

Western Division Housing Court
Unofficial Reporter of Decisions

Volume 40

Dec. 9, 2024 — Dec. 31, 2024

ABOUT

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

WHO WE ARE

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

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

OUR PROCESS

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

EDITORIAL STANDARDS

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

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

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

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

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

PUBLICATION

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

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

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

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COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-974

SUSAN CIFTCI,

Plaintiff,

v.

VESTA HOMES and KONOVER
RESIDENTIAL,

Defendants.

ORDER

After hearing on December 9, 2024, at which the plaintiff appeared self-represented and the defendants appeared through their counsel, the following order shall enter:

1. As an alternative to the hotel stay that is being requested by the tenant, the landlord has offered the tenant to temporarily relocate to another apartment in the tenant's building for approximately the one week that the landlord will have the tenant's unit painted and re-carpeted and a bathroom door installed.
2. This alternative is allowed by the court.

3. The tenant shall identify items that need to be moved to the alternate unit such as her bed and bedframe, kitchen table and chairs, kitchen items, clothing, etc. that the tenant will need while she is residing in that unit.
4. The landlord shall then move those items to the alternate unit careful and without causing any damage to them.
5. It is anticipated that this move will occur during the morning of December 10, 2024.
6. The landlord shall forthwith, on December 9, 2024, tape down the edges of the carpet remnants in the tenant apartment so as to avoid a dangerous tripping hazard.
7. After the move to the alternate accommodations if Ms. Ciftci realizes that other items need to be moved from her apartment to the alternate unit she can communicate same to the landlord who will make arrangements for those items to be moved.
8. During all times that the tenant is residing in the alternate unit she shall have total and unfettered access to her apartment.
9. This matter shall be scheduled for further hearing on **December 10, 2024, at 2:00 p.m. by Zoom** to ensure that these things were effectuated properly. If they were not, the tenant may renew her request for the landlord to provide her with hotel accommodations.

So entered this 9 day of December, 2024.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-516

CARMEN GONZALEZ,

Plaintiff,

v.

**CHRISTOPHER RIVERA and ZULEYKA
TAPIA,**

Defendants.

ORDER

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

1. The plaintiff has brought this case for injunctive relief, seeking a court order that the tenant (Zuleyka Tapia) not allow her boyfriend Christopher Rivera to live at the property and not stay there for more than 48 hours at a time--- which is the time limitation in the lease (Exhibit 1).
2. Ms. Tapia described that Mr. Rivera visit the tenant and their daughter for 48 hours each week and he will not stay beyond that time frame at any one time.

3. That shall be the order of the court: Mr. Rivera shall not stay at the premises for more than 48 hours at any one time.

So entered this 9 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-CV-973**

MAPLE COMMONS,

Plaintiff,

v.

ERIC GARCIA,

Defendant.

ORDER

After hearing December 4, 2024, at which the plaintiff appeared through counsel and the defendant, Eric Garcia, appeared self-represented, the following order shall enter:

1. Mr. Garcia testified credibly that he has been living at the subject premises with the deceased tenant, Lindy Collazo. Ms. Collazo was the only legal tenant therein and died on November 4, 2024.
2. Mr. Garcia further testified that the landlord knew that he was living at the unit and that landlord's staff even assisted him in completing the money orders

when he paid the rent. Mr. Garcia believes that one of the staff that helped him in this manner was "Lourdes".

3. The landlord is seeking an order that Mr. Garcia vacate the premises.
4. This matter shall be scheduled for further hearing, at which time the parties shall have relevant witnesses present to testimony (including anyone named Lourdes that works for the plaintiff), on **December 10, 2024, at 9:00 a.m.**

So entered this 9 day of December, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79SP002118

PITTSFIELD HOUSING AUTHORITY,

Plaintiff,

v.

TIFFANY SERRANO,

Defendant

Order for Entry of Judgment and Issuance of Execution

This matter came before the court on December 4, 2024 for hearing on Plaintiff Pittsfield Housing Authority's *Motion for Issuance of Judgment and for Execution for Possession*.

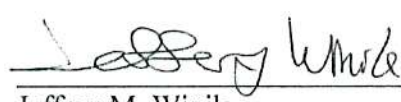
The plaintiff commenced this summary process action against defendant Tiffany Serrano based upon allegations of nonpayment of rent. On July 10, 2024 the parties entered into a written agreement. Under the terms of the agreement the defendant acknowledged that she owed \$14,979.52 in unpaid rent as of the date of the agreement. The monthly rent was \$762.00. The defendant agreed to pay her monthly rent each month plus \$200.00 (that would be applied toward the rent arrearage) by the 5th day of each month commencing in August 2024. The agreement further provided that the defendant would make a \$3,000.00 payment (that would be applied towards her rent arrearage) when she received her 2023 federal tax refund. Finally, the agreement provides that if the defendant fails to comply with either the rent or arrearage payment provisions the plaintiff may move for entry of judgment.

The defendant has not complied with material terms of the July 10, 2024 agreement. First, the defendant has failed to make any rent or arrearage payments for the months of October or November 2024. Second, although she received her 2023 federal tax refund (in amount just under \$3,000.00), the defendant failed to tender that amount to the plaintiff. As of December 4, 2024 the rent arrearage has increased to \$15,901.92.

Accordingly, the plaintiff's motion is **ALLOWED**.

It is **ORDERED** that judgment enter for the plaintiff for possession and unpaid rent totaling \$15,901.92 (unpaid rent through November 2024), plus interest and costs. Execution shall issue forthwith; however, the plaintiff shall not levy on the execution until on or after January 8, 2025.

So entered this 9th day of December, 2024.

 *w/permission*

Jeffrey M. Winik
Associate Justice (Recall Appt.)

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-983**

TOWN OF SOUTHAMPTON,	
	Plaintiff,
v.	
CARRIE MALO, et al.,	
	Defendants.

**ORDER TO
VACATE THE
PREMISES UNTIL
CONDEMNATION
IS LIFTED**

After hearing December 9, 2024, on the plaintiff Town's emergency compliant and motion for injunctive relief, at which the Town and Mr. Gary Malo appeared, the following order shall enter:

1. The subject premises located at 4 Gunn Road Ext., Southampton, Massachusetts (premises) has been condemned by the Town of Southampton Board of Health (Southampton).
2. After a November 5, 2024, Correction Order and a November 12, 2024, Condemnation requiring that no one reside therein, there has been no repairs effectuated and the property is still being occupied.

3. All occupants shall immediately vacate the premises.
4. The Town shall post copies of this Order on each door at the premises forthwith.
5. The Town shall board and secure the premises on December 10, 2024, or thereafter as soon as is practicable after having the occupants removed from the premises. The Town may utilize the services of the Sheriff's Office or the local police---who may treat the occupants as trespassers under G.L. c.266, s.120.
6. The Town may seek to be compensated by the owners of the premises for the costs associated with its being boarded and secured.
7. Any party or any occupant of the premises may be heard at the next Court hearing noted below.
8. The Town shall have this Order served by Sheriff on Carrie Ann Malo in-hand or at her last and usual place of residence.
9. This matter shall be heard further on **December 16, 2024, at 9:00 a.m.** at the Hadley Session of the Housing Court located at 116 Russell Street in Hadley, Massachusetts.

So entered this 9th 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-SP-2473

A.P. II, LP,

Plaintiff,

v.

LISETTE RIVERA,

Defendant.

ORDER

After hearing on December 4, 2024, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. The landlord reports that the tenant's rent balance is \$4,982.82 plus \$237.01 court costs.
2. The tenant explained that her Workmen's Compensation stopped in October 2024, which prevented her complying with the terms of the Agreement dated September 6, 2024.

3. The tenant shall pay \$427 to the landlord today.
4. Though the tenant reports that she reported the change in her income to Way Finders, Inc. but her rent was not recalculated.
5. To provide the tenant with additional time to advocate with Way Finders, Inc. to recalculate her rent, this matter shall be scheduled for further hearing noted below.
6. This matter shall be scheduled for hearing on the landlord's motion for entry of judgment on **December 19, 2024, at 9:00 a.m.**

So entered this 10th 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-CV-914

SHAIANN ANDRADE,

Plaintiff,

v.

**SUSAN YE, MEDALIA HEATLEY, and
VIVIANA RODRIGUEZ,**

Defendants.

ORDER

After hearing on December 5, 2024, on cross-motions from Andrade and Rodriguez, the following order shall enter:

1. As a preliminary matter, the caption shall be corrected so that Ms. Heatley's last name is correctly spelled "Heatley".
2. Ms. Rodriguez did not meet her burden of proof that Ms. Andrade violated the Court's November 15, 2024, Order (hereinafter, "November Order"). Further, Ms. Rodriguez failed to give the landlord an opportunity to act on her complaint about Ms. Andrade.

3. Ms. Andrade did not meet her burden of proof that Ms. Gonzalez violated the November Order.
4. Ms. Ye has failed to comply with the November Order. She is not sufficiently researching the complaints by her tenants about one another including, but not limited to viewing the camera surveillance and/or sharing same with the tenants, and not taking sufficient steps to address the problems among her tenants.
5. The terms of the November Order shall continue to be in full force and effect, which includes a prohibition on communication between the parties and obligations on the landlord to investigate and take appropriate action.

So entered this 10th day of December, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

APPLETON CORPORATION AS LESSOR AND
CROSS TOWN CORNERS AS OWNER,

Plaintiff,

-v.-

DOCKET NO. 23SP05583

JEANNIE DATIL,

Defendant.

ORDER

This matter came before the court on December 6, 2024 for a hearing on the plaintiff's motion for entry of judgment and issuance of the execution. The plaintiff appeared through their attorney with the property manager. The defendant appeared and was self-represented. Janis Luna of Wayfinders joined the hearing to report on RAFT.

In this eviction case based on nonpayment of rent, the plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy. The monthly rent is \$960.¹ Since the case was filed on December 12, 2023, the parties have entered into Agreements to try to resolve the matter. The most recent Agreement was filed on June 21, 2024.² By its terms relevant to this motion, the defendant agreed to pay her monthly use and occupancy by the tenth of each month beginning in July and to make three payments to pay the remaining arrearage on the fifteenth of July, August, and September. The parties agreed that the case would be dismissed when the defendant's arrearage reached zero, but that if she did not comply with the

¹ The rent is scheduled to increase to \$1,100 as of February 1, 2025 pursuant to the provisions of the Low Income Tax Credit Program governing the tenancy.

² The defendant received \$6,005.21 in RAFT financial assistance. This did not reduce the arrearage to zero, because a payment by the defendant was returned for insufficient funds. The defendant replaced the check, but by then she owed additional money.

terms of the Agreement, the plaintiff could file a motion for entry of judgment and issuance of the execution.

The plaintiff now has filed such a motion on the grounds that the defendant did not make all of the payments as she agreed. She owes \$3,800 through December 2024.

The defendant reported that she lost her job because her daughter was ill. She applied for RAFT financial assistance in the week before the hearing. Ms. Luna from Wayfinders reported that she would be eligible only for the balance (\$7,000 minus the June RAFT payment). Wayfinders is waiting for the landlord's documentation. Because even the maximum RAFT payment at this time will still leave a significant balance, the defendant must propose a realistic payment plan to the plaintiff to be eligible for RAFT. She suggested that she could pay the balance when she receives her expected tax refund. The plaintiff was not prepared to accept such a payment plan at the hearing.

The court finds that the defendant is in substantial noncompliance with material terms of the parties' June 21, 2024 Agreement. However, because there is a pending RAFT application, the court continues the hearing on the plaintiff's motion pursuant to G.L. c. 239 §15 to give the parties the opportunity to complete the RAFT application process and to negotiate a payment plan for the balance that would remain.

Orders

After hearing, the following orders will enter:

1. The hearing on the plaintiff's motion for entry of judgment and issuance of the execution is continued to **December 20, 2024 at 9:00 a.m.**
2. Before that hearing, the plaintiff will submit the required documentation to Wayfinders and the defendant will submit any further documentation if required by Wayfinders.
3. Also before that hearing, the defendant will submit a realistic payment plan to the plaintiff for the arrearage that would remain if RAFT paid the maximum amount. The plaintiff will consider such proposed payment plan in good faith.
4. At the hearing on December 20, 2024, the parties will report on the status of the RAFT application.

5. The defendant will pay her December use and occupancy (\$960) before the December 20, 2024 hearing.

December 10, 2024

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

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-60

CITY OF WESTFIELD,

Plaintiff,

v.

ALYCAR INVESTMENTS, LLC, et al.,

Defendants.

ORDER

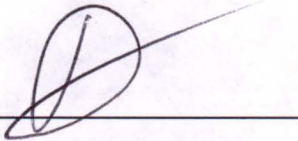
After hearing on December 6, 2024, the following order shall enter:

1. The defendant property owner Alycar Investments, LLC (Alycar) admits through counsel that it has not made all of the repairs required by earlier City citations and Court orders.
2. As such, Alycar is found to be in contempt of the Court's "30-day to complete repairs" orders of September 23, 2024, and October 31, 2024.
3. Having found Alycar in contempt, the Court shall order a sanction, designed to coerce Alycar into finally completing the repairs at the premises, of \$100

per day beginning on Monday, December 9, 2024, for each day until the City determines that the repairs are satisfactorily completed.

4. Said monies shall be paid, if any should accrue, to the Court.
5. Additionally, the court's order from October 31, 2024, which required in paragraph #3 that Alycar provide seventy-two hours notification to the City before it sells or otherwise transfers ownership of the subject premises shall be amended so that the seventy-two hours do not run during weekends or holidays.
6. If the sanctions imposed above accrue and are not paid by the time of any closing on the sale of the premises, all such sums shall be paid to the Court out of the sale proceeds.

So entered this 10th 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-SP-3081

NICHOLAS HURLIN,

Plaintiff,

v.

LOIS RAMIREZ, JESSENIA ROMAN, and
JANNETTE RODRIGUEZ,

Defendants.

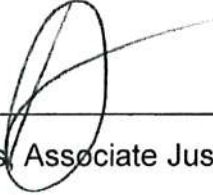
ORDER

After hearing December 6, 2024, on the landlord's motion for entry of amended judgment at which only counsel for the landlord appeared, the following order shall enter:

1. For a multitude of reasons, the motion is denied and the case is dismissed.
2. First off, this summary process action was commenced prior to the expiration of the notice to quit.
3. Second, the notice to quit is for no-fault and the summons was for fault reasons.

4. Third, after the tenant defaulted at the Tier 1 event in August 2023, the landlord waited ten months, until June 2024, to file a non-military affidavit.
5. Fourth, the execution in this matter expired in October 2024, and there is no basis for issuing a new one in accordance with G.L. c.235, s.23.
6. Accordingly, the motion to amend the execution is denied and this matter is dismissed, without prejudice.

So entered this 10th 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-2627

MASON SQUARE,

Plaintiff,

v.

JENNIFER FELICIANO,

Defendant.

ORDER

After hearing on December 4, 2024, on the tenant's motion to stop a physical eviction at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. The tenant explained that she lost her employment after the parties' agreement filed on August 16, 2024, but that now she has two jobs and believes she can pay her rent plus arrearage payments.
2. There is a RAFT application pending (Application # [REDACTED]) and a representative from Way Finders, Inc. was able to join the hearing by zoom.

Way Finders, Inc. was able to confirm the pending status of the RAFT application.

3. The tenant reported that she is anticipating tax returns nearing \$8,000 and will pay all of it towards the outstanding debt not covered by RAFT (if RAFT pays). Said payment shall be within five business days of receipt of said tax returns the tenant shall make said payment.
4. On December 6, 2024, the tenant shall pay \$500 towards the arrearage. Upon said payment, the landlord shall cancel the current move-out scheduled for December 11, 2024.
5. Beginning in January 2025, the tenant shall pay her monthly rent on time and then she shall pay \$500 towards arrearage by the third week of each month. This extra monthly payment should be viewed by RAFT as a "repayment plan" for purposes of the RAFT program.

So entered this 10th day of December, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

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

PAPER CITY PROPERT MANAGEMENT,
Plaintiff

v.

HENRY GARCIA,
Defendant

ORDER OF DISMISSAL

This case came before the Court on December 10, 2024 on the defendant's motion to dismiss under Mass. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. After hearing at which both parties appeared, the Court allows the motion.

A levy is scheduled to occur this week. The defendant filed a motion to stay use of the execution, which was scheduled for hearing on December 5, 2024. The hearing was continued to December 6, 2024, and on that day, a lawyer filed a Limited Assistance Representation appearance and a motion to dismiss for lack of subject matter jurisdiction, citing the plaintiff's lack of standing to pursue an eviction.

A plaintiff may bring a summary process action to evict a tenant and recover possession of its property only if the plaintiff is the owner or lessor of the property. *Rental Property Mgmt Services v. Hatcher*, 479 Mass. 542, 546 (2018). In this case, it is undisputed that the plaintiff is not the owner. The sole question is whether the plaintiff is the lessor of the property. Because plaintiff's counsel had little time to prepare for the hearing and to show that the plaintiff was in fact the lessor, the Court continued the hearing to today.

A property management company can be the lessor and therefore be entitled to recover possession of residential premises from a tenant. When the question is raised as to

whether a particular property management company is acting as the lessor in a particular case, the Court requires some evidence to show that the property management company in question is carrying out the responsibilities of a lessor, including but not limited to entering into leases, collecting rents and addressing maintenance issues.

Here, the plaintiff did not produce any such evidence. It contends that it should be considered the lessor because its principal is the same individual who is the principal of the ownership entity. Common ownership is not the determining factor, however, as the companies are each a separate legal entity. The plaintiff did not produce any evidence to demonstrate that it was acting as the lessor.¹

Under the circumstances presented in this case, the Court has no choice but to dismiss the case with prejudice due to lack of standing. The levy shall be cancelled forthwith.

SO ORDERED.

December 10, 2024

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

cc: Court Reporter

¹ Despite a representation that the plaintiff manages the property and collects rents, the defendant provided evidence that his Section 8 Housing Assistance Payment contract is between Springfield Housing Authority and Holyoke SF 21, the owner, and not with the plaintiff.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-5367

SPRING MEADOW APARTMENTS,

Plaintiff,

v.

JOELIZ TOLEDO,

Defendant.

ORDER

After hearing on December 4, 2024, at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. The parties reported that the tenant's RAFT application was denied.
2. The landlord reports that \$4557.74 is due through December 2024.
Judgment shall enter for that sum plus court costs.
3. There shall be a stay on the issuance of the execution contingent upon the tenant complying with the terms of this order.

4. The tenant shall pay her rent for December 2024 (\$855) plus an additional \$50 towards arrearage, totaling \$905 today.
5. The tenant shall pay her rent timely plus \$400 per month beginning in January 2025 towards arrearage.
6. Additionally, the tenant shall pay the remaining arrearage with her 2023 tax returns within five business days of her receipt of same.

So entered this 10th day of December, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-2384

WILMINGTON SAVINGS FUND SOCIETY, FSB,
AS OWNER TRUSTEE OF THE
RESIDENTIAL CREDIT OPPORTUNITIES
TRUST VI-A,

Plaintiff

v.

DAN BARTLETT, ET AL.,
Defendants

DECISION AND ORDER

This post-foreclosure summary process case was before the Court on October 28, 2024, for hearing on the motion for summary judgment filed by Wilmington Savings Fund Society, FSB, as Owner Trustee of the Residential Credit Opportunities Trust V1-A (“Plaintiff”). Plaintiff seeks possession of residential property located at 161 Wilson Avenue in Chicopee, Massachusetts (the “Property”) currently occupied by Dan Bartlett and Alissa Guiel (“Defendants”). Defendants filed a written opposition and Plaintiff then filed a reply brief. All parties appeared and were represented by counsel.

Plaintiff filed this case on June 19, 2024. Defendants filed an answer and counterclaim on August 1, 2024, alleging: 1) a need for dismissal due the pendency of a Superior Court matter brought by Defendant Guiel’s mother Brenda challenging the foreclosure sale; and 2) violations of G.L. c. 93A for failure to strictly follow

Massachusetts foreclosure statutes. On September 13, 2024, Defendants filed a motion to dismiss, arguing that the pendency of the Superior Court case should have a preclusive effect on the Housing Court's ability to hear the instant summary process action. Following a hearing on October 2, 2024, the Court denied Defendants' motion.

STANDARD OF REVIEW

Plaintiff seeks summary judgment on the question of possession. The standard of review for summary judgment "is whether, viewing the evidence in the light most favorable to the non-moving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." *Augat, Inc. v. Liberty Mut. Ins. Co.*, 410 Mass. 117, 120 (1991). See Mass. R. Civ. P. 56 (c). The moving party must demonstrate with admissible documents, based upon the pleading depositions, answers to interrogatories, admissions documents, and affidavits, that there are no genuine issues as to any material facts, and that the moving party is entitled to a judgment as a matter of law. *Community National Bank v. Dawes*, 369 Mass. 550, 553-56 (1976). All evidentiary inferences must be resolved in favor of the non-moving party. See *Simplex Techs, Inc. v. Liberty Mut. Ins. Co.*, 429 Mass. 196, 197 (1999).

DISCUSSION

Plaintiff alleges that there are no genuine issues of material fact in dispute. Plaintiff further asserts that the Foreclosure Deed and Affidavit of Sale in the statutory form recorded with the Hampden County Registry of Deeds in Book 25120, Page 183 establishes its prima facie case for possession. See *Federal National Mortgage Ass'n v. Hendricks*, 462 Mass. 569 (2012). The Court agrees.

Defendants do not claim that they are bona fide tenants under G.L. c. 186A, nor do they set forth facts from which the Court could find them to have established a landlord-tenant relationship of any kind with Plaintiff. Moreover, they acknowledge that they are not signatories to the note or mortgage. Their opposition to summary judgment is based on two legal arguments.

First, Defendants contend that the instant eviction case should be delayed pending resolution of the Superior Court case in which Brenda Guiel is challenging title. They argue that Defendants cannot establish their superior right to possession until the challenge to title is resolved. The Court disagrees. Defendants are not parties in the Superior Court case and Brenda Guiel is not a party in this case because she does not reside at the Property. Given that summary process addresses the issue of possession, and the fact that one of the defendant's mothers is challenging Plaintiff's title to the Property does not preclude judgment for possession entering against Defendants.

Second, Defendants assert that they can overcome Plaintiff's prima facie case by demonstrating that Plaintiff failed to strictly comply with Massachusetts foreclosure statutes. In an unpublished decision involving a case with a similar fact pattern, the Appeals Court concluded that only the former owner (and not her adult child or other residents) was a party to the loan agreement or mortgage and thus was the only party with standing to challenge the validity of the foreclosure. See *Ten Diamond St. Worcester Realty Tr. v. Farrar*, 99 Mass. App. Ct. 1131 (2021). In the *Farrar* case, none of the other residents were bona fide tenants and none had a

tenancy relationship with the bank. Although not bound by the *Farrar* decision, the Court is persuaded by and agrees with its reasoning.¹

Here, Defendants are not tenants but are merely occupants of the Property. Under the circumstances, the Court concludes that they have no standing to challenge the validity of the foreclosure.

CONCLUSION

Because there are no genuine issues of material fact in dispute and given that the Court rejects the two legal arguments presented by Defendants in their opposition, the Court concludes that Plaintiff is entitled to entry of judgment. Accordingly, the Plaintiff's Motion for Summary Judgment is ALLOWED.

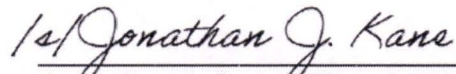
ORDER

1. Judgment for possession shall enter in favor of Plaintiff.
2. Execution may issue upon written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

December 10, 2024

cc: Court Reporter


Jonathan J. Kane, First Justice

¹ The decisions cited by Defendants are inapposite, as they do not address the rights of mere occupants (as opposed to bona fide tenants) to raise title as a defense in a summary process case. In *Bank of New York v. Bailey*, 460 Mass. 327, 334 (2011), the defendant was the former owner, and the issue was whether the Housing Court had jurisdiction to decide the validity of a challenge to a title raised by a former homeowner as a defense to a summary process eviction action. In *U.S. Bank Trust, N.A. v. Johnson*, 96 Mass. App. Ct. 291 (2019) the foreclosing bank argued that the former owner's adult daughter was ineligible to move for waiver of the appeal bond due to lack of standing to challenge the validity of the mortgage. The Court did not specifically address the adult daughter's status but labeled her a tenant and noted that any tenant could raise the validity of a foreclosure as a defense to possession. *Id.* at 297-98. Defendants here are not tenants.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

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

ANCHORED PROPERTY INVESTMENTS, LLC,)
Plaintiff)
v.)
MELISSA VASQUEZ,)
Defendant)

FINDINGS OF FACT,
RULINGS OF LAW AND
ORDER FOR JUDGMENT

This summary process case came before the Court on December 9, 2024 for a bench trial. Both parties appeared with counsel.¹ Plaintiff seeks possession of residential premises located at Wilcox Street, Apt. 2L, Springfield, Massachusetts (the “Premises”) pursuant to G.L. c. 139, § 19. In relevant part, G.L. c. 139, § 19 recites:

If a tenant or occupant of a building or tenement, under a lawful title, uses such premises or any part thereof for the ... illegal keeping, sale or manufacture of controlled substances ... or the illegal keeping of a weapon ..., such use or conduct shall, at the election of the lessor or owner, annul and make void the lease or other title under which such tenant or occupant holds possession and, without any act of the lessor or owner shall cause the right of possession to revert and vest in him, and the lessor or owner may seek an order requiring the tenant to vacate the premises or may avail himself of the remedy provided in chapter two hundred and thirty-nine.

¹ Defendant was not present at the commencement of trial. The case was scheduled for 9:00 a.m., but the trial did not begin until 10:23 a.m. Defendant appeared in the courtroom at 11:10 a.m. Although she arrived during Plaintiff’s case in chief, she elected not to testify.

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

The Premises are located in a 16-unit residential property managed by Plaintiff on behalf of the property owner. Plaintiff collects rents, manages maintenance requests and protects the safety of residents. The Court finds that it is the lessor of the Premises, and therefore is a proper plaintiff that has a superior right to possession in relation to Defendant.

On September 17, 2023, police (a combination of State Police and Springfield Police) arrested two individuals suspected of trafficking and/or distributing narcotics outside of the building located at 24 Wilcox Street. These individuals were searched and officers discovered they were in possession of loaded firearms and suspected cocaine and heroin. They were arrested and charged with numerous felony narcotics and firearms offenses. One of the individuals arrested was in possession of a key to the Premises.

After obtaining a warrant, law enforcement used the key to enter the Premises. No one was home at the time. Police confiscated approximately 56 bundles each containing approximately ten wax bags each containing tan powder, one small, knotted baggie containing off white chunky substance and one with white powdery substance, and various bags containing green leafy vegetable matter. State Trooper DeCaro testified credibly that his colleagues also found items related to the keeping of drugs (scales, unused plastic bags stamped with identifying information, white powder residue) inside the Premises. Defendant did not dispute that the narcotics found in the Premises were illegal controlled substances as defined in G.L. c. 94C.

Although no firearms were found in the Premises, a bag of firearms and narcotics was located on the porch directly above the Premises, which are attached by an external staircase. In the bag was an identification card of an individual who, when investigators entered the Premises, was discovered to be receiving mail with his name and the address of the Premises.

Defendant was not charged with a crime. Her counsel contends that the illegal firearms and narcotics found on the individuals arrested outside of the 24 Wilcox Street cannot be directly connected to Defendants, and the firearms and narcotics located on the porch above the Premises could have come from anywhere. He also argued that there is no evidence that Defendant was aware of any illegal conduct in the Premises.

The Court finds that Plaintiff proved by a preponderance of the evidence that a tenant or occupant used the Premises for the illegal keeping, sale or manufacture of controlled substances. Even if Defendant herself was not directly engaged in the keeping, sale or manufacture of controlled substances, the Court draws an inference that she must have been aware of the activity going on inside her apartment. The evidence shows that drug paraphernalia was kept in plain sight and the credible testimony leads to the conclusion that Defendant must have known that her unit was being used to keep illegal drugs. Moreover, Plaintiff's property manager testified that she personally witnessed drug activity and/or drug transactions taking place in the Premises. Defendant did not testify, so the evidence is uncontroverted. Therefore, the Court finds that Plaintiff sustained its burden of proof under G.L. c. 139, § 19.

that the Premises were used for the illegal keeping, sale or manufacture of controlled substances.²

Because Plaintiff availed itself of the remedies provided in G.L. c. 239 in order to recover possession, Plaintiff is entitled to recover unpaid rent or use and occupancy if it is claimed (emphasis added). See G.L. c. 139, § 19. Here, the complaint makes no claim for unpaid rent or use and occupancy. Plaintiff introduced evidence showing that \$16,278.00 is due through the date of trial,³ and Defendant neither objected to the introduction of the evidence nor to the amount of money owed. Plaintiff may move to amend the complaint to conform to the evidence at trial if it seeks a monetary judgment.

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

1. Judgment shall enter for possession in favor of Plaintiff.
2. Execution (eviction order) shall issue pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

December 11, 2024.


Jonathan J. Kane, First Justice

cc: Court Reporter

² It is not necessary to reach the question of whether weapons were kept in the Premises.

³ The ledger shows more is owed, but the Court deducted late fees, which generally are not collectable in a summary process action.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

FRANKLIN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-3851

STEVEN GELMAN,)
)
)
 Plaintiff)
)
)
 v.)
)
)
 OLEOLA NEWCOMBE,)
)
)
 Defendant)
_____)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER FOR JUDGMENT

This summary process case brought for nonpayment of rent came before the Court for a bench trial on November 15, 2024. Both parties appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 32 Center Drive, #2, Orange, Massachusetts (the “Premises”).

At the outset of trial, the parties stipulated to Plaintiff’s prima facie case for possession, including Defendant’s receipt of the notice to quit. The parties agree that monthly rent is \$1,250.00. The parties do not agree on the amount owed. Defendant filed an answer with defenses and counterclaims for violation of G.L. c. 186, § 15B (security deposit and last month’s rent), G.L. c. 186, § 18 and G.L. c. 239, § 2A (retaliation), G.L. c. 186, § 14 (quiet enjoyment), G.L. c. 93A (consumer protection) and the common law claim of breach of the implied warranty of habitability.

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 has lived at the Premises since 2018. In June 2024, Defendant made a lump sum payment of \$15,000.00 which brought her balance to zero through June 2024. Defendant has not paid rent for the last five months, leaving a balance of unpaid rent in the amount of \$6,250. RAFT has approved a payment of \$5,000.00, which will pay the balance owed through October, 2024, leaving a balance of \$1,250.00 as of the date of trial.¹ The Court will next address each of Defendant's defenses and counterclaims.

A. Violation of G.L. c. 186, § 15B (Security Deposit and Last Month's Rent)

Defendant alleges that the father of her child paid a security deposit of \$1,000.00 at the outset of the tenancy. At the time, he was employed by Plaintiff's business, and she claims the security deposit was paid in installments of \$25.00 deducted from his paycheck. She further claims that she paid \$1,000.00 for last month's rent. She claims to have a receipt, but she did not bring it to trial. She also claims Plaintiff admitted that he had accepted last month's rent in a different court proceeding but, again, offered no proof. The lease does not reference payment of either a security deposit or last month's rent and Plaintiff denies any deposits.

Without any evidence, the Court rules that Defendant failed to sustain her burden of proving by a preponderance of the evidence that Plaintiff violated G.L. c. 186, § 15B.

B. G.L. c. 186, § 18/G.L. c. 239, § 2A (retaliation)

In her answer, Defendant alleges both the defense of retaliation (G.L. c. 239, § 2A) and a counterclaim for retaliation (G.L. c. 186, § 18). The Court rules that she waived these claims by not testifying to them at trial. To the extent that the Court

¹ The RAFT payment is scheduled to be sent to Plaintiff today.

could find that a presumption of retaliation arose based solely on the documentation submitted at trial, the Court rules that Plaintiff demonstrated by clear and convincing evidence that he would have sent the notice to quit when he did regardless of any complaints made by Defendant. Defendant had not paid rent for many months when she paid the lump sum of \$15,000.00 in June 2024, and then she immediately fell behind again by failing to pay rent in July and August, leading to Plaintiff serving the notice to quit in August 2024.

C. Conditions of Disrepair

Defendant alleges that she suffered with conditions of disrepair that endangered or materially impaired her health or safety. She contends that these conditions constitute a breach of warranty, interfered with her quiet enjoyment (G.L. c. 186, § 14) and violated G.L. c. 93A.

The evidence presented at trial shows that Defendant complained about conditions in early September 2024 when she informed Plaintiff that her dishwasher and stove were broken. Defendant offered no credible testimony that she made earlier complaints about conditions.² Despite Defendant's testimony that Plaintiff failed to respond to her complaints, the evidence shows that on September 10, 2024, Plaintiff had R&M Handyman Service create a punch list of items that needed repair. The Court finds that each of the items was adequately addressed within a reasonable time frame.³ By letter dated October 31, 2024, the Orange Board of Health issued a

² The letter of compliance issued by the Orange Board of Health indicates that it issued correction orders on July 19, 2024 and August 19, 2024, but these orders were not offered into evidence.

³ The Court does not credit Defendant's testimony that Plaintiff was essentially non-responsive to her requests for repairs. She claims she had to buy her own dishwasher because the one Plaintiff provided did not work, but there is no credible evidence of this claim, and in any event, Defendant stated that she was not looking for compensation for the dishwasher.

letter of compliance with respect to all Sanitary Code violations.

With respect to any time period during which Defendant had to live with conditions of disrepair in September and October 2024, the Court finds that the conditions about which Plaintiff complained did not endanger or materially impair the health or safety of the occupants of the Premises, and that they were not substantial violations that constituted a breach of the warranty of habitability.⁴ These conditions also were not sufficiently serious to constitute a breach of warranty or a violation of G.L. c. 93A.

With specific reference to an overflowing dumpster that Defendant claimed attracted rodents, the evidence shows that the dumpster belonged to the upstairs tenant and that Plaintiff made reasonable efforts to have the dumpster removed. He also hired a professional exterminator to treat the Premises on a regular schedule, and the extermination records do not support a conclusion that the Premises were infested with rodents.⁵ The Court finds that Plaintiff did not act negligently with respect to the dumpster and therefore did not violate G.L. c. 186, § 14. See *Al-Ziab v. Mourgis*, 424 Mass. 847, 850 (1997) (a tenant must show some negligence by the landlord in order to recover under the statute).

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

1. Judgment for possession and \$1,500.00 in damages, plus court costs, shall enter in favor of Plaintiff.

⁴ The primary health concern about which Defendant complained relates to “mold” under the dishwasher. There is insufficient evidence to find that the substance Defendant saw was harmful mold or that it compromised the air quality in the apartment.

⁵ Defendant testified that the rodents were seen in the garage, not in living areas.

2. Judgment shall enter in favor of Plaintiff on Defendant's counterclaims.
3. Execution (the eviction order) may issue upon written application ten days after the date judgment enters.

SO ORDERED.

DATE: December 11, 2024

/s/ Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-2723

ALI MAHDI,

Plaintiff,

v.

SAJIDAH AZEEZ and AHMED MAHDI,

Defendants.

ORDER

After hearing October 23, 2024, on several of the defendants' motions at which the plaintiff Ali Mahdi appeared self-represented and the defendants appeared with counsel, the following order shall enter:

1. **Defendants' Motion to Dismiss:** The bases for this motion to dismiss include (1) the fact that the notice to quit was for no-fault and the summons is for non-payment of rent, (2) the fact that because rent was not reserved payable at periods less than three months, the 30-day notice to quit was insufficient as the law requires a three-month notice in these circumstances

(G.L. c.186, s.12), and (3) that the premises is a marital home off the defendant, Sajida Azeez, that its conveyance was fraudulent and the plaintiff, therefore, lacks superior right to possession (G.L. c.239, s.1).

2. The May 30, 2024, Notice to Quit was for no-fault. The summons and complaint is for non-payment of rent. In accordance with well-established case law, the reason stated in the summons and complaint must be consistent with the notice to quit. The plaintiff is assigned the grounds for termination stated in the notice to quit. *Tuttle v. Bean*, 13 Met. 275 (1847); *Stycharski v. Spillane*, 320 Mass. 382 (1946).
3. This first argument is sufficient to dismiss the plaintiff's action for possession. The defendants' second argument that the defendants never paid rent at the premise in intervals less than three months (or any interval for that matter) is undisputed by the plaintiff and this also forms a basis for dismissing the plaintiff's claim for possession----as the notice to quit was for 30 days and not three months.
4. Accordingly, the defendants' motion to dismiss the plaintiff's eviction action (claim for possession) is allowed and the defendants' claims shall be severed into a Civil Action which shall be captioned *Sajidah Azeez and Ahmed Mahdi v. Ali Mahdi and Mohanad Jumaah* ¹.
5. **Defendants' Motion to Amend the Pleadings and Allow the Amended Answer and Counterclaims filed with the Court: Allowed.**

¹ See below where Mr. Jumaah is added as an indispensable party as a third-party defendant.

6. **Defendants' Motion to Join Indispensable Party:** In accordance with Mass. R. Civ. P. 19, Mohanad Jumaah, with a mailing address of 42 Massasoit Avenue, West Springfield Massachusetts, appears to be necessary for complete relief to be accorded among the already existing parties and he shall be added as a Defendant in the new Civil Action discussed in Paragraph 4 above.
7. **Defendants' Motion for a Writ of Attachment:** The court treated this motion as one for an order that the plaintiff and the third-party defendant be prohibited from selling, transferring, or further encumbering any properties owned by either Ali Mahdi or Mohanad Jumaah and hereby allowed. Azeez and Ahmed Mahdi may record a copy of this order at the Registry of Deeds. This probation may be revisited at a later time by motion.
8. **Defendants' Motion to Claw Back:** This motion is taken off the list by the court as premature given the early status of this matter and the pendency of the Probate & Family matter between Jumaah and Azeez.
9. **Answer Due from Ali Mahdi and Mohanad Jumaah:** Ali Mahdi shall treat the Amended Answer deemed filed and served as described in Paragraph 5 above as a Complaint and has 20 days after today's hearing to file and serve his Answer.
10. Azeez and Ahmed Mahdi shall have the co-defendant in the Civil Action Mohanad Jumaah served with a summons and the Amended Answer and Mr. Jumaah shall treat same as a Complaint and have 20 days after receipt to file and serve an Answer.

11. **Jury Demand:** The jury demand filed by Sajidah Azeez and Ahmed Mahdi is accepted and the newly created Civil Action described in Paragraph 4 above shall be by jury trial.

12. **Case Management Conference:** The Clerk's Office is requested to open a new Civil Action as described in Paragraph 4 above and schedule a Case Management Conference in that matter.

So entered this 11 day of December, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

MING TSANG,

Plaintiff,

-v.-

DOCKET NO. 24SP03646

ANTHONY JOHNSON,

Defendant.

ORDER

This matter came before the court on December 6, 2024 for a hearing on the plaintiff's motion to issue the execution. Pursuant to the terms of the parties' October 31, 2024 Agreement, judgment has not entered yet in this case. Therefore, the court deems the plaintiff's motion to be a motion for entry of judgment. Both parties appeared at the hearing and were self-represented.

The plaintiff brought this eviction case without fault seeking possession of the subject rental premises. She also seeks unpaid rent/use and occupancy. On October 31, 2024 the parties entered into an Agreement to resolve the case. By the terms of the Agreement relevant to this motion, the parties agreed that the defendant owed \$2,900 representing two months use and occupancy through October 2024.¹ The defendant agreed to vacate the apartment by January 1, 2025 and to pay the November and December use and occupancy on the fifteenth of each month. The plaintiff agreed to waive the arrearage and costs if the defendant moved by January 1, 2025. Both parties agreed to waive all claims arising from the tenancy exclusive of personal injury claims. The defendant reported there were repairs needed in the unit, including the main drain, and agreed to provide access to the plaintiff to inspect and make necessary repairs. If the

¹ The defendant also agreed to apply for RAFT financial assistance. The court notes that G.L. c. 239 §15 is not applicable in this case because it is not based solely on nonpayment of rent.

landlord did not make the repairs, the defendant agreed not to withhold his use and occupancy, but to file a motion to enforce the Agreement. No such motion has been filed. If the defendant moved as he agreed, the case would be dismissed. If he did not move or if he did not make the two payments as he agreed, the plaintiff could file a motion for entry of judgment and the waiver of the monies owed would be voided.

The plaintiff filed the motion now before the court on the grounds that the defendant did not pay any money since signing the Agreement. The arrearage through November is \$4,350. (December use and occupancy is not yet due pursuant to the terms of the Agreement.)

The defendant reported that he has lived at the premises since 2014, but that his wife always took care of the bills. She moved out as of September 1, 2024. He lost his job and does not have the money to pay the monthly use and occupancy. He offered a money order for \$900, but he did not have it with him to give to the landlord at the hearing. When he agreed to move by January 1, 2025, he did not have alternative housing in place and he has not been able to find a new apartment since then.

Since signing the Agreement, the plaintiff addressed the issue with the main drain. She replaced the toilet but said that she has to wait until the spring to make further repairs. The defendant reported that sewage continues to back up in his apartment, although it has not happened as often or as much since the toilet was changed. If this is the case, it is not clear why the defendant did not file a motion for enforcement pursuant to paragraph 10 of the Agreement. However, as discussed at the hearing, the plaintiff must repair the problem immediately so that there is NO sewage backup in the defendant's apartment for the remainder of his occupancy.

After hearing, the court finds that the defendant is in substantial noncompliance with a material term of the October 31, 2024 Agreement because he did not pay the November use and occupancy as agreed. The plaintiff is entitled to Judgment for possession and unpaid rent/use and occupancy.

Orders

After hearing, the following orders will enter:

1. The plaintiff's motion, deemed to be a motion for entry of judgment, is **ALLOWED**. Judgment will enter for the plaintiff for possession and \$4,350 in unpaid rent/use and occupancy through November 2024 with costs.

2. Execution is stayed through January 15, 2025 on condition that the defendant pay \$900 in a money order to the plaintiff by December 18, 2024.
3. The plaintiff will make repairs immediately so that there are no sewage backups in the defendant's apartment.

December 11, 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-3276

VALLEY OPPORTUNITY COUNCIL,)
)
Plaintiff)
)
v.)
)
VIVIAN MEDINA,)
)
Defendant)
_____)

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR JUDGMENT

This summary process case came before the Court on November 12, 2024 for a bench trial. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 865 Hampden Street, Unit 2L, Holyoke, Massachusetts (the “Premises”) from Defendant based on allegations of material lease violations.

The parties stipulated that Defendant’s tenancy began April 1, 2016 and that her rent is \$1,100.00 per month. Defendant acknowledges that she received the notice to quit and has not vacated. The only rent and use and occupancy owed through the date of trial is the current month of November 2024.

Because this is a for-cause eviction case, Defendant’s counterclaims may not be used as a defense to Plaintiff’s claim for possession pursuant to G.L. c. 239, § 8A unless the counterclaim undermines basis for terminating the tenancy. For judicial economy, however, and given that the parties appeared prepared for trial on all counterclaims, the Court agreed to hear the evidence and will identify any

counterclaim that, if successful, would be available as a defense to possession under § 8A.

Plaintiff alleges that Defendant substantially violated the terms of her lease due to (1) consistent late payment of rent, (2) causing disturbances, (3) failing to maintain her unit in a sanitary condition, (4) having unauthorized occupants, (5) and keeping unauthorized pets. In a for-cause eviction case, a landlord is limited to the reasons for eviction set forth in the complaint, and to prevail at trial, the landlord must prove by a preponderance of the evidence that the conduct described in the notice to quit constitutes a substantial violation of a material term of the lease.¹

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:

1. Consistent Late Payment of Rent

The landlord agreed to allow the tenant to pay in two installments each month. Plaintiff's property manager claims that she consented to Defendant paying rent in installments so long as there was not an outstanding balance. She testified that once Defendant began carrying a rent balance, Defendant became obligated to pay in full at the beginning of the month.

The Court finds no evidence of any such conditions on payment. Plaintiff did not offer any written notice that Defendant could no longer pay in installments as she had done for years. Defendant testified credibly that she was never told that her continued failure to pay in a single lump sum each month would be a basis for

¹ The Court notes that the lease was not introduced into evidence.

eviction. In any event, beginning in August 2024, Defendant began to pay in one lump sum (albeit late). Given the history of late and partial payments that the landlord accepted over the course the tenancy, and in light of the absence of a particular lease provision specifying the due date for payments, the Court finds that Defendant's late payment of rent does not constitute a substantial lease violation.

2. Disturbances

The Court finds that Plaintiff did not prove by a preponderance of the evidence that Defendant substantially violated her lease by interfering with the quiet enjoyment of others at the property. First, there was no evidence presented regarding the lease provision that Defendant purportedly violated. Second, Plaintiff offered no lease violation notices or witnesses to the alleged disturbances. The Court credits Defendant's testimony that the allegations stem from one neighbor with whom she has had numerous disputes and that she is not solely at fault for these issues.

3. Failing to Maintain the Unit

The Court finds that Plaintiff did not prove by a preponderance of the evidence that Defendant substantially violated her lease due to her housekeeping. The most recent inspection prior to service of the notice to quit in April 2024 occurred in June 2023. At that time, the property manager noted that Defendant's stove and drip pans needed to be cleaned and that there was evidence of leaks in ceilings that had not been reported by Defendant. She also noted damage to walls caused by cats and evidence that Defendant had been making her own repairs in the unit.

Plaintiff did not reinspect the Premises prior to serving the notice to quit ten months later. It is not reasonable to assume the condition of the Premises ten months

after an inspection. Even though Plaintiff contends that the annual inspection of the unit in June 2024 showed similar conditions, this inspection occurred long after the notice to quit was served. To sustain its burden of proof it must prove the allegations in the notice to quit at the time the notice was served.² Moreover, regarding the claim that Defendant failed to report the need for repairs, Defendant produced email correspondence reporting a water leak on August 29, 2023 and November 25, 2023. The Court concludes that Plaintiff did not sustain its burden of proof on its claim that Defendant's conduct in relation to the condition of the Premises constitutes a substantial lease violation.

4. Unauthorized Occupants

Defendant testified credibly that no other adult resides in the household. Plaintiff's property manager testified that at one point, Defendant's son's girlfriend moved into the Premises without permission and without reporting her income as part of the household income. Such behavior could constitute a material lease violation, but, without the lease, the Court has insufficient evidence to make a finding that Defendant violated her lease by allowing an occupant to stay beyond the period that is typically permitted in a lease involving a rent subsidy.

5. Unauthorized Pets

The parties testified consistently as to Defendant's request for a reasonable accommodation for her daughter to have cats. The property manager testified that Defendant supplied a letter from a health professional supporting the need for a

² Plaintiff did not move to amend its complaint prior to trial, so the Court does not reach the question of whether after-arising violations could be relied upon to substantiate Plaintiff's claims.

reasonable accommodation and that Plaintiff has yet to send a formal denial. She further stated that she would not approve of three cats as a reasonable accommodation. Nonetheless, fair housing laws require Plaintiff to engage in an interactive process regarding Defendant's request for an accommodation, and it must have proper grounds to deny the (e.g., the lack of a nexus to a disability or that it would cause an undue administrative and financial burden). Given that Defendant made the request approximately eleven months ago and Plaintiff has yet to respond formally, it would be premature to conclude that possession of the cats constitutes a substantial lease violation.

6. Defendant's Counterclaims

With respect to Defendant's counterclaims, she did not produce evidence to support a claim for retaliation. She called the Board of Health on May 3, 2024, after receiving the notice to quit. She offered no testimony or documentary evidence at trial regarding a security deposit, so her counterclaim for violation of G.L. c. 186, § 15B is dismissed.

Defendant's answer alleges that she suffered with defective conditions in her unit. She offered two notices of violation for the Board of Health but did not testify in any detail about the conditions. The first notice of violation, dated May 7, 2024, cites cracked plaster, issues with bathroom ventilation and damaged windows. The second notice of violation, dated October 30, 2024, cited the windows again, and a hole above the entry door. Standing alone, without any testimony from a health inspector or Defendant herself as to the extent, duration, and effect of these conditions on her living conditions, the citations do not provide sufficient information for the Court to

conclude that the violations cited were serious or that they could be considered substantial defects. Therefore, the Court concludes that Defendant's counterclaims are without merit.

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

1. Judgment shall enter for Defendant on Plaintiff's claim for possession.
2. Judgment shall enter for Plaintiff on Defendant's counterclaims.

SO ORDERED.

December 11, 2024


Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
The Trial Court
Housing Court Department

HAMPDEN DIVISION

Docket No. 22H79SC000116

WHILBY, PAULINE)
PLAINTIFF)
v.)
DIAZ, SAMANTHA et al)
DEFENDANT)

PROPOSED ORDER

On June 21, 2024, the Court issued an Execution on Money Judgment in the above captioned action, which requires the Defendant, Samantha Diaz (hereinafter "Defendant" or "Landlord") to pay the Plaintiff, Pauline Whilby \$6,640.44 per the following schedule of damages and interest:

Compensatory Damages	\$ 5,600.00
Prejudgment Interest	\$ 134.26
Court Costs	\$ 100.00
Judgment Total	\$ 5,834.26
Postjudgment Interest	\$ 806.18
Execution Total	\$ 6,640.44

As of December 10, 2024, Defendant has not paid Plaintiff any money to satisfy the Execution on Money Judgment and Postjudgment Interest continues to accrue due to nonpayment.

This matter having come before the Court on Pauline Whilby's motion seeking the temporary appointment of a keeper of rent at 49—51 Mansfield Street, Springfield, Massachusetts, 01108 (the "Property"), after notice and opportunity for hearing, and upon consideration thereof, it is ORDERED and ADJUDGED that:

1. For at least ninety (90) days from the date hereof and until further order of the Court, the Process Division of the Hampden County Sheriff's Department, having a principal place of operations at 95 Liberty Street PO Box 5005, Springfield, MA 01103, (413) 732-5772,

info@hampdencountysheriff.com (the "Keeper") is hereby appointed Keeper to attach rent owed to Defendant by tenants (the "Tenants") residing at the Property owned by Defendant to satisfy the Execution on the Money Judgement.

2. Tenants who reside at the Property shall hereby and until further notice pay any and all rent owed to the Defendant as landlord to the Keeper instead.
3. The Keeper shall transfer rent collected from the Tenants, less the Keeper's cost of service, to Paul M. Bromwich, Esq. of Egan, Flanagan and Cohen, P.C., having a principal place of business at 67 Market Street PO Box 9035, Springfield, MA 1102-9035, until further order of the Court.
4. The Tenants shall continue to pay rent owed to the Defendant as landlord to the Keeper until further order of the Court.
5. The Landlord is enjoined and otherwise prohibited from collecting rent from the Tenants, whether under a lease agreement or any other arrangement, until this Order has been lifted, and all payments received by the Keeper shall be credited to accounts of the respective tenants.
6. The parties will reconvene at a Court-scheduled hearing in April to address whether this Order must remain in effect.

Dated: December 11, 2024


Anse Kenney Chaplin, Justice
Housing Court

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79SP003238

ROBERT LLOYD,

Plaintiff,

v.

NATHANIEL McBEAN,

Defendant

Order for Judgment

This matter came before the court on December 11, 2024 for hearing on Plaintiff Charlie Shaw's *Motion for Judgment and Execution*.

The plaintiff commenced this summary process action against defendant Nathaniel McBean based upon allegations of nonpayment of rent. On October 16, 2024 the parties entered into a written agreement. Under the terms of the agreement the defendant acknowledged that he owed \$6,500.00 in unpaid rent through October 2024 (plus \$300.00 in late fees). The monthly rent was \$1,300.00. The defendant agreed to pay his monthly rent each month commencing in November 2024. Further, the defendant agreed to pay \$400.00 commencing in November 2024 that would be applied towards the rent arrearage and late fees.

In October 2024, the plaintiff received a \$4,400 payment from RAFT that reduced the rent amount owed to \$2,100.00 (not including late fees).

However, the plaintiff has not complied with material terms of the October 16, 2024 agreement. He failed to make any of the rent or arrearage payments due in November or December 2024. As of December 11, 2024 the rent arrearage increased to \$4,700.00 (plus late fees). There is no new pending RAFT application.

Because the defendant has not complied with his payment obligations under the October 16, 2024 agreement, plaintiff's *Motion for Judgment and Execution* is **ALLOWED**.

It is **ORDERED** that judgment enter for the plaintiff for possession and unpaid rent totaling \$4,700.00, plus costs. Execution shall issue in due course.

So entered this 12th day of December, 2024.

 w/permission
Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79SP002610

NORTH ADAMS HOUSING AUTHORITY,

Plaintiff,

v.

MARK GRAMEGNA,

Defendant

Order for Judgment

This matter came before the court on December 11, 2024 for hearing on Plaintiff North Adams Housing Authority's *Motion for Entry of Judgment for Possession*.

The plaintiff commenced this summary process action against defendant Mark Gramegna based upon allegations of nonpayment of rent. On August 28, 2024 the parties entered into a written agreement. Under the terms of the agreement the defendant acknowledged that he owed \$1,497.00 in unpaid rent through August 2024. The monthly rent was \$283.00. The defendant agreed to pay his monthly rent each month when due commencing in September 2024. Further, the defendant agreed to pay an additional \$200.00 with his monthly rent commencing in September 2024 that would be applied towards the rent arrearage.

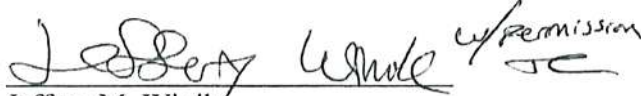
The defendant made the payments due in September and October 2024. However, the defendant failed to make his rent or arrearage payments due in November and December 2024. Accordingly, as of December 11, 2024 the defendant's rent arrearage has increased to \$1,663.00.

Because the defendant has not complied with her payment obligations under the August 28, 2024 agreement, plaintiff's *Motion for Entry of Judgment for Possession* is **ALLOWED**.

It is **ORDERED** that judgment enter for the plaintiff for possession and unpaid rent totaling \$1,663.00, plus costs. Execution shall issue only upon written request from the plaintiff

(the plaintiff represented to the court that it wanted to afford the defendant some short period of time to cure his default).

So entered this 12th day of December, 2024.


Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden , ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23CV0091

JAFTA SMITH

PLAINTIFF(S)

v.

SPRINGFIELD GARDENS

DEFENDANT(S)

ORDER

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

The hearing on the Plaintiff's motion for sanctions was heard on December 12, 2024.

Following review of the excerpts of Mr. Gruber's deposition and the selected discovery requests included in the plaintiff's motion, the Court declines to enter sanctions at this time.

Mr. Gruber, an agent of the defendant, signed an affidavit under the pains and penalties of perjury that he provided all documents and communications in the defendant's possession relating to the case, that the defendant has not withheld any relevant documents or communications and that he is unaware of any additional documents or communications that have not already been produced in discovery. Therefore, the Court finds no material noncompliance with its discovery obligations.

The plaintiff is entitled to seek sanctions in the future if it becomes clear based on information it gathers that the statements in Mr. Gruber's affidavit were not accurate.

For all of the foregoing reasons, the plaintiff's motion for sanctions is DENIED.

SO ORDERED: 1s/ Jonathan J. Kane DATE: 12/12/24
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-1003

ELLA CRAVISH,

Plaintiff,

v.

MICHAEL TONER,

Defendant.

ORDER

After hearing on December 12, 2024, by Zoom, at which the plaintiff tenant appeared self-represented and the defendant landlord appeared with counsel, the following order shall enter:

1. If electrical and heating service at the premises located at 1718 West Housatonic Street, Pittsfield, MA (premises) by 7:00 p.m. today, December 12, 2024, the landlord shall provide hotel accommodations for the tenant until the electrical and heating systems are functioning.

2. This matter shall be scheduled for further hearing on **December 18, 2024**, at **9:00 a.m.** at the Pittsfield Session of the Housing Court.

So entered this 13 day of December, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

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

LONGHILL GARDENS, LLC,
Plaintiff

v.

ORDER ON MOTION TO
DISMISS CLASS CERTIFICATION

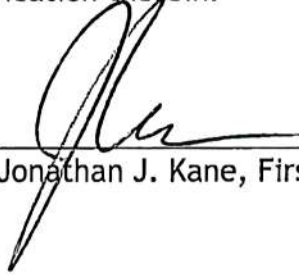
ANTHONY MESSINA AND SARAH FRANGAKIS,
Defendants

This summary process case came before the Court on December 12, 2024 on Plaintiff's Motion to Dismiss Class Certification. Both parties appeared through counsel.

At the hearing, the Court stated from the bench that it would sever the class action claims from this summary process case. Upon further reflection, this decision creates logistical concerns as the counterclaims asserted by Defendants in this summary process case are not all class claims. Accordingly, instead of severing the class claims, the Court reconsiders its order allowing Defendants' motion for class certification instead denies the motion without prejudice. Defendants may elect to file a separate civil action and seek class certification therein.

SO ORDERED.

December 13, 2024



Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-973

MAPLE COMMONS,

Plaintiff,

v.

ERIC GARCIA,

Defendant.

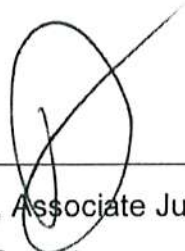
ORDER

After hearings on December 4 and 10, 2024, the following order shall enter:

1. The defendant, Eric Garcia, is not a tenant of the subject premises located at 324 Union Street, Unit 1026, Springfield, MA.
2. Though he has resided therein for some time either as a guest or a subtenant of the proper tenant, Lindy Collazo, Ms. Collazo has passed away and the defendant has not rights as a tenant.
3. Accordingly, the defendant shall have until December 31, 2024, to vacate the premises.

4. If the defendant does not relinquish his keys timely, the plaintiff may file a motion for entry of judgment for possession.

So entered this 13 day of December, 2024.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a vertical stroke and a horizontal stroke, positioned above a horizontal line.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-3307

MASON SQUARE APARTMENTS II, LP,

Plaintiff,

v.

NAYSHA M. FALCON,

Defendant.

ORDER

After hearing on December 11, 2024, on the tenant's motion to stop a physical eviction at which the tenant appeared self-represented and the landlord appeared through counsel, the following order shall enter:

1. By the time of this ruling from the bench, the moving company and sheriffs had fully effectuated the levy on the execution---moving her belongings to a bonded warehouse and changing the locks..
2. The Court referred the tenant to meet with a representative from the Tenancy Preservation Program (TPP) and recessed the hearing to allow for same.

3. When the hearing resumed, Ms. Craig from TPP reported that the tenant has [REDACTED] and that her assessment was that [REDACTED] had a direct correlation with the tenant's failures to pay her rent as well as engage in this court case. Further, Ms. Craig was able to secure a place in a [REDACTED] [REDACTED] starting the day of the hearing (December 11, 2024).
4. Ms. Craig also reported that she would bring the tenant to the [REDACTED] program.
5. The basic requirement that federal law imposes upon the landlord stemming from the project-based subsidized units (under Section 8) is to make a reasonable accommodation to a handicapped tenant.
6. Though it is yet to be determined, there is a colorable claim that the tenant is a person with a handicap for purposes of Section 504 of the Federal Rehabilitation Act of 1973, 29 U.S.C. s. 794 (1988), in that she has a record of a physical or mental impairment which substantially limits one or more of her major life activities. 29 U.S.C. s. 706(8)(B). Here, the tenant is commencing a [REDACTED] program and she is at very serious risk of losing her subsidized apartment.
7. As an initial reasonable accommodation, the landlord shall not re-rent the subject premises to anyone other than the tenant until further order of the court.
8. The tenant shall participate in the drug rehabilitation program, not return to the premises, and cooperate with TPP.

9. The court requests that TPP effectuate a referral for the tenant to the Massachusetts Fair Housing Center at 57 Suffolk Street, Holyoke, MA which can be reached at 413-539-9796 and/or Community Legal Aid.
10. This matter shall be scheduled for further hearing by Judge Fields on **December 26, 2024, at 9:00 a.m.**

So entered this 13 day of December, 2024.



Robert Fields, Associate Justice

Cc: Bekki Craig, TPP

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-2598

RELATED MANAGEMENT COMPANY, LP,

Plaintiff,

v.

ANNIE TUCKER,

Defendant.


ORDER

After a review hearing on December 12, 2024, at which both parties appeared through counsel, the following order shall enter:

1. The landlord reports that the tenant owes \$7,599.75 in use and occupancy through December 2024 plus court costs.
2. The tenant has a RAFT application pending. Both parties shall cooperate with that process.

3. The tenant shall pay her rent plus \$10 each month. This extra payment towards arrearage should be considered by the RAFT program as a "repayment agreement".
4. Attorney Mamootil of Community Legal Services, who has entered a full representation appearance for the tenant, shall work with the tenant on her RAFT application, her efforts to obtain benefits from the Social Security Administration, and efforts to reduce her car insurance payments.
5. The tenant shall continue to work with the Tenancy Preservation Program (TPP), which shall among other things investigate assistance for the tenant due to her being a victim of domestic violence.
6. This matter shall be continued for further review on **January 16, 2025, at 9:00 a.m.**

So entered this 13 day of December, 2024.



Robert Fields, Associate Justice

Cc: Beckki Craig, TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24SP3062

HECTOR SANCHEZ,

Plaintiff,

v.

ESTHER RIVERA,

Defendant.

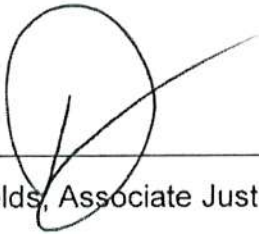
ORDER

After conducting a Case Management Conference on December 11, 2024, at which both parties appeared through counsel, the following order shall enter:

1. **Motion in Limine:** The landlord's motion *in limine* regarding testimony about an alleged security deposit payment is denied. The fact that the original lease pursuant to the 2005 Section 8 Choice Voucher Program has a blank line instead a dollar amount in the security deposit section is insufficient to be a basis to exclude all testimony regarding an alleged security deposit payment.

2. **No-Fault Termination:** The tenant has until December 20, 2024, to file and serve a motion regarding whether she is challenging the use of a no-fault termination notice while the tenancy is subject to the Section 8 Choice Voucher Program.
3. The landlord shall have until December 27, 2024, to file and serve opposition thereto.
4. A hearing shall be scheduled for said motion on **December 30, 2024, at 9:00 a.m. by Zoom.**
5. This matter is scheduled for trial on January 3, 2025, at 11:00 a.m.

So entered this 13 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-2998

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

v.

MARGARITA CRUZ,

Defendant.

ORDER

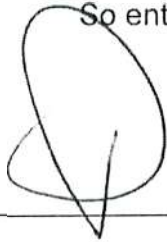
After hearing on December 10, 2024, on the tenant's motion to stop the currently scheduled physical eviction, the following order shall enter:

1. The court is concerned that the tenant's disabilities have affected her capacity to fulfil the requirements of this litigation.
2. As such, she is referred today to the Tenancy Preservation Program (TPP, who was present at the hearing).
3. It is hoped that with TPP, the tenant shall apply for RAFT (which should pay for the entirety of the tenant's arrearage and court and cancellation costs) and

also seek the appointment of an "institutional representative payee" through the Social Security Administration so as to prevent non-payment in the future.

4. The tenant shall make a rent payment for January 2025 as soon as she received funds.
5. This matter shall be scheduled for further hearing on **January 7, 2025, at 2:00 p.m.**

So entered this 13 day of December, 2024.



Robert Fields, Associate Justice

Cc: TPP

Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-892

RANDY AND THOMAS TIMMONS,

Plaintiff,

v.

DOUGLAS DICHARD,

Defendant.

ORDER

After a review hearing on December 10, 2024, at which the plaintiff Thomas Timmons and the defendant Douglas Dichard appeared and were joined by G.A.L. James Brown and a representative from the Tenancy Preservation Program (T.P.P.), the following order shall enter:

1. Randy Timmons did not appear and over the past couple of weeks has not been in contact with his brother, co-defendant Thomas Timmons. Though G.A.L. Brown is appointed to assist both plaintiffs, and has filed pleadings with claims against the defendant on behalf of both plaintiffs, Mr. Randy Timmons must appear at hearings and engage in the litigation.

2. G.A.L. Brown reported that he will continue to work with the plaintiff or plaintiffs and T.P.P. on getting Thomas Timmons on SSI and to the extent that he is able to work with Randy Timmons to have an "Institutional Representative Payee" appointed through the Social Security Administration for his benefits.
3. G.A.L. Brown and T.P.P. shall also work with Thomas Timmons to get him either an "Obama phone" or a TracPhone to assist with communication between Mr. Timmons and G.A.L. Brown and T.P.P. G.A.L. Brown may spend up to \$50 for said TracPhone and add it to his invoice as a necessary and covered expense for his G.A.L. appointment.
4. G.A.L. Brown and T.P.P. shall also work with Thomas Timmons regarding RAFT and other means of paying rent and will also investigate his mother's life insurance policy/proceeds.
5. The defendant shall treat the Timmons' Answer from the SP matter as a complaint and shall have until January 17, 2024, to file and serve his Answer.
6. G.A.L. Brown shall file a G.A.L. Report by February 14, 2024.
7. This matter shall be scheduled for review on **February 18, 2024, at 9:00 a.m.** Randy Timmons shall also appear at this hearing, even if he wishes to report that he is no longer interest in being a party to this action.

So entered this 13 day of December, 2024.

Robert Fields Associate Justice

Cc: G.A.L. James Brown, Esq.

T.P.P.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-CV-584

CITY OF SPRINGFIELD, CODE
ENFORCEMENT DEPARTMENT,

Plaintiff,

v.

JAMES MCKELVIN, et al.,

Defendants.

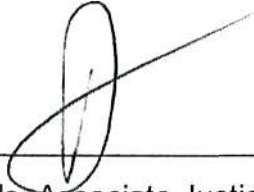
ORDER

This matter came before the court on December 10, 2024, for a Contempt Trial, after which the following order shall enter:

1. The deadlines established by court orders for completing repairs and having electrical, plumbing, and building permits closed have passed and the work is not completed and the permits not closed and the condemnation remains in place.
2. Accordingly, the Court finds the defendant property owner James McKelvin in contempt of the court's orders.

3. McKelvin shall pay the City \$271.17 in service of process costs.
4. McKelvin shall pay the City \$900 in accumulated inspection fees stemming from the April 4, 2024, July 29, 2024, and October 21, 2024, inspections.
5. McKelvin shall pay the City attorneys fees totaling \$600.
6. All payments above are due by April 1, 2025.
7. McKelvin shall have until April 1, 2025, to complete all repairs, close all permits, and have the condemnation lifted.
8. There shall be a coercive sanction of \$50 per day beginning on April 1, 2025, for each day that there are outstanding repairs and until the condemnation is lifted by the City.
9. The City shall inspect the premises upon request by McKelvin as he completes repairs and after April 1, 2025, if not all repairs are completed by then.
10. This matter shall be scheduled for further hearing on **April 18, 2025, at 9:00 a.m.**

So entered this 16 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-04008

Debra Whitlock for the Estate of *
Doris Bushey *
PLAINTIFF *
*
v. *
*
Laura Ducharme, Tony Ducharme and *
all other occupants¹ *
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, Laura Ducharme and Tony Ducharme, have resided at 1357 Dwight Street, Holyoke, MA ("the premises") initially as tenants under a written lease, which has expired, since November 2012, and currently as tenants at will. The plaintiff, Debra Whitlock for the Estate of Doris Bushey, is the owner of the premises and is the defendants' landlord. The rent for the premises is \$1,200.00 per month and is due on the first day of the month. The defendants

¹ 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.

have failed to pay the plaintiff any rent for the months of May 2024 through December 2024, owe a balance of **\$1,125.00** for the month of April 2024 and currently owe the plaintiff a total of **\$10,725.00** in unpaid rent.

The Court finds that, on June 18, 2024, the plaintiff served the defendants with a legally sufficient 30 Day Notice To Terminate Tenancy.

The Court finds that the plaintiff has established her case for possession of the premises and damages for unpaid rent in the amount of **\$10,725.00**, plus costs.

The defendant Laura Ducharme testified that the defendants are disabled, are low income and have applied for “numerous” alternative apartments. The Court credits this testimony.

The plaintiff testified that the estate has been paying the real estate taxes, insurance and utilities for the premises since the decedent’s death on January 24, 2024. The Court credits this testimony.

The plaintiff, through counsel, represented that the premises needs to be sold and the proceeds divided among the decedent’s seven (7) children, according to the terms of the decedent’s will. The Court credits these representations.

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 **\$10,725.00**, plus costs.
2. Execution issue on February 28, 2025, upon written request of the plaintiff.


ANNE KENNEY CHAPLIN
ASSOCIATE JUSTICE

Date: December 16, 2024

Thomas N. Wilson, Esq.
Laura Ducharme
Tony Ducharme

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-996**

CAVORIS HARRIS,

Plaintiff,

v.

JAMES GARVEY and BRANDON GARVEY,

Defendants.

ORDER

After hearing on December 16, 2024, at which the plaintiff appeared self-represented and the defendant James Garvey (property owner) appeared with counsel, but for which the other defendant did not appear, the following order shall enter:

1. The owner of the property, James Garvey, will arrange to meet the plaintiff, Cavoris Harris, at the premises to allow Mr. Harris to remove his belongings.'
2. Mr. Brandon Garvey shall not interfere with Mr. Harris' efforts to remove his belongings.

3. James Garvey has concerns about his son Brandon Garvey's ability to allow Mr. Harris to remove his belongings (include a bed set) and will seek the assistance of the Springfield Police and/or the Hamden County Sheriffs to be present to maintain peace and order.
4. If there is a disagreement between the parties as to the ownership of any given item, it is to be photographed and the dispute of ownership shall be settled by the court. For any such disputed item, the Garveys shall not allow same to be damaged or transferred to anyone else's possession or ownership until the dispute over ownership is resolved.

So entered this 16 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-03907**

Enrique Santiago *
PLAINTIFF *
*
v. *
*
Steven Barnes and Desiree McDowell *
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 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 defendants, Steven Barnes and Desiree McDowell, have resided at 125 Casino Ave., Chicopee, MA (“the premises”) as tenants at will since March 2018. The plaintiff, Enrique Santiago, is the owner of the premises and is the defendants’ landlord. The rent for the premises is \$750.00 per month and is due on the first day of the month. The defendants have failed to pay the plaintiff any rent for the month of December 2024, and currently owe the plaintiff a total of \$750.00 in unpaid rent.

The Court finds that, on July 2, 2024, the plaintiff served the defendants with a legally sufficient 30 Day Notice To Quit Terminating Tenancy.

The Court finds that the plaintiff has established his case for possession of the premises and damages for unpaid rent in the amount of \$750.00, 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 \$750.00, 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 16, 2024

cc: Peter Vickery, Esq.
Steven Barnes
Desiree McDowell

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CIVIL ACTION
NO. 24H79SP003157

VLADIMIR SOASTI,

Plaintiff

VS.

LAURIE GUNN,¹

Defendant

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

This is a summary process action in which the plaintiff is seeking to recover possession of residential premises based upon an allegation of unpaid rent. The defendant filed a written answer that included affirmative defenses and counterclaims.

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

The property at issue is a four-unit residential building located at 74-76 Maplewood Avenue, in Pittsfield, Massachusetts (the "property"). The apartment at issue in this case is located at 76 Maplewood Avenue, Apartment 2, in Pittsfield, Massachusetts ("Apartment 2"). Apartment 2 has two bedrooms, a living room, kitchen and one bathroom.

Defendant Laurie Gunn ("Gunn") has occupied Apartment 2 as residential tenant since September 1, 2022. She rented the apartment from the former owner of the property. The monthly rent was \$1,000.00 payable on the first day of each month. At the inception of her tenancy Gunn gave the former owner a \$1,000.00 last month rent deposit.

¹ 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.

Plaintiff Vladimir Soasti purchased the Maplewood Avenue property in September 2022. He has resided at 74 Maplewood Avenue, Apartment 2, since her purchased the property. The former owner transferred Gunn's last month rent deposit to Soasti in September 2022.

In April 2024 the parties executed a lease for Apartment 2. The monthly rent remained \$1,000.00 due on the first day of each month. Soasti continued to hold Gunn's last month rent deposit.

Gunn paid her rent each month when due through May 2024. Gunn did not make any rent payments for the seven-month period from June to December, 2024. As of December 11, 2024 (the trial date) the amount of unpaid rent totaled \$7,000.00.

On July 8, 2024 Soasti had a deputy sheriff serve Gunn with a legally sufficient notice to quit based upon nonpayment of rent. Gunn did not surrender possession of the premises. In August 2024 Soasti commenced this summary process action against Gunn.

Soasti has established his prima facie case for possession and damages subject to Gunn's affirmative defenses and counterclaims.

G.L. c. 239, § 8A Conditions-Based Defense and Counterclaims. I find that Gunn was in arrears in her rent continuously since June 2, 2024. There is no credible evidence that Soasti knew or should have known of any defective conditions at Apartment 2 that required repair prior to June 2, 2024 (the date on which Gunn was first in arrears in his rent). Accordingly, I rule as a matter of law that Gunn is not entitled to a Section 8 defense to possession based upon defective conditions pursuant to G.L. c. 239, § 8A, para. 2.² For this same reason, Gunn is not entitled to relief in this summary process action on those portions of Gunn's counterclaims that are based upon claims of defective conditions (breach of implied warranty of habitability, violation of G.L. c 186, § 14 and violation of G.L. c. 93A). Those conditions-base counterclaims shall be dismissed without prejudice.

There is no evidence to support Gunn's claim that Soasti engaged in acts of retaliation directed against Gunn. Gunn testified that she has not had any income during 2024 and for that reason was unable to pay her rent. The clear and convincing evidence presented at trial establishes

² 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; . . ."

that the sole reason Soasti terminated Gunn's tenancy and commenced this summary process action was because Gunn failed to pay her rent when due. Accordingly, Gunn has not established a defense to possession under G.L. c. 239, § 2A or a counterclaim based upon G.L. c. 186, § 18.

Discrimination Counterclaim. There is no evidence to support Gunn's claim that Soasti discriminated against her based upon her status as a disabled person or based upon her status as an application or recipient of governmental assistance. Accordingly, Gunn has not established her defense to possession or counterclaim based upon G.L. c. 151B.

Pre-Paid Last Month Rent Deposit Counterclaim. It is undisputed that Soasti has never paid Gunn interest of her \$1,000.00 pre-paid last month rent deposit that Soasti held between September 2022 and December 2024. Soasti never credited (nor notified Gunn that he would credit) the interest towards Soasti's unpaid rent within thirty days after he terminated Gunn's tenancy. Gunn never deducted the accrued interest from any of her rental payments.³

Soasti's failure to pay interest on the last month rent deposit he was holding constitutes a violation of G.L. c. 186, § 15B ¶ 2A which states,

“ [i]f the lessor fails to pay any interest to which the tenant is then entitled within thirty days after the termination of the tenancy, the tenant upon proof of the same in an action against the lessor shall be awarded damages in an amount equal to three times the amount of interest to which the tenant is entitled, together with court costs and reasonable attorneys fees.”

Accordingly, Gunn has established her G.L. c. 186B ¶ 2A last month rent deposit counterclaim and is entitled to damages in the amount of **\$349.44** (5% interest on \$1,000.00 from September 2022 to December 2024 = \$116.48, trebled to \$349.44).⁴

³ G.L. c. 186, § 15B, ¶ 2A provides “Any lessor or his agent who receives said rent in advance for the last month of tenancy shall, beginning with the first day of tenancy, pay interest at the rate of five per cent per year or other such lesser amount of interest as has been received from the bank where the deposit has been held. Such interest shall be paid over to the tenant each year as provided in this clause; provided, however, that in the event that the tenancy is terminated before the anniversary date of such tenancy, the tenant shall receive all accrued interest within thirty days of such termination. Interest shall not accrue for the last month for which rent was paid in advance. At the end of each year of tenancy, such lessor shall give or send to the tenant from whom rent in advance was collected a statement which shall indicate the amount payable by such lessor to the tenant. The lessor shall at the same time give or send to such tenant the interest which is due or shall notify the tenant that he may deduct the interest from the next rental payment of such tenant. If, after thirty days from the end of each year of the tenancy, the tenant has not received said interest due or said notice to deduct the interest from the next rental payment, the tenant may deduct from his next rent payment the interest due.

⁴ Soasti's failure to comply with the pre-paid last month rent deposit statute also constitutes a violation of G.L. c. 93A; 940 C.M.R. § 3.17 (4). A defendant is not entitled to recover cumulative damages arising from the same operative facts. *Wolfberg v. Hunter*, 385 Mass. 390 (1982). Soasti's G.L. c. 186, § 15B, ¶ 2A and G.L. c. 93A counterclaims arise from the same operative facts. Since the statutory and punitive damages under each statute are equal, I shall award damages under G.L. c. 186, § 15B.

G.L. c. 239, § 8A Affirmative Defense Based on Counterclaim. In accordance with *Meikle v. Nurse*, 474 Mass. 207, 214 (2016), Gunn is entitled to an affirmative defense to possession under G.L. c. 239, 8A because she has prevailed on her G.L. c. 186B last month rent deposit counterclaim. Gunn shall have seven (7) days from the date that judgment enters to pay Soasti the amount due (unpaid rent less the damages assessed on their counterclaims).

The amount due Soasti under G.L. c. 239, §8A is **\$6,650.56**.⁵

RAFT. Gunn does not have an application for RAFT assistance that was pending on the trial date. See G.L. c. 239, § 15.

ORDER FOR JUDGMENT

Based upon all the credible testimony and evidence presented at trial in light of the governing law, it is **ORDERED** this 16th day of December 2024 that:

1. Damage Claims and Setoff:

- a) Judgment shall enter for plaintiff Vladimir Soasti for unpaid rent of **\$7,000.00**, which amount shall be set off against the damages awarded to defendant Laurie Gunn pursuant to G.L. c. 186, § 15B.
- b) Judgment shall enter for defendant Laurie Gunn on her pre-paid last month rent deposit counterclaims under G.L. c. 186, § 15B, ¶ 2A and G.L. c. 93A counterclaims, with damages awarded under G.L. c. 186, § 15B, ¶ 2A in the amount of **\$349.44**.
- c) Judgment shall enter for the plaintiff/counterclaim defendant Vladimir Soasti dismissing defendant/counterclaim plaintiff Laurie Gunn's counterclaims for retaliation (G.L. c. 186, § 18) and discrimination (G.L. c. 151B).
- d) Defendant/counterclaim plaintiff Laurie Gunn's conditions-based counterclaims for breach of implied warranty of habitability, violation of G.L. c. 186, § 14 and violation of G.L. c. 93A shall be dismissed without prejudice pursuant to G.L. c. 239, § 8A, ¶ 2.
- e) The net amount due plaintiff Vladimir Soasti after set off totals **\$6,650.56**.

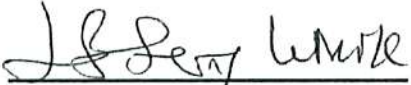
2. Possession Claim in accordance with G.L. c. 239, § 8A:

- a) **If defendant Laurie Gunn deposits with the Clerk of the Housing Court the sum of 7115.89 (the net amount due for unpaid rent after set off \$6,650.56 plus interest in the amount of 296.66 and costs in the amount of 177.70) in the form of a money order payable to "Commonwealth of Massachusetts" by **December 27,****

⁵ \$7,000.00 (unpaid rent due Soasti) less \$349.44 (counterclaim damages due Gunn) = \$6,650.56 (net damages due Soasti).

2024 then pursuant to the fifth paragraph of G.L. c. 239, § 8A judgment shall enter for defendant Laurie Gunn for possession. If payment is made, the Clerk is directed to release these funds to plaintiff Vladimir Soasti in full satisfaction of his claim for unpaid rent.

- b) If defendant Laurie Gunn does not deposit \$6,650.56 with the Clerk by December 27, 2024, then judgment shall enter in favor of plaintiff Vladimir Soasti for possession on December 30, 2024, with execution to issue for possession and damages in due course.

 w/permission
Jeffrey M. Winik
Associate Justice (On Recall)

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-3071

DONALDSON DEVELOPMENT TRUST,

Plaintiff,

v.

MATTHEW KULAK and JUSTINA KULAK,

Defendant.

ORDER

After hearing on December 4, 2024, on the tenants' motion for a continuance due to one of the tenant's participation in a [REDACTED] program, the following order shall enter:

1. As a reasonable accommodation to Mr. Kulak, this trial shall be rescheduled.
2. Mr. Kulak is expected to be in the Berkshire CSS program for the next 14 to 21 days and then will be transferred to ALC North.
3. Bekki Craig, Program Director of the Pioneer Valley Tenancy Preservation Program (TPP), joined the hearing and was referred the case and asked if

she could help coordinate Mr. Kulak's services and his engagement in this summary process action.

4. The parties agreed on the record that if the landlord's real estate agent wishes to show the subject premises to a prospective buyer, the agent should communicate with the tenant (Justina Kulak) by text to coordinate same---with no less than 24 hours advance notice.
5. This matter shall be scheduled for a Status Hearing on **December 26, 2024, at 9:00 a.m.** Mr. Kulak---perhaps with TPP's assistance---shall appear for this hearing if possible (in person or by Zoom). It is anticipated that Mr. Kulak will seek the vacating of the default judgment entered against him at this hearing. Additionally, the plaintiff indicated that it might file a motion for use and occupancy payments pending trial.

So entered this 17 day of December, 2024.



Robert Fields, Associate Justice

Cc: Bekki Craig, TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

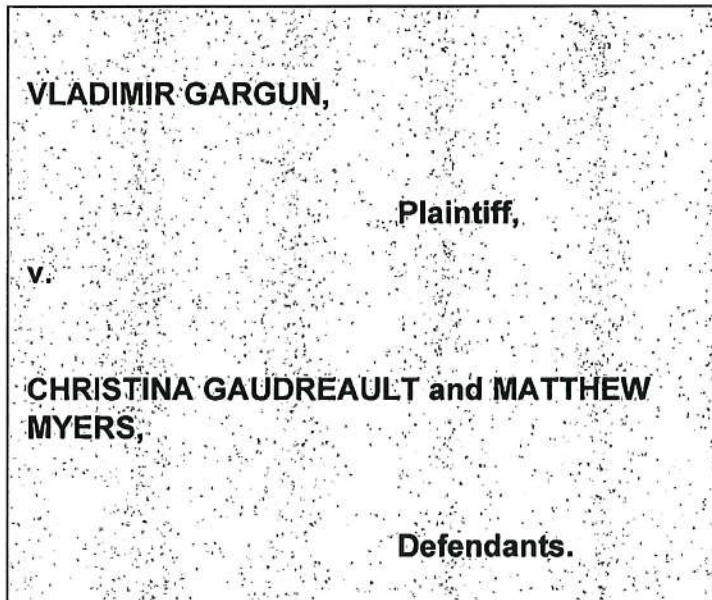
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-2565



ORDER

After hearing on December 13, 2024, on the tenants' motion to cancel and physical eviction and dismiss this matter, the following order shall enter:

1. The court's November 12, 2024, Order allowed for the tenants to pay the \$3,441.61 owed after a G.L. c.239, s.8A decision issued by paying the landlord \$1,245 directly and paying \$900 from Community Action and \$1,300 from Salvation Army.

2. The tenants paid their portion directly, Community Action deposited \$900 with the Court, and Salvation Army has cut a check to the landlord for \$1,300 and will deliver same to the landlord today at his home.
3. The \$900 deposited with the Court from Community Action shall be disbursed to the landlord from the Clerk's Office.
4. The physical eviction scheduled for December 19, 2024, shall be cancelled and this matter dismissed.

So entered this 17 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-3366**

JAMES GELINAS,

Plaintiff,

v.

JULIAN L. BRIDA and JEREMY BRIDA,

Defendants.

ORDER

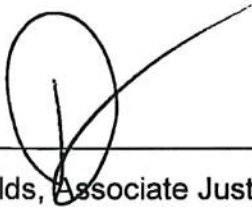
This matter came before the court for trial on December 16, 2024, at which the plaintiff appeared through counsel and the defendants appeared self-represented. After hearing on preliminary matters, the following order shall enter:

1. The Court is concerned that Jeremy Brida, one of the tenants, may not be competent to navigate and engage in this summary process action. In order to determine if Jeremy Brida is an "incapacitated person" as that term is defined in G.L. c.190B, s.510(9), the court hereby orders that he undergo a forensic psychological evaluation with the Court Clinic. The Court requests that the

clinician evaluate Jeremy Brida with respect to his decision-making capacity, his ability to comply with court orders regarding his housing, and his ability to understand the legal proceedings and participate meaningfully therein. The purpose of the evaluation is to allow the judge to decide whether, in order to secure the full and effective administration of justice, the Court should appoint a *guardian ad litem* for Jeremy Brida.

2. Assistant Clerk Magistrate Cunha has agreed to help coordinate the scheduling of the Court Clinic evaluation.
3. After the Court is in receipt of the written evaluation, it shall schedule the next event.

So entered this 17 day of December, 2024.



Robert Fields, Associate Justice

Cc: Court Clinic

Kara Cunha, Esq., Assistant Clerk Magistrate

Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-3853

ROBERT HAWLEY,

Plaintiff,

v.

HEATHER GALUS and MICHAEL MAJORS,

Defendants.

ORDER

After hearing December 5, 2024, on the landlord's motion to reinstate the case to the docket after the landlord failed to appear at the Tier 1 event and the matter was dismissed, the following order shall enter:

1. The motion is allowed. The court is satisfied that the landlord's failure to appear at the November 7, 2024, Tier 1 was excusable neglect due to the ill health of his spouse.
2. The Court shall schedule this matter for a Housing Specialist Mediation.

So entered this 17th day of December, 2024.


Robert Fields, Associate Justice

Cc: Jenni Pothier, Chief Housing Specialist
Michel Doherty, Clerk Magistrate
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-1602

DONALD MILLER,

Plaintiff,

v.

MICHELA GILLIAN and NINA GILLIAN,

Defendants.

ORDER

After hearing on December 13, 2024, on the landlord's motion to add Nina Gillian to the execution, the following order shall enter:

1. The landlord shall return the judgment and the execution to the court.
2. The judgment shall be vacated as it included court costs which were expressly waived by the landlord in the parties' Agreement dated June 14, 2024.
3. A new judgment shall enter for possession only for the landlord against both Michela Gillian and Nina Gillian. Ms. Nina Gillian is the younger daughter of

Michela Gillian and never established an independent tenancy relationship with the landlord.

4. An execution may issue thereafter upon the timely filing and service of a Rule 13 Application.
5. If the Court issues an execution for possession, it shall be against both Michela Gillian and Nina Gillian.

So entered this 17 day of December, 2024.



Robert Fields, Associate Justice

Cc: Michael Doherty, Clerk Magistrate
Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-509**

SPRING HILL APARTMENTS, LP,
Plaintiff,
v.
KIMBERLY ORTIZ,
Defendant.

ORDER

After hearing on December 4, 2024, on the tenant's motion to stop a physical eviction, the following order shall enter:

1. Though the tenant has made payments to the landlord in each of the months since the last hearing in September 2024, she has not paid the amounts required by the court's most recent order.
2. The tenant attempted recently to pay \$1,100 additional funds but reports that the landlord did not accept the payments and said that it would wait to see what happens in court.

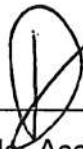
3. The tenant has six children ages 13, 9, 6, 3, 2, and 1, and the subject unit has a project-based subsidy.
4. After consultation with a representative from Way Finders, Inc. on the record, their records indicate that the tenant has applied multiple times for RAFT and that her applications have been either timed out or denied. The application from late August 2024 was timed out due to the landlord's lack of submission of documents and the application from early November 2024 was timed out due to the tenant's failure to complete the application.
5. The tenant is urged to consult with Community Legal Aid at One Monarch Place (Tel: 413-781-7814) or with Springfield Partners at 721 State Street (Tel: 413-263-6500) for assistance with her RAFT application.
6. After payment today by the tenant of \$1,100¹, the landlord asserts that the tenant owes \$1,459.56 in outstanding rent (use and occupancy) through December 2024, plus court costs.
7. The landlord shall immediately cancel the physical eviction and shall provide invoices for the costs incurred by scheduling and cancelling the physical eviction pursuant to this order.
8. The tenant shall, starting in January 2025, pay her rent plus \$50 extra by paying her rent by the first week and then \$50 extra by the 12th of the month later.
9. RAFT should consider the monthly extra payment of \$50 as a "repayment plan" for RAFT purposes.

¹ The tenant gave the landlord's attorney \$1,100 in money orders at the hearing.

10. The terms of this order shall toll the time frames discussed in G.L. c.235,
s.23.

11. The tenant shall diligently pursue her RAFT application and the landlord shall
cooperate with such efforts.

So entered this 17 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-SP-3228**

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

ORDER

After hearing on December 13, 2024, the following order shall enter:

1. The tenant shall pay \$1,740 today to the landlord. This represents rent plus \$200 for October and November 2024. The tenant shall then pay rent plus \$200 by December 27, 2024, for December 2024.
2. The tenant reports that there is a RAFT application pending.
3. In addition, the tenant asserts that he will likely receive tax returns for 2024 that when combined with anticipated RAFT funds will pay the entirety of the rent arrearage and costs.

4. The tenant shall continue to pay rent plus \$200, pursue his RAFT application, and, pay the landlord as much of his tax return that are needed to pay off his debt.
5. If the tenant fails to comply with the terms of this order, the landlord may file a new motion for entry of judgment.

So entered this 17 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-CV-983**

TOWN OF SOUTHAMPTON,

Plaintiff,

v.

CARRIE MALO, et al.,

Defendants.

ORDER

After hearing December 16, 2024, at which the plaintiff appeared through counsel and the defendants Carrie and Gary Malo appeared self-represented, the following order shall enter:

1. It continues to appear that Gary Malo has no ownership or other financial interest in the subject premises as Carrie Malo agrees that Gary was supposed to have removed himself from the deed and mortgage as a result of their divorce decree.

2. Gary Malo shall continue his efforts to effectuate the result until he accomplishes same. For the time being, and with anticipation of Gary removing himself from the deed and mortgage, he is not required by court order to make repairs at the premises.
3. Carrie Malo, however, as sole owner of the subject premises, shall attempt to secure the commitment of a contractor to make the necessary repairs at the premises and be prepared to report to the court that status of those efforts at the next court hearing.
4. The plaintiff Town shall provide invoices for the costs incurred by it in having the premises boarded and secured to Ms. Malo who is expected to reimburse the Town (with copies to Gary Malo and to the court).
5. The Town shall retain the key to the premises and Ms. Malo and/or her contractor may coordinate with the Town for access to the premises by calling Inspector Kaniecki.
6. Ms. Malo shall be responsible for monitoring the premises to ensure that no one enters without her express permission and only through coordination with the Town.
7. This matter shall be scheduled for further review and on any properly marked and served motions on **January 27, 2025, at 9:00 a.m.**

So entered this 17 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-2782

U.S. BANK TRUSTEE, NA,

Plaintiff,

v.

LORI ANDRAS, et al.,

Defendants.

ORDER

After hearing on December 11, 2024, at which all parties appeared, the following order shall enter:

1. The defendants shall pay \$1,500 in use and occupancy to the bank each month beginning January 2025, and shall be paid by the first week of each month.
2. Judgment having already entered issuance of the execution shall be stayed contingent upon the terms of this Order. Such stay shall toll the time frames discussed in G.L. c.235, s.23.

3. This matter shall be scheduled for further hearing as noted below. At that hearing, the defendants shall show the court evidence of their efforts to diligently search for alternate housing and of their efforts towards packing and relocating.
4. This matter shall be scheduled for further review and whether the stay on the issuance of the execution shall continue on **February 27, 2025, at 9:00 a.m.**

So entered this 17th 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-3533

JOHNNY DIEP,

Plaintiff,

v.

ARLIA OSMAN,

Defendant.

ORDER

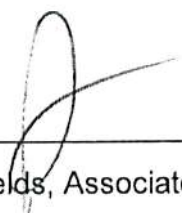
After hearing on December 4, 2024, at which both parties appeared self-represented, the following order shall enter:

1. After consultation with a representative from Way Finders, Inc. by Zoom, it appears that the landlord's submission of the ledger which included November 2024 rent (which was timely per the parties' agreement), RAFT only paid out for rent though October 2024.
2. When RAFT paid out \$5,023 (which covered rent through October 2024) it could have paid out an additional \$1,600 for November 2024 rent if it had

processed the payment based on the updated ledger it received on November 2, 2024, and that would have brought the tenant's rent balance of \$0 and the case would have been dismissed.

3. The tenant continues to be eligible for \$1,976.48, which is sufficient to cover November 2024's rent of \$1,600, plus \$376.48 towards December 2024.
4. The tenant shall apply to RAFT for said funds and the landlord will cooperate with same.
5. The tenant is hopeful to be employed shortly and provided documentation supporting that possibility.
6. The tenant shall pay her rent for December 2024, plus \$100. The RAFT program should consider this additional \$100 payment as a "repayment plan" under its regulations.
7. This matter shall be scheduled for review on **December 27, 2024, at 9:00 a.m.**

So entered this 18 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-SP-4632

M & S BLUEBIRD, INC.,

Plaintiff,

v.

CHRISTOPHER PATTEN, et al.,

Defendants.

ORDER

After hearing on various motions filed by the parties, the following order shall enter:

1. **Preliminary Matter:** The court record reflects that on June 26, 2024, the plaintiff's motion to amend their complaint to add Theresa Bevan, Randall Bevan, Jr., and Melissa Germain was allowed (Adeyinka, J.) but addresses for the additional defendants was never provided, their names were never added to the case, no summons issued, and no certificate of service filed.

2. At the next case management conference noted below, the parties need to address whether the case has been amended, or not, and how to proceed relative to those individuals.
3. **Plaintiff's Motion in *limine* to Exclude General Release Dated June 16, 2017:** The plaintiff's motion to exclude the General Release between the former owners of the park and the defendant, Christopher Patten, is allowed. That release was signed into and filed with the court in an earlier Housing Court action (16-CV-1001) between the then plaintiff Christopher Patten and the then defendant mobile home park owners Blue Bird MHC, LLC, which no longer owns the park and is not a party to this instant matter.
4. That General Release is not binding on the current plaintiff park owner and its introduction into this case would not be probative but perhaps confusing for the jurors. Additionally, the General Release at term #4 specifically states that Christopher Patten could not be released from any claims or rent by any other park owners who may own the property subsequent to the then owner signators to that General Release.
5. **Plaintiff's Motion *in limine* to Exclude Evidence of Past/Pending Sale of the Park:** The plaintiff seeks exclusion of prior and pending sales of the park as it would be more confusing to the jurors than probative. It is the court's appreciation of the defendant Christopher Patten's defenses that among other things he is challenging the plaintiff's ownership of the park, which is a valid defense and disputable issue in a Summary Process action. *Sheehan Constr. Co v. Dudley*, 299 Mass. 51, 53 (1937); *New England Mut. Life Ins. v.*

Wing, 191 Mass. 192, 195 (1906); *Bank of New York v. KC Bailey*, 460 Mass. 327 (2011). Accordingly, the plaintiff's motion in *limine* to exclude evidence of the sale of the park to the current plaintiff is denied.

6. **Plaintiff's Motion in *limine* to Exclude Evidence of the Tenant's**

Complaints Regarding Title V Work at the Premises: The plaintiff is seeking exclusion of any evidence regarding the Title V work performed at the premises for which the defendant argues he was a "whistleblower" with the authorities and is further alleged by the defendant as being the basis for this eviction as a reprisal for the defendant's actions. First off, though the defendant consistently refers to his complaining about the Title V work as being protected as whistleblowing, the state's whistleblowing statute is triggered only when it is an employee of the bad actor and not a tenant complaining about repairs.

7. Even though the defendant is not covered by the whistleblower statute (G.L. c.149, s.185), he is covered by the anti-reprisal statute at G.L. c.239, s.2A which the jury could find applies to him---even though the owners at the time of the Title V activities and now are technically different. Accordingly, the motion is denied.

8. **The Defendant's Motion to Exclude the 2009 Lease Between the Former Owners of the Park and Theresa Bevan:** Subject to evidentiary objections at trial, there is nothing *per se* objectionable about this lease and the motion to exclude it is denied.

9. **Next Case Management Conference:** A judicial case management conference shall be scheduled for **January 16, 2025, at 2:00 p.m.**

So entered this 15th day of December, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden , ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24SP4142

Appleton Corp.

PLAINTIFF(S)

v.
Scott

DEFENDANT(S)

ORDER

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

Defendant's motion for leave to file late answer and discovery is DENIED. Defendant elected not to proceed with the request as she will be vacating on January 2, 2025.

Plaintiff's motion for summary judgment is ALLOWED. The Court finds that there are no genuine issues of material fact in dispute. Defendant acknowledges that she is not a tenant and but was instead residing in the subject premises as her mother's PCA and caregiver. Her mother has passed away and Defendant did not vacate. She makes no claim to possession of the premises. Her sole request is to be allowed until January 2, 2025 to vacate so she can move in with a family member. This request is allowed.

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

1. Judgment for possession shall enter in favor of Plaintiff.
2. Execution may issue by written application ten days after the date judgment enters.
3. No levy shall take place prior to January 3, 2025.

SO ORDERED: 1st Jonathan J. Kane DATE: 12/19/24
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-2224

DM PROPERTY, LLC,

Plaintiff,

v.

SIMARIS VELEZ,

Defendant.

ORDER

This matter came before the court for trial on December 5 and 10, 2024, at which the plaintiff appeared through counsel and the defendant appeared self-represented. After consideration of the evidence admitted therein, the following findings of fact, rulings of law, and order for judgment shall enter:

1. **Background:** The plaintiff, DM Property, LLC (hereinafter, "landlord") owns a 40-unit housing development in Springfield, Massachusetts. The defendant, Simaris Velez (hereinafter, "tenant") has rented and occupied the unit located at 1124 Dwight Street therein (hereinafter, "premises") since May 2016.

2. On or about April 19, 2024, the landlord had the tenant served with a 30-Day Notice for non-payment of rent and thereafter filed this instant Summary Process matter. The tenant filed an Answer with defenses and counterclaims alleging that the landlord failed to properly and timely recertify the tenant's portion of the rent in accordance with the Section 8 project-based rental subsidy program and thereafter improperly terminated her from that program. The tenant also asserted claims arising out the conditions of disrepair and breach of the Consumer Protection Act.
3. **The Landlord's Claim for Rent, Use, and Occupancy; Recertification:**
The landlord has met its burden of proof that its calculation of the rent was correct and that the tenant failed to provide all of the documents and verifications that were required for recertification until July 2024. Though the tenant provided some documents prior to that time (in February, April, and May 2024), she did not provide all the necessary documents until July 2024. Thus, the landlord was correct in terminating the subsidy effective February 2024 and calculating the rent at the \$1,700 FMR until the subsidy was reinstated in August 2024.
4. The landlord also met its burden of proof on the amount of outstanding rent, use, and occupancy totaling **\$7,864** through December 2024.
5. **The Tenant's Claim Regarding Conditions of Disrepair:** The tenant testified about conditions of disrepair throughout her apartment that spanned various periods of time, many ranging over years without repair but was ultimately unable to meet her burden of proof when these conditions began or

whether or when she informed the landlord about them. That said, it is very clear that there are various conditions of disrepair for which the landlord became fully aware when the landlord inspected the premises and took photographs on September 10, 2024. These include the following: problems with the oven hood, cabinets, and toilet, missing toilet-paper-holder parts, toothbrush holder coming off wall, holes in walls throughout the unit, tile flooring coming off, walls in need of painting throughout the unit, bathroom fan not working properly, showerhead part coming off wall, tub caulking coming off, damage to doors, front door knob broken (and unsecure), light fixtures coming off ceiling, exposed ceiling, missing risers from stairs, baseboard coming off wall, and the wall in disrepair behind toilet.

6. All of these conditions are evident in the photographs taken by the landlord during its September 10, 2024, inspection and all remain without having been addressed as of the trial in December 2024---three months later. The landlord stated that it is having a staffing problem of some sort, without greater detail, that has resulted in not being able to begin the repair of any of these conditions.
7. Said conditions had a predictable and negative effect on the tenant's use and enjoyment of the premises and constituted violations of the minimum standards of fitness for human habitation as set forth in Article II of the State Sanitary Code. 105 C.M.R. 410.00 et seq. for which the landlord is strictly liable. *Berman & Sons v. Jefferson*, 379 Mass. 196 (1979). 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. Patukonist*, 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 (up to Code), and the value in their actual condition. *Haddad v. Gonzalez*, 410 Mass. 855 (1991).

8. According to the parties' pretrial stipulation, the contract rent for the premises (subsidized portion plus the tenant's portion) is \$1,700 and the court finds that the fair rental value of the premises was reduced by 40% as a result of these conditions which existed for three months (from September to December 2-24). The court reaches a finding that the value of the premises is reduced by 40% based on the aggregate of the various and numerous conditions of disrepair which involve each room of the premises. The damages to be awarded the tenant for the landlord's breach of the warranty of habitability are **\$2,040** (representing 40% of \$1,700 (\$680) for three months).
9. **Consumer Protection Act Claim:** There is no question that the landlord, as owner of a 40-unit housing complex, is in trade or commerce for purposes of the Consumer Protection Statute (G.L. c.93A). A failure by a landlord to cure code violations within a reasonable time after notice---here it has been three months since the landlord itself identified these violations without beginning any repairs---constitutes a violation of the landlord-tenant regulations that the Attorney General has promulgated pursuant to G.L. c.93A, s.2(c). *South*

Boston Elderly Residences, inc. v. Moynahan, 91 Mass. App. Ct. 455, 470 (2017). Furthermore, “the Supreme Judicial Court has long recognized that a landlord can violate c.93A based on ‘substantial and material breach of the implied warranty of habitability.’” *Id.*, quoting *Crus Mgt. Co. v. Thomas*, 417 Mass. 782, 790 (1994). A tenant who prevails under c.93A, may be awarded “up to three but not less than two times [actual damages] if the court finds that the use or employment of the act or practice was a willful or knowing violation...or that the refusal to grant relief upon demand was made in bad faith.” G.L. c.93A, s.9(3).

10. The court finds and so rules that the landlord’s failure to even begin making repairs it identified in its September 10, 2024, inspection is “willful” or “knowing” for purposes of trebling the warranty of habitability award above. This is the court’s conclusion as there is no question that the conditions of disrepair and the need to repair them is “knowing” and the landlord failed to be persuasive that their failures are not “willful” under the statute.
11. Accordingly, the warranty of habitability award of \$2,040 is trebled under Chapter 93A, bringing the total to **\$6,120**.
12. **Tenant’s Defense of Retaliation:** The tenant failed to meet her burden of proof on her defense of retaliation.
13. **Tenant’s Claim of Breach of Covenant of Quiet Enjoyment:** The tenant failed to meet her burden of proof on her claim of breach of the covenant of quiet enjoyment.

14. **Conclusion and Order:** Based on the foregoing and in accordance with G.L. c.239, s.8A, the tenant shall have ten days from the date of this order noted below to deposit \$ 2116.24 with the court's Clerk's Office. This sum represents the difference between the award of outstanding rent, use, and occupancy for the landlord of \$7,864 MINUS the award of damages to the tenant totaling \$6,120 plus court costs of \$ 258.06 and interest of \$ 114.18. If the tenant makes said deposit with the court, judgment shall enter for her for possession and the funds will be disbursed to the landlord.

15. If the tenant does not make said deposit with the court, judgment shall enter for the landlord for possession plus \$1,744 plus court costs and interest.

So entered this 19 day of December, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

Her application for payment has been pending for several months and Defendant believes it should be approved soon. Accordingly, in light of the foregoing, the following order shall enter:

1. Judgment for possession and \$8,034.44 plus court costs shall enter in favor of Plaintiff.
2. A motion for issuance of the execution shall be scheduled for January 9, 2024. At that time, Defendant shall provide an update as to status of the SRB payment.
3. Defendant shall complete her RAFT application.
4. The following shall serve as a repayment plan for the balance of the arrears and court costs:
 - a. Defendant will pay \$350.00 by January 5, 2025 toward the month of January 2025.
 - b. If she has not yet received payment from the SRB, Defendant will pay \$350.00 by February 5, 2025 toward the month of February 2025.
 - c. Defendant shall pay the remaining arrears and court costs by February 28, 2025 with the payment she receives from the SRB.

SO ORDERED.
December 19, 2024


Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-3915

MIGUEL MARIA,

Plaintiff

v.

TESSA CHAMPAGNE,

Defendant

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR JUDGMENT

This no-fault summary process case came before the court for a bench trial on December 19, 2024. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of a single-family home located at 49 Worthy Street, Springfield, Massachusetts (the "Premises") from Defendant.

The Court finds that Plaintiff is a third-party purchaser for value following foreclosure. Defendant is the adult child of the deceased former owner/mortgagor. Defendant stipulated to Plaintiff's prima facie case for possession, including receipt of the notice to quit dated April 9, 2024. There is no claim for money owed, as the parties never formed a landlord-tenant relationship.

Defendant did not file an answer and raised no defenses at trial. She acknowledges that the time for attempting to modify or assume the loan prior to foreclosure has passed. She only seeks additional time to move. Because she is an

occupant at sufferance and not a tenant, she is not entitled to the statutory stay provided under G.L. c. 239, § 9.

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

1. Judgment for possession only (plus court costs) shall enter for Plaintiff.
2. Execution (eviction order) may issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.
December 19, 2024

/s/ Jonathan J. Kane

Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-1013

FRANSICO BALTAZAR,)
Plaintiff)
v.) ORDER FOR ACCESS
)
TIMOTHY LEYBOVSKY AND NATALIE GUZMAN,)
Defendants)

This matter came before the Court on December 20, 2024 pursuant to the Court's December 17, 2024 order. Plaintiff appeared through counsel. None of the individuals who currently occupy the premises located at 16 Bristol Street, Ludlow, Massachusetts (the "Premises") appeared.

Based on the facts set forth in the verified complaint and the absence of any occupant to appear after notice of the hearing today, without hearing the Court finds that Plaintiff possesses no adequate remedy at law and is likely to prevail on the merits with respect to his right to enter the Premises for inspection and identification of the occupants. Plaintiff is likely to suffer immediate and irreparable harm if the injunctive relief is denied.

Accordingly, the following order shall enter:

1. The occupants of the Premises shall permit Plaintiff or his agents to enter the Premises for inspection upon at least 24 hours' advance written notice served at the Premises.
2. All occupants shall identify themselves to Plaintiff or his agents.

3. Plaintiff shall have this order served by sheriff or constable service before or along with service of the notice for access.

4. The legislative fee for injunctive relief is waived.

SO ORDERED.

December 20, 2024

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0438

ARIANNA KETCHAKEU, PENELOPE HOSLEY,
and KALYANI KORTRIGHT,

Plaintiffs

v.

7Q59 AMHERST, LLC, and XIAN DOLE,

Defendants

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

This civil action for the assessment of damages pursuant to Mass. R. Civ. P. 55(b)(2) came before the court on September 30, 2024. Plaintiffs appeared with counsel. Defendants appeared self-represented. At all times relevant to this case, Plaintiffs resided at 19 Eastern Avenue, Northampton, Massachusetts (the “Property”), a property owned by Defendant 7Q59 Amherst, LLC.¹

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

I. FINDINGS OF FACT

Defendant 7Q59 Amherst, LLC purchased the Property in April 2021. Defendant Dole is a manager of the LLC (together, the LLC and Defendant Dole shall be referred

¹ Default entered against Defendant 7Q59 Amherst, LLC on April 12, 2024. Defendant Dole was defaulted after hearing on August 5, 2024. This assessment of damages hearing is necessary for entry of judgment.

² Two other cases between the same parties, 23CV0878 and 24SC0006, were consolidated into this matter. A related summary process case, 23SP5835, was dismissed on January 16, 2024 when possession became moot.

to as “Defendants” or the “landlord”).³

1. Plaintiff Hosley moved into the Property along with three other individuals who are not part of this case pursuant to a written one-year lease executed by a prior owner of the Property. Plaintiff Hosley was occupying the Property when Defendants acquired it on April 1, 2021.
2. Plaintiff Kortright moved into the Property in September 2021 and Plaintiff Ketchakeu moved in on April 1, 2022.
3. Neither Plaintiff Kortright nor Plaintiff Ketchakeu entered into a written rental agreement with the landlord. The evidence shows, however, that Defendants acquiesced to their tenancies by acknowledging their presence in the Property and accepting rent from them.⁴
4. At all relevant times, Plaintiffs were tenants at will.
5. Monthly rent at all relevant times was \$1,500.00.
6. On April 17, 2022, Plaintiffs notified the landlord that the stove was not working. The landlord promptly replaced the stove with a used stove.
7. On April 30, 2022, Plaintiffs sent an email to Defendant Dole notifying her that they would be withholding rent until the defective conditions in the Property were repaired. They attached to the email a checklist of the items in disrepair. They sent a copy of the email to the Northampton Public Health Department (“PHD”).

³ The Court finds that Ms. Dole’s liability in this matter stems from her individual conduct in managing the Property. At no time did she dispute her personal liability in this case.

⁴ This finding is supported by the fact that Ms. Dole sent a notice to quit with each of Plaintiffs’ names (although misspelled) listed. Also, she testified that she was at the property often doing maintenance and “all the people living there know me.”

8. Fifteen minutes after receipt of the email, Ms. Dole informed Plaintiffs that she would be sending them a notice to quit, which she did later the same day. The notice purported to terminate the tenancy on June 7, 2022.
9. For approximately one week after receipt of the notice to quit, Plaintiffs suffered anxiety and insomnia due to their fear of homelessness.⁵
10. On May 20, 2022, Plaintiffs notified Ms. Dole that the oven was not working.
11. On or about May 31, 2022, Defendants replaced the stove with a used stove. During installation, Plaintiffs noticed a strong gas odor.
12. Plaintiffs contacted Eversource, who inspected the Property the same day and shut off the gas. Plaintiffs use gas for heat, hot water, and cooking.
13. On June 1, 2022, the PHD inspected the Property with Eversource, and on June 2, 2022, it issued a notice of violations, citing, among other things, no gas service, an inoperable stove, a mold-like substance in the bathroom, loose stairs on the deck, missing railings, and bedroom and bathroom doors that did not close properly. Defendants did not formally challenge the PHD's findings.⁶
14. The State Sanitary Code violations cited by the PHD substantially confirm the list of defects about which Plaintiffs gave notice on April 30, 2022.

⁵ According to the testimony of Plaintiffs, their distress subsided when they met with counsel and learned about their rights as tenants.

⁶ The Court finds Ms. Dole's testimony that she did not get notice for PHD not to be credible.

15. On June 2, 2022, Ms. Dole informed Plaintiffs that she had reserved a hotel room for the three of them and the first-floor tenant. The room had two queen beds. Plaintiffs rejected the hotel because it was inappropriate for four unrelated individuals, particularly given that one of the people did not reside in their unit.
16. Plaintiff Hosley found a listing for a nearby 3-bedroom apartment on Airbnb and asked Ms. Dole to place them there instead of the single hotel room. Ms. Dole responded by writing “I am not your mom.”
17. On June 28, 2022, after a hearing on Plaintiffs’ emergency motion for alternative housing and repairs, the Court ordered that violations cited by the PHD be completed forthwith and that Defendants provide temporary alternative housing in a hotel with separate bedrooms for each tenant until repairs were completed. The Court further ordered that Defendants pay Plaintiffs a food stipend of \$350 per week until the repairs were completed.
18. Defendants paid each of the Plaintiffs a one-time food stipend of \$350.00.⁷
19. The gas service to the Property was restored in the beginning of July, 2022. In total, Plaintiffs were without gas service for approximately one month.

⁷ The Court finds Ms. Dole’s testimony that she made two payments of \$350.00 to each of the plaintiffs not to be credible.

20. Defendants corrected the defects that could endanger or impair the health, safety, or well-being of Plaintiffs, including the installation of a working stove, as of July 15, 2022.

II. CONCLUSIONS OF LAW

A. Breach of Warranty

Implied in every tenancy is a warranty that the leased premises are fit for human occupation. *Jablonski v. Clemons*, 60 Mass. App. Ct. 473, 475 (2004); see *Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973). The warranty of habitability typically requires that the physical conditions of the premises conform to the requirements of the State Sanitary Code. See *Davis v. Comerford*, 483 Mass. 164, 173 (2019), citing *Boston Hous. Auth.*, 363 Mass. at 200-201 & n.16. A tenant's obligation to pay the full rent abates when the landlord has notice that the premises failed to comply with the requirements of the warranty of habitability." *Id.*, citing *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196, 198 (1979). The warranty of habitability applies only to "substantial" violations or "significant" defects. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) (not every breach of the State sanitary code supports a warranty of habitability claim). Damages for breach of the implied warranty of habitability are measured by "the difference between the value of the premises as warranted (the rent may be evidence of this value) and the value of the premises as it exists in its defective condition.'" *Id.*, quoting *Cruz Mgt. Co. v. Wideman*, 417 Mass. 771, 775 (1994).

In this case, Plaintiffs sustained their burden of establishing by a preponderance of the evidence that the physical conditions of the Property did not

conform to the requirements of the State Sanitary Code. The Court finds that Plaintiffs were without gas service for approximately one month, during which the Court concludes the fair rental value of the Property was diminished by 80%.⁸ The Court further finds that Plaintiffs were without a working stove for two additional weeks of July 2022. For this two-week period, the Court concludes that the fair rental value of the Property was diminished by 40%.⁹ With respect to the other conditions cited by the DPH as possibly endangering or impairing the health, safety or well-being of the tenants, the Court rules that Plaintiffs are entitled to a rent abatement of 5% for the months of May and June 2022, and half of July 2022.^{10 11} As total damages for the breach of warranty of habitability, then, the Court awards damages in the amount of \$1,687.50.

"[A] failure by a landlord to cure a code violation within a reasonable time after notice constitutes a violation of the landlord-tenant regulations that the Attorney General has promulgated pursuant to G. L. c. 93A, § 2 (c)." *South Boston Elderly Residences, Inc. v. Moynahan*, 91 Mass. App. Ct. 455, 470 (2017). Furthermore, the Supreme Judicial Court has long recognized that a landlord can violate c. 93A based on a substantial and material breach of the implied warranty of habitability. *Id.*, quoting *Cruz Mgt. Co. v. Thomas*, 417 Mass. 782, 790 (1994).

⁸ The dollar amount for this condition is \$1,200.00.

⁹ The dollar amount for this condition is \$300.00.

¹⁰ The dollar amount for this condition is \$187.50.

¹¹ The Court did not find sufficient evidence to warrant a finding that the conditions endangering or impairing the health, safety or well-being of the tenants existed at the outset of the tenancy. Therefore, the Court finds that the correspondence Plaintiffs sent to Defendants on April 30, 2022 constitutes the first notice for purposes of calculating a rent abatement.

A tenant who prevails under c. 93A, may be awarded "up to three but not less than two times [actual damages] if the court finds that the use or employment of the act or practice was a willful or knowing violation . . . or that the refusal to grant relief upon demand was made in bad faith." G. L. c. 93A, § 9 (3). Here, the Court concludes that Defendants' actions were willful or knowing, and it thus doubles the warranty damages to \$3,375.00.

B. Violation of G.L. c. 186, § 14 (Interference with Quiet Enjoyment)

Plaintiffs contend that Defendants' refusal to provide adequate alternative accommodations and requiring them to live with serious conditions of disrepair constitutes interference with quiet enjoyment under G.L. c. 186, § 14 ("any lessor or landlord who directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant ... shall also be liable for actual and consequential damages or three month's rent, whichever is greater"). The Court agrees. For the entire month of June 2022, Plaintiffs could not shower or wash with hot water. For six weeks, they could not cook at the Property and did not have sufficient funds to order from restaurants daily. Despite being ordered by the Court to provide alternative housing and a food stipend, Defendants complied belatedly and only for a brief period.

The Court credits Plaintiffs' testimony about the deep psychological distress they suffered because of Defendants' noncompliance with the Court's order. The impact on their lives was significant and prolonged. The Court awards the sum of \$2,500.00 to each tenant as emotional distress damages for a total of \$7,500.00.

Plaintiffs are also entitled to collect the full amount of the food stipend ordered by the Court on June 28, 2022. Although the Court ordered Defendants to pay each Plaintiff \$350.00 per week until the repairs were completed, the Court finds that Defendants made only one payment of \$350.00 to each Plaintiff. Given that the repairs were not completed for six weeks, Plaintiffs Ketchakeu and Hosley are each entitled to damages in the amount of \$1,750.00 (5 additional weeks), and Plaintiff Kortright is entitled to damages in the amount of \$1,400.00 (4 additional weeks as she did not reside in the Property for approximately one week), for a total of \$4,900.00. In the aggregate, Plaintiffs' actual damages for interference with quiet enjoyment are \$12,400.00.¹²

C. Violation of G.L. c. 186, § 14 (Failing to Furnish Gas)

Plaintiffs argue that Defendants violated a separate prong of G.L. c. 186, § 14 as a result of their failure to provide utilities (gas). The Court rules that Plaintiffs are not entitled to a separate award of statutory damages for this claim. The core facts that constitute interference with quiet enjoyment of G.L. c. 186, § 14 are the same facts that give rise to the claim for failure to furnish utilities. Therefore, the Court rules that Plaintiffs are entitled to a single award of damages under the statute.

D. Violation of G.L. c. 186, § 18 (Retaliation)

G.L. c. 186, § 18 establishes a rebuttable presumption that retaliation has occurred where the summary process action was initiated within six months of the tenant seeking to enforce federal, state, or local housing standards against the

¹² This figure exceeds statutory damages of three months' rent (\$4,500.00) and therefore the Court awards actual damages.

landlord. This presumption "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 the action was taken, even if the tenant had not . . . made such report." *South Boston Elderly Residences, Inc. v. Moynahan*, 91 Mass. App. Ct. 455, 468-469 (2017).

Here, the findings clearly show that Defendants retaliated against Plaintiffs by serving a notice to quit immediately after they complained about the conditions of the unit. Ms. Dole failed to rebut the presumption of retaliation with any credible evidence. Pursuant to G.L. c. 186, § 18, a landlord who takes reprisals against a tenant for exercising their legal rights is liable for damages of not less than one month's rent or more than three months' rent. Under the circumstances presented here, with the notice to quit served so close in time to Plaintiffs' complaints, the Court awards two months' rent in the amount of \$3,000.00.¹³

E. Violation of G.L. c. 93A (consumer protection)¹⁴

Plaintiffs seek a separate award of damages under G.L. c. 93A. The Court has already awarded damages under the consumer protection statute as a component of the breach of warranty claim. Furthermore, both G.L. c. 186, § 14 and G.L. c. 186, § 18 have a multiple damages component built into the language of the statute. The Court rules that the goals of c. 93A of punishment and deterrence have been satisfied with the multiple damages awarded for breach of warranty and retaliation and

¹³ The Court finds that statutory damages exceed the actual damages associated specifically with the service of the notice to quit.

¹⁴ The Court finds that Defendants are engaged in trade or commerce as landlords.

concludes that an additional award of damages under c. 93A would be duplicative. Therefore, the Court declines to award damages under G.L. c. 93A.

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

1. Judgment shall enter in favor of Plaintiffs in the amount of \$22,150.00.¹⁵
2. Plaintiffs are entitled to an award of reasonable attorneys' fees and costs on all claims for which statutory attorneys' fees are allowable. Within fifteen (15) days from the date judgment enters, Plaintiffs may file a petition for reasonable attorney's fees and costs, along with supporting documentation. Defendants shall then have fifteen (15) days from receipt of Plaintiffs' petition to file any opposition, after which time the Court will assess attorneys' fees and costs without need for further hearing, unless the Court so requests.

SO ORDERED.

December 20, 2024

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

cc: Court Reporter

¹⁵ The Court declines to enter separate damages awards for each of the plaintiffs individually.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23H79CV000669

BRANDON NAVOM,

Plaintiff

v.

SAVANNAH RICHARDSON,

Defendant

POST-JUDGMENT ORDER

This matter came before the Court on December 18, 2024, 2024 for hearing on defendant/plaintiff-in-counterclaim Savannah Richardson's *Motion to Dismiss Appeal*.

On June 10, 2024 Judgment entered in favor of Richardson on her counterclaims in the amount of \$18,690.00 plus \$9,526.10 in attorney's fees. Plaintiff/defendant-in-counterclaim Brandon Navom filed a notice of appeal dated June 20, 2023 (docketed on July 3, 2024).¹ Navom has not taken any steps to perfect his appeal by ordering a transcript(s) of the trial proceedings in accordance with the Massachusetts Rules of Appellate Procedure, Rule 8 (b).

Rule 10(c) provides in relevant part that "if an appellant in a civil case shall fail to comply with Rule 9(d) or Rule 10(a)(1) the lower court may on motion . . . dismiss the appeal, but only upon finding of inexcusable neglect; otherwise, the court shall enlarge the appellant's time for taking the required action."

I shall afford Navom one last opportunity to comply with his obligations under Rule 8 (b) and Rule 9(d). Navom shall have until January 10, 2025 to either request designated transcript(s)

¹ The court was not asked to rule on whether the notice of appeal was timely.

of specific trial proceedings in compliance with Massachusetts Rules of Appellate Procedure, Rule 8 (b) or file with the clerk a *Stipulation that Transcript is Unnecessary* signed by both parties. If he takes the necessary steps to request such transcript(s) or files the signed stipulation with the clerk by January 10, 2025, Richardson's *Motion to Dismiss Appeal* shall be **DENIED**, and the clerk shall assemble the record. However, if Navom does not take the necessary steps to request such transcript(s) or file the signed stipulation with the clerk by January 10, 2025, then Richardson's *Motion to Dismiss Appeal* shall be **ALLOWED** without further hearing.

SO ORDERED this 20th day of December 2024.



Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23H79SP005605

PITTSFIELD HOUSING AUTHORITY,

Plaintiff,

v.

DAVID WINCHELL,

Defendant

Order for Judgment

This matter came before the court on December 18, 2024 for hearing on Plaintiff Pittsfield Housing Authority's *Motion for Issuance of Judgment and for Execution for Possession*.

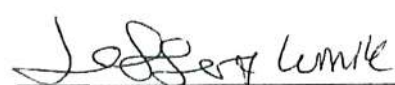
The plaintiff commenced this summary process action against defendant David Winchell based upon allegations of nonpayment of rent. On January 24, 2024 the parties entered into a written agreement. Under the terms of the agreement the defendant acknowledged that he owed \$9,390.55 in unpaid rent through January 2024. The monthly rent was \$185.00. The defendant agreed to apply for RAFT assistance. He further agreed to pay his monthly rent each month commencing in February 2024 together with an additional \$100.00 that would be applied towards his rent arrearage.

The defendant has not complied with material terms of the January 24, 2024 agreement. Since June 2024 the defendant has failed to make any of the rent or arrearage payments due since January 2024 (his last payment of 285.00 was made on May 10, 2024). As of December 18, 2024 the defendant's rent arrearage has increased to \$10,083.95. Further, the defendant never applied for RAFT assistance, and as of December 18, 2024 there is no new pending RAFT application.

Because the defendant has not complied with his payment obligations under the January 24 2024 agreement, plaintiff's *Motion for Issuance of Judgment and for Execution for Possession* is **ALLOWED**.

It is **ORDERED** that judgment enter for the plaintiff for possession and unpaid rent totaling \$10,083.95, plus costs. Execution shall issue in due course; however, the plaintiff shall not levy on the execution prior to January 20, 2025.

So entered this 20th day of December, 2024.

 w/permission

Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79SP003343

JOHN RENZI,
Plaintiff,

v.

CHRISTOPHER REED,
Defendant

Order for Judgment

This matter came before the court on December 18, 2024 for hearing on Plaintiff John Renzi's *Motion to enter Judgment*. Christopher Reed, the one remaining defendant, did not appear,

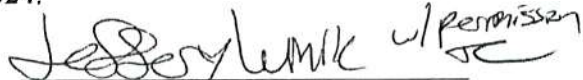
The plaintiff commenced this summary process action. On October 16, 2024 the parties entered into a written agreement. Under the terms of the agreement the defendant agreed to vacate the premises by November 30, 2024 and pay \$450.00 (use and occupancy from October 18 to November 30, 2024).

The defendant has not complied with material terms of the October 16, 2024 agreement. He has failed to vacate the premises or make the \$450.00 payment by November 30, 2024. As of December 18, 2024 the rent arrearage totaled \$4,950.00. There is no new pending RAFT application.

Because the defendant has not complied with his payment obligations under the October 16, 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 \$4,950.00, plus costs. Execution shall issue in due course.

So entered this 20th day of December, 2024.


Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-3422

ROMAN AUVGANG,

Plaintiff,

v.

ODELYS DIAZ,

Defendant.

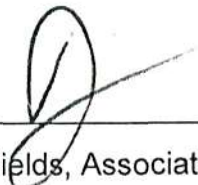
ORDER of DISMISSAL

After hearing on December 19, 2024, at which only the plaintiff landlord appeared, the following order shall enter:

1. Due to the landlord's scrivener's error, every pleading and notice was delivered to an incorrect address for the tenant.
2. On December 2, 2024, after hearing on the landlord's motion to amend the pleadings to correct the address, the court issued an order to give the tenant notice of the pending motion and schedule it for hearing on December 19, 2024.

3. Unfortunately, that order/notice was sent to another incorrect address.
4. The court is concerned that to do anything other than dismiss this action for lack of proper service of the summons and all of the subsequent pleadings and notices will only further delay what might still result in a case needing dismissal on due process grounds.
5. Accordingly, this matter is hereby dismissed without prejudice.

So entered this 23rd 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-4572

B.G. MASSACHUSETTS I, LLC,

Plaintiff,

v.

BIANCA MARTINEZ-RAMOS,

Defendant.

SCHEDULING ORDER

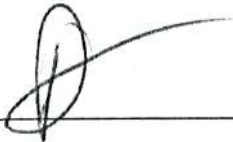
After hearing on December 19, 2024, at which the plaintiff landlord appeared through counsel and the defendant tenant appeared self-represented, the following order shall enter:

1. The landlord's motion to amend the summons to include the lease violation allegations in both the September 9, 2024, and October 9, 2024, notices to quit is allowed subject to the landlord filing and serving a document that asserts each alleged lease violation with a description of each and the

corresponding lease clause alleged to have been violated (by the date noted below).

2. By agreement of the parties, the Tier 1 event shall be moved to January 7, 2025, at 9:00 a.m.
3. If the matter is not mediated successfully at the Tier 1 event, the landlord shall file the document described above in Paragraph 1 and both parties shall propound discovery by no later than January 17, 2025.
4. The parties shall respond to said discovery demand by no later than January 27, 2025.
5. A trial shall be scheduled for February 6, 2024, at 9:00 a.m.

So entered this 23rd 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-4076

SCOTT LAFLAMME,

Plaintiff,

v.

NANETTE OWENS and MATTHEW SPITZER,

Defendants.

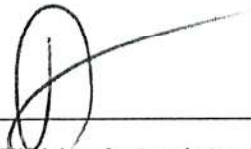
ORDER OF DISMISSAL

This matter came before the court for trial on December 19, 2024, at which all parties appeared self-represented. After hearing, the following order shall enter:

1. Prior to filing this eviction case on October 10, 2024, the tenants owed \$6,000 in use and occupancy (July through October 2024) and that amount was paid in full by RAFT.
2. The landlord included the four months of rent on his ledger with the RAFT application but did not include court costs, which would have been covered and paid by the RAFT program (confirmed by a representative from Way Finders, Inc. by Zoom during the hearing).

3. The parties are going to apply to RAFT for the court costs and the Way Finders, Inc. representative confirmed that the tenants have remaining funds from the RAFT program to pay the court costs.
4. Given that if the court costs were included in the RAFT award paid to the landlord on October 11, 2024, this matter would have been dismissed on that date, and given that the parties are going to apply to RAFT for those court costs, this summary process action shall be dismissed¹.
5. The landlord will need to re-terminate the tenancy and begin a new eviction action for rent that became due starting in November 2024 if same remains unpaid.

So entered this 23rd day of December, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

¹ If the court costs go unpaid, the landlord may file a motion in this action to seek a money judgment for the court costs---but no judgment for possession is available in this summary process action.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-1939

S & C INVESTORS, LLC,

Plaintiff,

v.

MARIE PATRUNO, et al.,

Defendants.

ORDER

After hearing on December 19, 2024, for a Review scheduled by the court's November 15, 2024, order, the following order shall enter:

1. Counsel for the tenant Marie Patruno, Tanya Mamootil, entered a full appearance and agreed to submit to landlord's counsel a reasonable accommodation request for the cancellation of the physical eviction (cancelled by the court's previous order) with supporting medical verifications.
2. Attorney Mamootil should not file same with the court, only to landlord's counsel.

3. There shall be a protective order on said reasonable accommodation request and the landlord is prohibited from sharing any parts thereof with anyone without leave of court.
4. A representative from the Tenancy Preservation Program (TPP), currently working with the parties in this action, shared a concern that the ledger should indicate a \$0 balance, but the landlord's counsel could not confirm same. Thus, the parties will discuss and determine if the matter should be dismissed or whether further action is required.

So entered this 23rd day of December, 2024.



Robert Fields, Associate Justice

Cc: Alisha White, TPP

Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 23-SP-4390

**RICHARD KOWALKSI and MICHELLE
LACOURSE,**

Plaintiff,

v.

NICOLE BUCIER, et al.,

Defendants.

ORDER

After hearing on December 13, 2024, on the plaintiffs' motion for reconsideration, the following order shall enter:

1. On May 28, 2024, the trial in this matter was conducted. It was a "for cause" eviction matter in which the landlord also included outstanding rent in its Account Annexed on the summons. Several months before trial, the Court

issued a ruling on March 12, 2024, which allowed the tenant's counterclaims and defenses to be part of the trial.¹

2. At trial, the parties entered into a Pre-trial Stipulation in which the landlords asserted \$30,000 in outstanding rent and the tenant asserted \$20,000. Additionally, the landlords called their property manager to the stand and asked her questions about the unpaid rent and through her put their rental ledger into evidence. Further, the landlords asked the tenant questions about the rent during their cross-examination of the tenant.
3. **Discussion:** Now the landlords come before the court, and after making rent an issue at trial that was litigated and adjudicated by the court, asking that the court undo a finding and ruling that such rent was owed. Counsel argues erroneously that the landlords' only option to collect on that judgment would be in Small Claims which would reduce the amount they could seek for recovery. Of course, the landlords may file a Supplementary Proceeding to collect on their judgment, which would not reduce the amount owed.²
4. The landlords' counsel also reported at the motion hearing that the tenant owes rent since after the trial, thus a non-payment of rent action is also available to them.
5. Finally, the landlords argue that they were "not given the opportunity to be heard on the inclusion of the unpaid rent/use and occupancy". This is not

¹ The undersigned judge was not the judge who ruled to include the counterclaims but has no doubt that at the time of the ruling it was explained by the court to the parties that even if the tenant was to be awarded after trial more money than was outstanding in rent, the landlord would still be awarded judgment for possession if it proved its "for cause" case.

² Actually, the underlying judgment will increase at an annual rate of 12%, which can also be sought in Supplemental Process.

only not accurate, it is the landlords who introduced the rent as an issue to be determined by the court during the trial---as described above. Not only did they have pre-trial opportunities to make it clear that they are not seeking the court's adjudication of outstanding rent at trial, they did not have to initiate the topic at trial of outstanding rent through their own witness and then put the rent ledger into evidence and then to cross-examine the tenant about the amount of outstanding rent.

6. Given the landlords' own actions at pre-trial and at trial, the court properly adjudicated the rent issue and appropriately entered judgment for the landlords for the sum of outstanding rent after an offset for the tenant's counterclaim of breach of warranty of habitability required by the law.
7. **Conclusion:** Based on the foregoing, the plaintiffs' motion for reconsideration is denied.

So entered this 24th 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-449

KIKCO MCMAHAN,

Plaintiff,

v.

ORDER

HOLY VENTURES,

Defendant.

After hearing on December 4, 2024, on the defendant's motion to dismiss at which both parties appeared through counsel, the following order shall enter:

1. **STANDARD OF REVIEW MOTION TO DISMISS, Rule 12 (b) (9):** The motion to dismiss is brought pursuant to Mass. R. Civ. P. 12(b)(9) for pendency of a prior action in a court of the Commonwealth. On a Rule 12(b)(9) motion to dismiss, the court may not maintain an action if there is a prior pending action involving the same parties and issues. *M.J. Flaherty Co. v. United States Fid. & Guar. Co.*, 61 Mass. App. Ct. 337, 339, 810 N.E.2d

823 (2004), citing *Harvard Community Health Plan, Inc. v. Zack*, 33 Mass. App. Ct. 649, 652 (1992); Mass. R. Civ. P. 12(b)(9). Rule 12(b)(9) prohibits the long-barred practice of claim-splitting. *Lyons v. Duncan*, 81 Mass. App. Ct. 766, 771 (2012).

2. Thus, "[d]ismissal under [Mass. R. Civ. P. 12(b)(9)] is proper when the same parties are involved in two actions, one begun before the other, and '[i]t is apparent from the face of the present complaint ... that all the operative facts relied on to support the present action had transpired prior to the commencement of the first action.'" *Zora Enterprises, Inc. v. Burnett*, 61 Mass. App. Ct. 341, 346 (2004), quoting *Keen v. Western New England College*, 23 Mass. App. Ct. 84, 85-87 (1986). "That events transpiring in the first case have binding effect on the plaintiff in the second case makes enforcement of the policies underlying Rule 12(b)(9) more, not less, desirable." *Zora Enterprises, Inc.*, 61 Mass. App. Ct. at 347.
3. **STANDARD OF REVIEW RES JUDICATA:** "The term '*res judicata*' includes both claim preclusion and issue preclusion." *Kobrin v. Board of Registration in Med.*, 444 Mass. 837, 843 (2005). Claim preclusion operates where there is "(1) the identity or privity of the parties to the present and prior actions, (2) identity of the cause of action, and (3) prior final judgment on the merits." *Ibid.*, quoting from *DaLuz v. Dep't of Corr.*, 434 Mass. 40, 45 (2001). Causes of action are considered identical for these purposes if they are based on "the same transaction, act, or agreement, and seek[] redress for the same wrong." *Fassas v. First Bank & Trust Co. of Chelmsford*, 353 Mass. 628, 629 (1968),

quoting from *Mackintosh v. Chambers*, 285 Mass. 594, 596 (1934). The doctrine bars "relitigation of all matters that were or could have been adjudicated in the [earlier] action." *Kobrin v. Board of Registration in Med.*, supra, quoting from *O'Neill v. City Manager of Cambridge*, 428 Mass. 257, 259 (1998).

4. The doctrine of collateral estoppel may be applied with respect to administrative agency determinations so long as the tribunal rendering judgment has the legal authority to adjudicate the dispute. *Alba v. Raytheon Co.*, 441 Mass. 836 (2004); *Bellermann v. Fitchburg Gas & Elec. Light Co.*, 470 Mass. 43 (2014). A final order of an administrative agency in an adjudicatory proceeding precludes relitigation of the same issues between the same parties, just as would a final judgment of a court of competent jurisdiction. *Alba v. Raytheon Co.*, 441 Mass. 836 (2004). The guiding principle in determining whether to allow defensive use of collateral estoppel is whether the party against whom it is asserted lacked full and fair opportunity to litigate the issue in the first action or whether other circumstances justify affording him an opportunity to relitigate the issue. *McLaughlin v. City of Lowell*, 84 Mass. App. Ct. 45 (2013).
5. **DISCUSSION:** The defendant argues that this matter should be dismissed pursuant to M.R.C.P. R. 12(b) (9) arguing that the doctrine of *res judicata* applies. Specifically, that the plaintiff re-raised many of the same claims and issues against the defendant in this complaint, that she raised and fully

litigated against the defendant in her prior complaint to the Massachusetts Commission Against Discrimination ("MCAD").

6. The defendant's motion to dismiss clearly states that dismissals for lack of probable cause are not "final adjudications" for the purpose of G.L. C. 30A, the Massachusetts Administrative Procedure Act under G.L. c. 151B *Grandioit v. Mass Comm'n Against Discrimination*, 95 Mass. App. Ct. 603, 607 (2019). (See defendant's Motion to Dismiss pg. 6 para 1 sentence 2).
7. The requirement of a "final adjudication" in the prior action is one of the requirements for the doctrine of *res judicata* to apply in subsequent litigation See *Ibid.*, quoting from *DaLuz v. Dep't of Corr.*, 434 Mass. 40, 45 (2001). The requirement of a "final order" in an administrative agency determination is required for the doctrine of *res judicata* to apply in subsequent litigation. See *Alba v. Raytheon Co.*, 441 Mass. 836 (2004).
8. Therefore, the doctrine of *res judicata* does not apply and the Court denies the defendant's motion to dismiss.

So entered this 24 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-872

MAYSELA RIVIE,

Plaintiff,

v.

ANASTAYSHA "STACY" ROLLER and
YOUCHANA ROBINSON MITCHELL REALTY
TRUST,

Defendants.

ORDER

After hearing on November 15, 2024, on various motions by both parties, the following order shall enter:

1. **Preliminary Matters:** As discussed on the record, Ms. Roller was instructed that she may not file documents nor pleadings nor communicate with the court by email. Additionally, given that there is no longer an ongoing tenancy (tenant vacated in February 2024), the Summary Process matter (23-SP-5842) shall be consolidated into the Civil Action (23-CV-872) and all future

filings shall be made to the Civil Action (23-CV-872). Please note that in this Civil Action, Ms. Rivie is the plaintiff and Ms. Roller and Youchana Robinson Mitchell Realty Trust are the defendants.

2. **Defendant Stacy Roller's Motion to Dismiss:** Ms. Roller's motion to dismiss Ms. Rivie's claims is denied *without prejudice*. The motion is predicated on allegations that Rivie's claims are groundless or fraudulent, based on slander or are fabricated which caused the non-payment of rent and various misrepresentations. Such arguments do not support a dismissal at this stage but may be renewed at a later date such as at trial.
3. **Defendant Stacy Roller's Request for a Jury Trial:** On July 17, 2024, the court issued an order (Winik, J.) which granted Ms. Roller until July 31, 2024, to file her answer/counterclaim. Ms. Roller filed a "request for jury trial" on July 22, 2024.
4. The court is satisfied that this jury request is timely given Judge Winik's order and the case shall be designated for a jury trial.
5. **Defendant Stacy Roller's Motion to Reconsider the Real Estate Attachment:** On March 28, 2024, the court issued an order for a prejudgment real estate attachment in the amount of \$25,000. The subject property was subsequently sold and \$25,000 is currently being held in escrow pending the outcome of this litigation by the closing attorney Lorraine Rossi.
6. Thus, the motion is for the release of those funds for disbursement to Ms. Roller. Ms. Roller did not persuade the court to alter the court's analysis articulated in

its March 28, 2024, order and the funds shall remain held in escrow pending the outcome to this action.

7. **Defendant Stacy Roller's Motion to Quash a Subpoena Served on the Springfield Housing Authority:** Ms. Roller's motion is mostly based on her belief that Ms. Rivie can very easily access the Springfield Housing Authority records and that she is using a "subpoena with a sheriff to intimidate her" and her "mailing it to her instead of emailing to her like everything else" was to further intimidate her.
8. Rivie's use of a records subpoena for Springfield Housing Authority records appears appropriate and there is no basis to quash it. Accordingly, this notion is denied.
9. **Defendant Stacy Roller's Motion for the Court to act as a Gatekeeper:** Ms. Roller believes that Ms. Rivie is abusing the court process to bully her into submission and is looking for the court to rule on whether filings should be served to her, or motions heard, during these proceedings.
10. The court does not view any pleading filed by Ms. Rivie as out of the ordinary and there is no basis for such an order at this time and the motion shall be denied.
11. **Plaintiff Maysela Rivie's Motion to Dismiss Roller's Claim for Intentional Infliction of Emotional Distress:** The court is satisfied at this juncture, based solely on the pleadings, that Stacy Roller has sufficiently asserted a basis for the claim of intentional infliction of emotional distress; alleging extreme and outrageous conduct by Ms. Rivie and her household, alleging

reckless disregard for causing emotional distress, and alleging a causal connection between Ms. Rivie or her household members' behavior and Ms. Roller's emotional distress. Accordingly, the motion to dismiss this claim is denied, *without prejudice*.

12. **Rivie's Motion to Strike Roller's Answer:** Stacy Roller's Answer to Ms. Rivie's claims is viewed by the court as a "general denial", which is insufficient as a pleading and she must "set out in simple terms [her] defense to each claim asserted..." *Piper v. C.L. Hayden Co.*, 254 Mass. 317, 319 (1926).
13. Accordingly, Ms. Roller has 20 days from the date of this order (noted below) to file and serve an Answer to Ms. Rivie's claims (as asserted in Rivie's Answer to the Summary Process action---23-SP-5842), addressing each of Rivie's defenses and counterclaims. Said Answer shall "answer fully, directly and specifically each allegation" in Rivie's defenses and claims. See, *Corkum v. Clark*, 263 Mass. 378, 380 (1928).
14. **Motion for Leave to Supplement Pleadings:** Ms. Rivie's motion for leave to amend her claims to include Defamation and Violation of the Security Deposit Laws is allowed and she shall file and serve the amended additional claims by no later than 20 days from the date of this order (noted below).
15. **Rivie's Motion for Injunctive Relief:** It is unclear what injunctive order is being sought by Ms. Rivie. Her motion itself does not have any prayer for relief that helps spell that out and even at hearing it was not made clear what order is being sought. That said, it is clear that Ms. Rivie is seeking an end to what Mr. Rivie feels is "abusive communications" which are defamatory in

nature which are being made by Ms. Roller to the Springfield Housing Authority personnel and to the Springfield Code Enforcement office, and to her former contractor Adrian Reaves.

16. Though continued communications of this nature may form a basis for a claim of defamation and/or tortious interference with advantageous relations, the court is not persuaded by Ms. Rivie that she has met her burden proof on any of the four prongs articulated for entering injunction relief by well settled case law. See, *Packaging Industries Group, Inc. v. Paul E. Cheney*, 380 Mass. 609 (1980).

17. **Rivie's Motion for the Court to act as a Gatekeeper:** Denied, *without prejudice*.

18. **Case Management Conference:** Going forward all Case Management Conferences shall be with Judge Fields. This matter shall be scheduled for a Case Management Conference on **Wednesday, February 5, 2025, at 11:00 a.m. by Zoom.**

So entered this 24 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-3456**

LUCY WILSON,

Plaintiff,

v.

ORDER

KRISTIAN ROBARE and KRISTEN MORE,

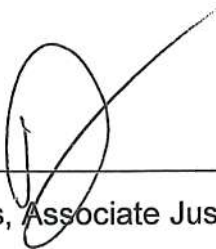
Defendants.

This matter came before the court for trial on December 20, 2024, at which all three parties appeared self-represented. After hearing, the following order shall enter:

1. The landlord met her burden of proof on her claim for possession plus \$8,600 for unpaid use and occupancy through December 2024.
2. The tenants failed to meet their burden of proof on their counterclaims which alleged that the landlord entered their apartment without their permission on several occasions and that her significant other Chuck harassed them.

3. Accordingly, judgment shall enter for the landlord for possession plus \$8,600 plus court costs.
4. An execution may issue upon the timely filing and service to the tenants of a Rule 13 Application.

So entered this 24 day of December, 2024.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a vertical stroke and a horizontal stroke, positioned above a horizontal line.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-2039

EURIDES BATISTA,

Plaintiff,

v.

DAMARIS FRIAS and DARREYL SUBER, JR.,

Defendants.

ORDER

After hearing on December 23, 2024, on motions by both the landlord and the tenants, the following order shall enter:

1. The landlord's motion alleging violation of the Agreement of the Parties is denied as it was a condition that no rent would be paid until both the Health Department and Building Department signed off on repairs. Though Health Department signed off, the Building Department has yet to do so. Accordingly, the landlord's motion for entry of judgment is denied.

2. The tenants' motion for an extension of time to move out is allowed contingent upon compliance with the terms of this order.
3. The tenant shall have until March 1, 2025, to vacate the premises as long as the pay any rent that may become due in the interim. Rent shall only become due if and when both the Health Department and the Building Department sign off on repairs. If said sign off occurs, the rent for the remaining portion of that month become due.

So entered this 26th 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-CV-485

ALTON KING, JR.,

Plaintiff,

v.

RACE STREET PROPERTIES, LLC and DAVID
WHITE,

Defendants.

ORDER

After hearings on November 6 and December 4, 2024, on various motion by all the parties, the following order shall enter:

1. **Preliminary Matter:** The related eviction matter, *Bank of New York Mellon v. Alton King*, 19-SP-190, should have been administratively closed as Mr. King's claims were severed to this instant Civil Action (24-CV-485). All filings between the parties, and all notices from the Court, shall be filed into and issued in this Civil Action, 24-CV-486, and no longer in the now-dismissed summary process action.

2. **Bank's Motion to be Dismissed:** Mr. King had until July 29, 2024, to file a "Complaint" in this Civil Action.¹ Mr. King filed his complaint on October 15, 2024, and it is excepted by the court as if it was filed timely.² That complaint does not assert any claims against the Bank of New York Mellon ("The Bank"). Accordingly, The Bank's motion is allowed, and The Bank is dismissed from this case.³ Additionally, moving forward, other than a motion seeking leave of Court to add the Bank of New York Mellon back into this action, the remaining parties should not be serving documents or pleading upon the Bank of New York Mellon as it is no longer a party.
3. **Race Street's Motion to Lift Stay:** Though Race Street is renewing its motion to lift the restrictions so that it can either auction off Mr. King's belongings or deliver his belongings to a location of Mr. King's choosing, the only additional information provided by Race Street since the last time it made the same motion to the court is proof that it obtained a license from the state to be a common carrier. This renewed motion otherwise lacks any underlying documents or affidavits in support of the motion and the assertions therein.
4. The Court directs the parties to review its Order dated June 27, 2024, which denied Race Street's earlier motion for leave to auction or deliver his items out of the warehouse. That same analysis and finding that Race Street has

¹ An Order dated June 27, 2024, gave Mr. King 30 days to file the Complaint.

² Mr. King's motion to extend the time for filing his Complaint was allowed and the Complaint filed is deemed timely.

³ The face of The Bank's motion was endorsed on November 6, 2024: "Allowed after hearing without prejudice. Bank of New York is hereby dismissed from this matter."

failed to meet its burden for injunctive relief applies here. Accordingly, Race Street's motion is denied.

5. **King's Motion for Accommodations Under the Americans with Disabilities Act (ADA):** The accommodation that Mr. King is seeking is to allow his acquaintance, Mr. Ozell, to speak on his behalf at court hearings. Mr. King stated that the reasons he needs this accommodation is because [REDACTED]
[REDACTED]. Mr. King did not submit any documents whatsoever in support of his request.
6. Without any supportive documentation, the motion is denied without prejudice and Mr. King is encouraged to provide sufficient documentation to support the applicability of the ADA. If Mr. King refiles a similar motion, he may ask the court to issue a protective order relative to sensitive and private medical documentation.
7. **Race Street's Insurance Policy:** At both hearings, on November 6 and December 4, 2024, Race Street committed to providing Mr. King a copy of Race Street's insurance policy (or at least the cover sheet) but has yet to do so. Race Street shall have until 10 days after the date of this Order noted below to provide it to Mr. King.
8. **King's Omnibus Motion:** King opted to not go forward on this motion until after the court issues a ruling on his motion for allowing Mr. Ozell or another spokesperson to speak for him in court. If Mr. King wishes to have said motion heard, he shall re-mark same for hearing.

9. **Discovery Schedule:** The parties have until February 28, 2025, to propound written discovery upon one another. Thereafter, the parties shall have 45 after receipt of said discovery demand to respond.

10. The parties shall have until May 15, 2025, to complete depositions.

11. **Judicial Case Management Conference:** This matter shall be scheduled for a Judicial Case Management Conference on May 22, 2025, at 2:00 p.m., live in the Springfield Courthouse.

So entered this 26 day of December, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

Carl E. Fumarola, counsel for Bank of New York Mellon (BBO#659019)

Colin T. Barrett, counsel for Bank of New York Mellon (BBO#690726)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-2020

NORTHERN HEIGHTS, LP,

Plaintiff,

v.

JUAN PEREZ,

Defendant.

ORDER

After hearing on December 20, 2024, on the tenant's motion to stop a levy of the execution, the following order shall enter:

1. The tenant has made some payments since the Agreement was entered into in June 2024, but the landlord reports that \$7,757.62 is outstanding in rent through December 2024 (plus court costs).
2. The landlord shared a concern that the tenant may have [REDACTED] that make it difficult to comprehend all that is required of him to successfully engage in this eviction action.

3. The tenant stated that he has recently been employed full time and has \$300 today and the tenant's brother appeared and offered to pay \$2,000 towards the debt, today.
4. The tenant shall pay \$2,300 to the landlord today and pay January 2025 rent on time. Upon receipt of said monies, the landlord shall cancel the physical levy now scheduled for January 9, 2025, at 11:00 a.m.
5. This matter is referred to the Tenancy Preservation Program (TPP). Ms. Batista was present for the hearing and was going to meet with the tenant immediately following the hearing. At a minimum, Ms. Batista was going to see if she could coordinate a meeting for the tenant with Springfield Partners for Community Action for assistance with a RAFT application.
6. In order to determine if Juan Perez is an "incapacitated person" as that term is defined in G.L. c.190B, s.510(9), the Court hereby orders that he undergo a forensic psychological evaluation with the Court Clinic. The Court requests that the clinician evaluate Juan Perez with respect to his decision-making capacity, his ability to comply with court orders regarding his housing, and his ability to understand the legal proceedings and participate meaningfully therein. The purpose of the evaluation is to allow the judge to decide whether, in order to secure the full and effective administration of justice, the Court should appoint a guardian *ad litem* for Juan Perez.
7. Assistant Clerk Magistrate Cunha is requested to help coordinate the scheduling of the Court Clinic evaluation. The TPP referral form has the tenant's and the tenant's brother Luis Perez' telephone numbers.

8. This matter shall be scheduled for a review hearing on **January 31, 2025**, at **9:00 a.m.**

So entered this 26 day of December, 2024.



Robert Fields, Associate Justice

Cc: Kara Cunha, Esq., Assistant Clerk Magistrate

Court Clinic

TPP

Court Reporter

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 LEE RENAUD and DAVID
PANTOJA,**

Defendants.

ORDER

After hearing on December 20, 2024, the following order shall enter:

1. The trial was delayed by the court on several occasions to grant the tenants opportunities to supplement their discovery responses, but the tenants failed to do so.
2. The landlord's renewed motion to strike the tenants' counterclaims (and as much as said counterclaims act as a defense to the landlord's claim for possession) is allowed.

3. Further, the landlord's motion to deem the unanswered Request for Admissions as "admitted" is allowed and with that, the landlord meets its burden of proof on its claim for non-payment.
4. Accordingly, judgment shall enter for the landlord for possession plus \$10,950 plus court costs.

So entered this 20th day of December, 2024.

Robert Fields, Associate Justice

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-1027

REBECCA D. RICE,

Plaintiff,

v.

MARC ST. PIERRE,

Defendant.

ORDER

After hearing on December 23, 2024, on the plaintiff tenant's motion for injunctive relief at which both parties appeared self-represented, the following order shall enter:

1. The landlord shall provide the tenant with no less than 48 hours advance written notice when access is required for repairs.
2. Said notice, which can be by text, shall indicate the window of time anticipated and the start time.
3. The notice shall also include a description of the anticipated repair.

4. The tenant works at night so the landlord shall make his best efforts to not schedule access for time earlier than noon---if possible.
5. The landlord has a full-time job outside of his landlord responsibilities, so the tenant has made it clear that she is okay with him accessing the premises for repairs (upon proper notice) as late as 7:00 p.m. on weekdays.
6. Any repair work that requires a license or a town permit shall be effectuated by a licensed professional and with proper permits issued by the town.
7. The landlord, nor his agents, may take photographs inside the tenant's unit without her permission.
8. If the tenant receives notice from the landlord she should respond promptly. If the time that is designated by the landlord can not work for the tenant due to a conflict, she must promptly inform the landlord and offer alternative times for the repairs to be scheduled.

So entered this 26th day of December, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

MR.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-3307

MASON SQUARE APARTMENTS II, LP,

Plaintiff,

v.

NAYSHA M. FALCON and WAY FINDERS,
INC.,

Defendants.

ORDER AND SUMMONS FOR
WAY FINDERS, INC. TO
APPEAR

After hearing on December 26, 2024, the following order shall enter:

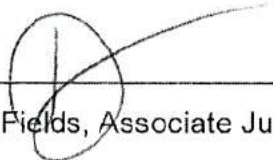
1. The tenant went into a [REDACTED] program on the day of the last hearing with the assistance of the Tenancy Preservation Program (TPP) and has been informed that on January 3, 2024, she will be transferred to a longer-term program.
2. Attorney Gordon Shaw appeared as Lawyer for the Day and reported that the tenant can pay \$500 forthwith and \$234 by January 8, 2025. Such sums are for outstanding rent, use, and occupancy but not to be applied by the landlord towards costs---which may be paid by the RAFT program. These payments

do not suggest that the tenant is paying current rent at this time. NOTE: The tenant cannot make said payments until she accesses her EBT card from the Gold Vine Storage facility and will endeavor to do so promptly (while remaining in her [REDACTED] program).

3. Way Finders, Inc. is hereby determined to be a necessary party to this case and shall be added as a party-defendant in accordance with Mass. R. Civ. P. 19.
4. The Court considers this so because the fact that the landlord levied on the execution for possession, Way Finders, Inc. may quickly stop paying its share of the rent under the project-based subsidy program attached to the subject premises while the Court has ordered that that unit remain vacant as it may further order the restoration of the tenancy as a reasonable accommodation.
5. Way Finders, Inc. shall continue to pay the subsidized portion of the rent to the landlord for the subject rental premises for January 2025, so as to maintain the *status quo* during the Court's analysis and consideration of further reasonable accommodations.
6. Attorney Shaw committed his agency (Community Legal Aid) to make a determination if it can offer the tenant legal representation or coordinate a referral to the Mass. Fair Housing agency in Holyoke.
7. The Tenancy Preservation Program (TPP) indicated that it will continue to work with the tenant and the parties and their counsel in this matter and has agreed to assist in the tenant's reasonable accommodations request to the landlord and to Way Finders, Inc.

8. The Clerk's Office is requested to have a copy of this order and the Court's December 11, 2024, Order sent to Attorney Pascale Desire, counsel for Way Finders, Inc. forthwith.
9. Way Finders, Inc. shall appear at the next hearing noted below.
10. This matter shall be scheduled for further review on **January 16, 2024**, at **9:00 a.m.**

So entered this 27th day of December, 2024.



Robert Fields, Associate Justice

Cc: Gordon Shaw, CLA
Bekki Craig, TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-SP-3597

CENTURY PACIFIC HOUSING PARTNERSHIP
X, LP,

Plaintiff,

v.

ANETTE RENTAS,

Defendant.

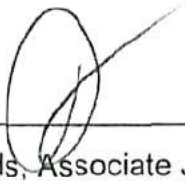
ORDER

After hearing on December 26, 2024, on the defendant's motion for injunctive relief in the form of a stay on the use of the execution at which the plaintiff appeared through counsel and the defendant appeared self-represented, the following order shall enter:

1. The defendant believes that she will be granted an emergency shelter placement in approximately three weeks' time.

2. So as to avoid unnecessary homelessness for the defendant and her family, which include [REDACTED] young children, there shall be a stay on the physical levy consistent with the terms of this Order.
3. Though the plaintiff may have the defendant served with notice of a physical levy on the execution at any time in accordance with G.L. c.239, s.3, the actual physical levy shall not be scheduled to occur prior to January 17, 2025.

So entered this 30 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. 22-SP-3371

EBROOKS, LP,

Plaintiff,

v.

KENDRA BRANCH,

Defendant.

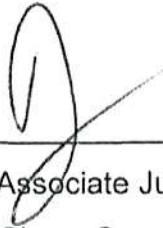
ORDER

After hearing on December 26, 2024, the following order shall enter:

1. Attorney Gordon Shaw joined the hearing as Lawyer for the Day and reported that he will investigate the tenant's appeal of her subsidy termination and Community Legal Aid will also make a determination whether it can offer the tenant representation in her appeal or in this court action.
2. Attorney Shaw will report on those two things at the next court hearing noted below.

3. The tenant shall pay \$822 by the first week of January 2025. This represents her monthly share of the rent (under the MRVP subsidy program) plus \$200 towards arrearage.
4. The landlord's motion for entry of judgment shall be continued to **January 9, 2025, at 9:00 a.m.**

So entered this 30 day of December, 2024.



Robert Fields, Associate Justice

Cc: Gordon Shaw, Community Legal Aid
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

FORGE PROPERTY MANAGEMENT,

Plaintiff,

-v.-

DOCKET NO. 23SP05399

FELICIA ORTONA,

Defendant.

ORDER

This matter came before the court on December 20, 2024 for a hearing on the plaintiff's motion for entry of judgment. The plaintiff appeared through its attorney. The defendant appeared and was self-represented.

The plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy in this eviction case based on nonpayment of rent. The parties entered into an Agreement on January 4, 2024. By its terms relevant to this motion, the parties agreed that the defendant owed \$7,500 in rent/use and occupancy through January 2024 and \$252.46 costs. Beginning in January 2024, the defendant agreed to pay the monthly rent/use and occupancy (\$1,000) and \$300 toward the arrearage each month. The defendant had \$2,000 remaining in available RAFT financial assistance. Both parties agreed to complete the RAFT application process. The parties further agreed that the case would be dismissed when the arrearage reached zero. If the defendant did not comply with the terms of the Agreement, the plaintiff could file a motion for entry of judgment.

The plaintiff filed such a motion. The plaintiff received \$2,000 from RAFT on behalf of the tenant in February, but this did not reduce the arrearage to zero. The defendant made the

agreed upon payments for some months, but has failed to do so in recent months. The arrearage is now \$7,300 through December 2024¹ and \$252.46 costs.

The parties agree that the defendant has exhausted her available RAFT benefits at this time. Therefore, G.L. c. 239 §15 does not apply in this case. The defendant reported that she disposed of her car and its accompanying payments so that she could afford the rent. She offered to pay \$500 every Tuesday beginning on December 24, 2024 and to pay \$2,500 from her anticipated tax refund. If she completes her proposed repayment plan, she would reduce the arrearage to zero by the end of May 2025.

Order

As stated at the hearing, the following order enters:

- 1. The plaintiff's motion for entry of judgment is continued for further hearing on January 10, 2025 at 2:00 p.m.**
2. At that hearing, the parties will report on whether Ms. Ortona made the following \$500 payments as she agreed to do:
 - December 24, 2024
 - December 31, 2024
 - January 7, 2025.

December 30, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

¹ This amount takes into account a \$500 payment which the defendant testified she made the week before the hearing, but which was not yet reflected on the plaintiff's ledger.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

YEVGENLY KATALNIKOV,

Plaintiff,

-v.-

DOCKET NO. 24SP02779

SEAN DEGLIS & KARINA ARBUZOV,

Defendant.

ORDER

This matter came before the court on December 20, 2024 for a hearing on the plaintiff's motion for entry of Judgment. The plaintiff appeared with his attorney. Defendant Arbuzov appeared; defendant Deglis did not appear. Both defendants are self-represented. Janis Luna of Wayfinders joined the hearing to report on RAFT.

In this eviction case based on nonpayment of rent, the plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy. The parties entered into an Agreement on September 26, 2024. By its terms relevant to this motion, the parties agreed that the defendants owed \$4,000 in unpaid rent/use and occupancy through September 2024 and costs of \$312.25. Ms. Arbuzov had a pending application for RAFT financial assistance. The parties also agreed to make a payment of \$175.43 by October 10, 2024 and then to pay the monthly use and occupancy of \$1,000 by the fifth of each month beginning in November 2024. If the defendants reached a zero balance the case would be dismissed. If they did not comply with the terms of the Agreement, the plaintiff could file a motion for entry of judgment.

The plaintiff has filed such a motion on the grounds that the defendants did not comply with the terms of the Agreement. The October 10 payment was made, but not the November or December use and occupancy payments. No monies were received from RAFT. Ms. Luna of

Wayfinders confirmed that Ms. Arbuzov's application timed out on November 6, 2024. The arrearage is now \$7,000 through December 2024 with costs of \$312.25.

Ms. Arbuzov reported that she moved out of the premises on or about November 3, 2024, but that Mr. Deglis remains living there. The landlord did not know that she had moved until the hearing. The tenancy was based on a written tenancy at will agreement. Because the tenancy was terminated by the notice to quit in this case, the court finds that Ms. Arbuzov is responsible for the rent/use and occupancy only for the days she lived at the premises, i.e., through November 3, 2024. Mr. Deglis remains responsible for the ongoing rent/use and occupancy.

After hearing the court finds that the defendants are in substantial breach of material terms of the September 26, 2024 Agreement because neither the arrearage nor the use and occupancy was paid. The plaintiff is entitled to judgment, although for different amounts against each tenant.

Orders

After hearing the following orders will enter:

1. Judgment will enter for the plaintiff against defendant Sean Deglis for possession and \$7,000 in unpaid rent/use and occupancy through December 2024 with costs of \$312.25.
2. Judgment will enter for the plaintiff against defendant Karina Arbuzov for possession and \$5,100 in unpaid rent/use and occupancy through November 3, 2024 with costs of \$312.25.¹
3. Executions will issue on the plaintiff's written application filed ten days after the day that the judgments enter.

December 30, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

¹ The judgments are not meant to be duplicative. There is joint and several liability between the two defendants for the amount of the judgments through November 3, 2024 (\$5,100) and for the costs.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

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

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Docket No. 24-SP-04166

KHS Enterprises, LLC *
PLAINTIFF *
*
v. *
*
Efrain Rivas Davila *
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. The defendant 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 defendant, Efrain Rivas Davila, has resided at 128 High Street, Unit 7, Holyoke, MA (“the premises”) as a tenant at will since January 2022. The plaintiff, KHS Enterprises, LLC, is the owner of the premises and is the defendant’s landlord. The rent for the premises is **\$500.00** per month and is due on the first day of the month. The plaintiff does not contend that the defendant owes it any unpaid rent.

The Court finds that, on May 17, 2024, the plaintiff served the defendant with a legally sufficient 30 Day Notice To Quit.

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

The defendant testified that he needs additional time in which to find alternative housing. The Court credits this testimony.

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, plus costs.
2. Execution issue on March 31, 2025, upon written request of the plaintiff.


ANNE KENNEY CHAPLIN
ASSOCIATE JUSTICE

Date: December 30, 2024

cc: Katharine A. Higgins-Shea, Esq.
Efraim Rivas Davila

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

DIANELIS MATIAS,

Plaintiff,

-v.-

DOCKET NO. 24CV00908

LOURDES BUCKHANNON,

Defendant.

ORDER

This matter came before the court on December 27, 2024 for a hearing on the plaintiff's motion to enforce the parties' November 12, 2024 Agreement¹ and to add her father, Rolando Matias, as a plaintiff in the case. The plaintiff appeared with her father, Rolando Matias. The defendant appeared with her husband, Reshawn Buckhannon. All parties were self-represented.

The plaintiff reports that the issue with the heat and hot water has been resolved. However, she reports that the defendant did not comply with paragraph 4 of the November 12, 2024 Agreement because the soot in the basement was not cleaned and it has spread through the house. The City of Springfield Code Enforcement inspector was last at the property on November 20, 2024. The landlord had until November 30, 2024 to complete all work. Mr. Buckhannon reports that he cleaned the soot and painted the basement floor.

The case was referred to the Housing Specialist Department immediately after the hearing for the parties to discuss what cleaning remains to be done at the premises. If the parties cannot agree on whether the soot was cleaned, the Housing Specialist will conduct a view of the

¹ The plaintiff's motion appears to be a motion for relief from judgment. However, the parties agree and the court deems it to be a motion to enforce.

premises and file a report with the court. Any remaining soot must be cleaned immediately by the plaintiff or her agent.

Without opposition, the portion of the plaintiff's motion to add Rolando Matias as a plaintiff in this case is **ALLOWED**.

The plaintiff raised a new issue at the hearing, regarding payment of one or two last month rents and the upcoming expiration of the lease. However, the issue was not before the court at the December 27 hearing. The parties were directed to discuss the matter with the Housing Specialist and to show each other any documentation of their position(s) on the issue to see if they could come to a mutual understanding. If they were not, the issue can be raised at a later time in an appropriate case.

December 30, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

CC: Housing Specialist Department

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-1039

ANA ORTIZ,

Plaintiff,

v.

JOSE and SARA BORIA,

Defendants.

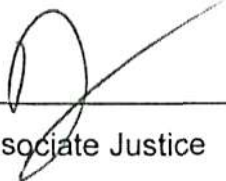
ORDER

After hearing on December 26, 2024, on the plaintiff tenant's motion for injunctive relief regarding the lack of a working furnace at the subject premises, at which the tenant appeared in-person and the defendant landlord, Jose Boria, appeared by Zoom, the following order shall enter:

1. The defendant property owners shall provide hotel accommodations with cooking facilities to the tenant and her household for each night and day (beginning tonight, December 26, 2024) until there is a functioning furnace at the subject premises at 41 Governor Street in Springfield, MA.

2. The defendants shall have the furnace repaired or replaced FORTHWITH.
3. This matter is scheduled for further hearing on **December 31, 2024, at 9:00 a.m.** at the Housing Court located at 37 Elm Street, Springfield, MA.

So entered this 30 day of December, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

Hampden, ss.

**HOUSING COURT DEPARTMENT
WESTERN DIVISION**

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

-v.-

DOCKET NO. 24SP03819

**KATHERINE RODRIGUEZ & KAMEILY
FLORES RODRIGUEZ,**

Defendant.

ORDER

This matter came before the court on December 20, 2024 for a hearing on the defendant's motion to remove the default judgment. The plaintiff appeared through its attorney with the assistant property manager. Both defendants appeared and were self-represented.

The plaintiff seeks possession of the subject rental premises and the unpaid tenant portion of the rent/use and occupancy in this eviction case based on nonpayment of rent. The premises are located in public housing. The tenant portion of the monthly rent is \$827, as calculated based on the household income reported to the Housing Authority each year. The parties appeared for a first tier court event on November 15, 2024. They were not able to resolve the matter, so the case was scheduled for trial to be held on December 6, 2024 at 9:00 a.m. The defendants did not appear at the call of the list for trial and were defaulted. A default judgment entered for the plaintiff against the defendants on December 12, 2024 for possession and \$27,779 in unpaid rent/use and occupancy through December 2024 and costs and interest.

The defendants argued that they were late for court because of transportation issues, i.e. they had to take the bus. The court does not find this to be excusable neglect for failing to appear. Ms. Rodriguez said that she was "guilty" of not paying the rent/use and occupancy. Ms. Flores Rodriguez agreed that the rent/use and occupancy had not been paid. In fact, neither of

the defendants nor anyone on their behalf has paid any of the tenant portion of the rent in well over two years. The last payments made were in May and July, 2022. Ms. Rodriguez explained that this was because of health issues, but she completed and signed her annual recertifications for 2022, 2023 and 2024, so that the tenant portion of the rent was set based on the reported household income. The court finds that the defendants did not present any creditable defense to the nonpayment of rent eviction.

Ms. Rodriguez reported that she moved out of the premises two weeks ago, although she did not notify the Housing Authority until the hearing. Her daughter Ms. Flores Rodriguez remains living at the premises.

G.L. c. 239 §15 does not apply in this case because there is no evidence before the court of an application pending for RAFT financial assistance.

Order

After hearing, the defendant's motion to remove the default judgment is **DENIED**. The court finds that the defendants did not meet either criterion for removal of a default judgment, excusable neglect for failing to appear nor a non-frivolous defense. The December 12, 2024 judgment remains in full force and effect.

December 30, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

JOHN TEPPER,

Plaintiff,

-v.-

DOCKET NO. 24CV01032

SHAWN BLISS,

Defendant.

ORDER

This matter came before the court on December 20, 2024 for a hearing on the plaintiff's request for an emergency order. Both parties appeared and were self-represented.

The plaintiff has been a tenant of the defendant for eight years at the subject rental premises located at 768 Beech Hill Road in Granville, Massachusetts. The monthly rent is \$900 and includes heat and electricity. The defendant lives in a separate house on the property.

The plaintiff testified that the landlord turned off his heat and electricity and would not accept December's rent until he threw it in the landlord's car window. He further testified that the landlord yelled at him. He called the police, but they would not file charges because there was no video evidence of what had happened.

The defendant testified that there has been an ongoing dispute with the plaintiff since the summer when he stopped the use of ATV's on the property by the plaintiff's grandchildren because his insurance will not cover the activity. He denied all of the plaintiff's allegations. He testified that all three units on the property are on his account and that both the heat and electricity were on at the plaintiff's unit. The day before the hearing he had served a notice to quit terminating the plaintiff's tenancy as of March 31, 2025 and stopping in writing the use of ATV's on the property. He acknowledged that he received December's rent.

Order

After hearing, the following orders will enter:

1. Neither the defendant nor his agents will interfere with the heat, electricity, or any utility at the subject rental premises.
2. As is the case with all tenancies, this tenancy includes a covenant of quiet enjoyment. The defendant and his agents will not interfere with the quiet enjoyment of the plaintiff for the remainder of the time he occupies the premises.
3. All communication between the parties and their agents will be in writing (including texts), except in the case of a true emergency.
4. The parties agree that December's rent has been paid.

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

Both parties are urged to consult an attorney about their rights and responsibilities in this matter.

December 30, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-1392

A.P. I, LP,

Plaintiff,

v.

ANNALIS TORRES,

Defendant.

ORDER

After hearing on December 31, 2024, on the tenant's motion to stop a physical eviction at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. For the reasons stated on the record, the motion is allowed and the landlord shall cancel the eviction currently scheduled for January 2, 2025.
2. The tenant going forward (starting in January 2025) shall pay her rent with her first DTA check (on or about the 8th of the month) and an additional \$50 with the second DTA check (on or about the 23rd of the month).

3. The tenant shall reapply to RAFT and that program should view the additional \$50 per month as a repayment plan. A representative from Way Finders, Inc. joined the hearing and confirmed that if the tenant is found eligible for RAFT funds same should be able to cover all outstanding costs from the two cancelled evictions.
4. The landlord shall provide an invoice to the tenant for the costs incurred in the scheduling and canceling of the physical eviction and shall add same to the tenant's ledger.
5. If the tenant is denied RAFT, or if after a RAFT payment there continues to be a balance owed by the tenant, the landlord may move the court for a new payment plan.
6. The tenant is urged to seek the assistance of Springfield Partners for Community Action, Inc. at 721 State Street in Springfield (413-263-6500) with her RAFT application.
7. The terms of this order shall stay the time frame of G.L. c.235, s.23.
8. The landlord's request that no further extensions be granted if the tenant is unable to comply with the terms of this order is denied, without prejudice.

So entered this 31 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-SP-4063

APPLETON CORP.,

Plaintiff,

v.

SHACARA ARNOLD,

Defendant.

ORDER

After hearing on December 31, 2024, on the tenant's motion to stop a physical eviction at which the landlord appeared by zoom through counsel and the tenant appeared live in the courtroom self-represented, the following order shall enter:

1. The court is concerned that the tnenat suffers from mental health issues which may have a nexus with her non-payment and given that the loss of a project-based subsidized apartment would be an extreme loss, and also given the re-referral to the Tenancy Preservation Program, the tenant's motion is allowed and the physical eviction shall be cancelled by the landlord.

2. The landlord may provide invoices for the cost incurred by scheduling and cancelling the eviction to the tenant and same shall be added to the tenant's ledger.
3. The tenant was referred to the Tenancy Preservation Program (TPP) at the time that the parties entered into an Agreement in January 2024.
4. A representative from TPP joined the hearing today and was unable to report as to what occurred with that earlier TPP referral but met with the tenant and determined that the tenant is eligible for TPP's services and the agency will open a case.
5. The tenant agreed to work with TPP on her RAFT application and other sources for rental assistant and also will follow TPP's recommendations relative to her mental healthcare.
6. The landlord shall inspect the tenant's unit and make all necessary repairs. The landlord is requested to prioritize the tenant's complaints of partial loss of electrical service and mold.
7. This matter shall be scheduled for review on **February 6, 2025, at 9:00 a.m.**

So entered this 31 day of December, 2024.



Robert Fields, Associate Justice

Cc: TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 23-SP-3381

THEODORE BURRELL,

Plaintiff,

v.

JOHN TERAULT,

Defendant.

ORDER

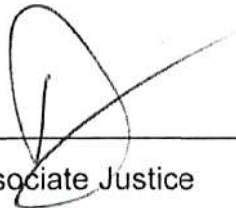
After hearing on December 27, 2024, the following order shall enter:

1. The parties report that they have engaged in a reasonable accommodations dialogue and have not been able to reach an agreement as to how to proceed.
2. The court shall schedule an evidentiary hearing (scheduled below) to determine whether further accommodation will be required of the landlord.
3. The parties have until January 13, 2025, to provide each other with a list of witnesses for said hearing. The landlord also has until that date to provide

the tenant with copies of video recordings of what they claim are the tenant's visitors "propping" the front security door open as well as of visitors entering the tenant's unit in violation of the court's orders.

4. This matter shall be scheduled for an evidentiary hearing on **March 11, 2025**, at **9:00 a.m.** in the Greenfield Session of the Court.

So entered this 31 day of December, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

HIGH STREET COMMONS,

Plaintiff,

-v.-

DOCKET NO. 23SP03666

JENNIFER A. MITCHELL & PRENTISS
ANDERSON, JR.,

Defendant.

ORDER

This matter came before the court on December 6, 2024 for a continued hearing after the court stopped the move-out scheduled for October 16, 2024 and stayed the execution pursuant to G.L. c. 235 §23. The case came before the court again on November 15, 2024 for further hearing. After that hearing, the court ordered the defendant (again) to make certain payments and the parties to complete an application for RAFT financial assistance. The court continued the hearing to December 6, further staying the execution. The plaintiff appeared at the December 6 hearing through its attorney. Defendant Jennifer A. Mitchell appeared; defendant Prentiss Anderson, Jr. did not appear. Both defendants are self-represented. Janis Luna of Wayfinders joined the hearing to report on RAFT. A Tenancy Preservation Program (TPP) representative also appeared at the hearing with Ms. Mitchell.

The court outlined the chronology of this cause eviction case in its October 11, 2024 order and incorporates it here.

After the November 15 hearing, the defendant paid \$900 as ordered, although late. She reported that she dropped off the December use and occupancy (\$259) the day before the hearing, although it was not yet reflected in the landlord's ledger. Crediting the December 5 payment, the defendant owes \$7,919 in her portion of the rent/use and occupancy through

December 2024 and \$195.01 costs. Ms. Luna of Wayfinders confirmed that the defendant's most recent application for RAFT financial assistance was denied because she did not demonstrate hardship/good cause for failing to pay her portion of the subsidized rent. She appealed the decision. The appeal was denied on November 20, 2024. There is no RAFT application pending.

The defendant offered to pay \$50 every Wednesday beginning December 11, 2024 and to pay the balance with her expected tax refund. The plaintiff's attorney was not authorized to accept this latest proposed repayment plan in light of the failed payment plans and orders that were not complied with to date. The court cannot order a landlord to accept a specific payment plan, especially in light of the failed payment plans to date in this case.

The court stopped the October 16 move-out and stayed the execution and then continued the stay of the execution further after the November 15 hearing to give the defendant a further and then final opportunity to resolve the underlying failure to pay her portion of the rent/use and occupancy which has been at the heart of this case since it was filed on August 14, 2023. The defendant has not done so. The court must consider the plaintiff's opposition to any further stay of the execution based on its argument raised at the November 15 hearing that the defendant's continued failure to pay her portion of the rent/use and occupancy and the resulting legal costs are causing a financial burden.

Based on the testimony at the hearing, the court finds that the plaintiff is entitled to use the execution at this time because the defendant has not come into compliance with her rent/use and occupancy obligation and does not appear to have the ability to do so. The court notes that this case is not governed by G.L. c. 239 §15 because it is based on cause and there is no RAFT application pending. Numerous RAFT applications were denied and the appeal of the last denial was also denied. The court further notes that the execution was stayed pursuant to G.L. c. 235 §23 by agreements of the parties and by orders of the court. Upon the plaintiff's return of the July 26, 2024 execution to the court, the Clerk's Office will issue a new execution.

Orders

After hearing, the following orders will enter:

1. The stay of the use of the execution is lifted. The plaintiff may proceed with the use of the execution pursuant to statute.

2. The plaintiff will return the July 26, 2024 execution to the court forthwith. Upon its return, the Clerk's Office will issue a new execution.
3. Despite this order, the parties are free to negotiate an alternative result between themselves, if the defendant can demonstrate an ability and a willingness to resolve the problems with paying her portion of the subsidized rent/use and occupancy together with the arrearage to the satisfaction of the landlord.
4. The defendant was asked to meet with the TPP clinician immediately after the hearing to begin an assessment, although the court notes that the case was referred to TPP by a judge of this court on February 6, 2024. A TPP representative was present at that hearing also. The plaintiff reports that a TPP representative has been present with the defendant at other hearings since February 6.
 - a. To the extent that TPP can assist the defendant in this matter, they are asked to use their best efforts to do so.

December 31, 2024

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

CC: Tenancy Preservation Program

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

KENQUAD LIMITED PARTNERSHIP,

Plaintiff,

-v.-

DOCKET NO. 23SP01802

MICHELLE BOWEN,

Defendant.

ORDER

This matter came before the court on December 20, 2024 for hearing on the defendant's motion for a further stay of the execution and the plaintiff's motion to issue the execution on an amended judgment. The plaintiff appeared through its attorney with the regional property manager. The defendant appeared and was self-represented. A clinician of the Tenancy Preservation Program (TPP) appeared with Ms. Bowen.

The court summarized the earlier chronology of this cause eviction case in its August 14, 2024 order and incorporates it here. The parties entered into an Agreement for Judgment on July 25, 2023. The parties agreed that judgment would enter for the plaintiff for possession and \$6,469 in unpaid rent/use and occupancy through July 2023 and \$256.76 costs. Execution was stayed pursuant to G.L. c. 235 §23 by agreements of the parties filed with the court and by court orders. After hearing on the plaintiff's motion to issue the execution, the court found that the defendant was in substantial violation of material terms of the July 25, 2023 Agreement for Judgment and that the plaintiff was entitled to the execution. However, the court did not issue the execution at the time, but referred the case to the Tenancy Preservation Program to see if the defendant could resolve the underlying issues in the case and thereby come into compliance with the terms of her tenancy. The plaintiff's motion was continued for further hearing.

The defendant filed a motion to amend the Agreement for Judgment. Both parties' motions were heard on September 16, 2024. At that hearing, the plaintiff reported that the

arrearage was \$15,646 through September 2024 with \$256.76 costs. Although the tenancy began as a subsidized tenancy, the rent went to market rate because the defendant's MRVP voucher was terminated for program violations effective January 31, 2024. Again, the court did not order the issuance of the execution because the defendant had an application pending for RAFT financial assistance. She was working with TPP to request reinstatement of her MRVP voucher by the Springfield Housing Authority, to complete her RAFT application, to propose a realistic payment plan for the balance once the amount of the RAFT assistance was known, and to try to get additional help for the defendant to pay her other bills which were in arrears.

The motions were continued for further hearing on September 30, 2024. On that day the parties entered into their most recent Agreement. By its terms relevant to this motion, the parties agreed that the defendant owed \$15,146 rent/use and occupancy through September 2024 and \$256.76 costs. The defendant withdrew her application for RAFT financial assistance for help with the arrearage, but she was going to file a new application for moving expenses. She agreed that she could not afford the apartment and agreed to move by November 30, 2024. She would pay the October and November use and occupancy in two installments each month. If the defendant did not comply with the terms of the September 30, 2024 Agreement, the plaintiff could file another motion to issue the execution.

The plaintiff filed such a motion. The defendant filed a motion to extend the time she could remain at the premises.

The plaintiff reported that the defendant did not move by November 30, 2024 and remains living at the premises. She owes \$18,204 rent/use and occupancy through December 2024 and \$256.76 costs.

The defendant reported that she has not been able to find a new apartment. Her application for RAFT moving expenses was approved, but will expire in January 2025 if she does not find a new apartment by then. The defendant reported that she paid the October and November use and occupancy with four money orders which she mailed. These payments are not reflected on the ledger. She paid \$612 in a money order to the landlord at the hearing. This amount will be deducted from the arrearage. TPP reported that they have been supporting Ms. Bowen, but they were not able to get her voucher reinstated by the Housing Authority.

After hearing, the court finds that the defendant is in substantial violation of at least one material term of the parties' September 30, 2024 Agreement, because she did not move as she

agreed to do (§5). The plaintiff is entitled to the execution on an amended judgment as requested. The court does not find grounds to stay the execution further pursuant to G.L. c. 239 §9. There is a substantial arrearage owed. Although the court stayed the execution earlier on equitable grounds to give the defendant the opportunity to come into compliance with the terms of her tenancy, with the assistance of TPP, she has not been able to do so. There is no evidence before that court that she can do so. The defendant acknowledges that she cannot afford this apartment. G.L. c. 239 §10. Finally, G.L. c. 239 §15 does not apply in this case because it is based on cause and there is no RAFT application pending.

Orders

After hearing, the following orders will enter:

1. The defendant's motion for a further stay of the execution is **DENIED**.¹
2. The plaintiff's motion to issue the execution is **ALLOWED**.
 - a. An amended judgment will enter for the plaintiff for possession and \$17,592 rent/use and occupancy through December 2024 with \$256.76 costs.
 - b. Execution will issue on the plaintiff's written application ten days after the date that the amended judgment enters. A motion is not needed.
3. The defendant will bring copies of the four money orders, which she said she mailed in October and November 2024, to the plaintiff's office.
 - a. The plaintiff will search its records to determine if any or all of those four money orders were received. If they were received, they will include them in the ledger.
 - b. If they were not received, the defendant will trace the money orders at the Post Office for reimbursement.
 - c. Either party may file a motion to correct the monetary portion of the judgment to reflect any missing payments, as needed.

December 31, 2024

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

CC: Tenancy Preservation Program

¹ However, as the plaintiff argued at the hearing, the defendant has achieved an extension of time to remain in the apartment, because of the usual scheduling and determination of the motions.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Case No. 24-CV-1037

CADIJA MERCER,
Plaintiff,
v.
CAROL SMITH, et al.,
Defendants.

ORDER

After hearing on December 31, 2024, the following order shall enter:

1. Because the plaintiff, Cadija Mercer, has a presiding G.L c.258E action against the defendant neighbor Crystal Alexander (██████████), the motion for an order against Ms. Alexander is denied and Ms. Alexander shall be dismissed from this action, without prejudice.
2. As to the motion for injunctive relief against the defendant landlord, Carol Smith, that motion is allowed. Ms. Smith shall investigate Ms. Mercer's

complaints against Ms. Alexander and take reasonable and responsible steps to address said complaints.

So entered this 31 day of December, 2024.

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a diagonal stroke.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-3309

HENDRIK MESSENGER,

Plaintiff,

v.

BENDON X. FOX, et al.,

Defendants.

ORDER OF DISMISSAL

After hearing on December 30, 2024, at which the landlord appeared self-represented and the tenant, Cathryn Lamontagne, appeared with Lawyer for the Day counsel, the following order shall enter:

1. The tenant's motion to vacate the default judgment is allowed for the reasons stated on the record.
2. The landlord shall return the execution to the court.
3. The tenant's motion to dismiss, due to the notice to quit and summons seeking late fees, is allowed.

4. This summary process action is dismissed and the physical eviction scheduled for January 7, 2025, shall be cancelled by the landlord forthwith.

So entered this 31 day of December, 2024.

Robert Fields, Associate Justice

Cc: Raquel Marizanares, Esq. (Lawyer for the Day)

Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 22-SP-3394

MILL HOLLOW APARTMENTS,

Plaintiff,

v.

ROSE BYRNES,

Defendant.

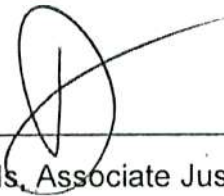
ORDER

After hearing on December 30, 2024, on the landlord's motion to stay use of the execution at which the tenant did not appear, the following order shall enter:

1. The landlord's attorney explained that the tenant is almost completely paid up, having solely \$75 in court costs remaining.
2. The execution expired on December 23, 2024. Being that the motion to stay the use of the execution was filed on November 27, 2024, the court will toll the remaining 26 days of the execution in accordance with G.L. c.235, s.23.

3. The tenant shall have 90 days from the date of this order to bring her balance to \$0.
4. The landlord shall return the execution to the court and may seek a new execution by motion and hearing if the tenant fails to bring her balance to \$0 within the 90 days noted above.

So entered this 31 day of December, 2024.



Robert Fields, Associate Justice

Cc: Court Reporter