Western Division Housing Court
Unofficial Reporter of Decisions

Volume 41

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

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

Hon. Jonathan Kane, First Justice, *Western Division Housing Court*
Hon. Robert Fields, Associate Justice, *Western Division Housing Court*
Hon. Michael Doherty, Clerk Magistrate, *Western Division Housing Court*
Aaron Dulles, Assistant Attorney General, *Massachusetts Attorney General's Office*
Raquel Manzanares, Esq., *Community Legal Aid*
Peter Vickery, Esq., *Bobrowski & Vickery, LLC*

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

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

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

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

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

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

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

PUBLICATION

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

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

SECURITY

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

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0C7A FBA2 099C 5300 3A25  9754 89A1 4D6A 4C45 AE3D
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CONTACT US

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

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[1] Confirmed type in spelling of plaintiff's name.

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Hon. Robert Fields, Associate Justice

[2] Confirmed type in spelling of plaintiff's name.

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

ROLANDO HODGE,

Plaintiff,

-v.-

DOCKET NO. 24SP02722

JANE SALAZAR HIERRO & ANA REYEZ SALAZAR,

Defendant.

ORDER

This matter came before the court on December 13, 2024 for a hearing on the plaintiff's motion to enter judgment. The plaintiff and defendant Ana Reyez Salazar appeared. Defendant Jane Salazar Hierro did not appear, but the plaintiff does not seek a default judgment against her. All parties are self-represented. After the hearing, the record was kept open for the plaintiff to submit a ledger showing all payments and charges to the rental account and then for the defendant to submit any opposition to the landlord's ledger. The plaintiff submitted a 2024 ledger (P Exh 2); the defendant did not submit anything in opposition.

The plaintiff brought this eviction case based on non-payment of rent seeking possession of the subject rental premises and unpaid rent/use and occupancy. The tenancy began pursuant to a lease which began on April 6, 2023 and expired on March 31, 2024 with a monthly rent of $1,800 (P Exh 1). On September 5, 2024, the parties entered into an Agreement to resolve the case. By its terms relevant to this motion, the parties agreed that the defendant had a pending RAFT application which, if approved, would pay a substantial part of the arrearage through September. Beginning in October, the defendant agreed to pay the monthly use and occupancy ($1,800) by the fifth of each month and $200 toward the balance by the twentieth of each month. The plaintiff agreed to waive the late fees if the defendant complied with the terms of the

Agreement. The case would be dismissed when the balance reached zero. If the defendant did not comply with the terms of the Agreement, the plaintiff could file a motion to enter judgment.

The plaintiff has now filed such a motion on the grounds that the defendant made the October payments as required, but not the November payments. The landlord received $7,000 from RAFT on behalf of the tenants in October, but this did not reduce the arrearage to zero. The parties agree that the defendant moved out of the premises on November 24, 2024[1] and that nothing was paid for November.

The issue of possession is moot, but the plaintiff seeks a monetary judgment for $5,040 for rent/use and occupancy through November 24, 2024 and $304.52 costs. He agreed to waive the late fees. The court notes that while paragraph 4 of the lease provides for a $100 late fee if a month's rent is more than thirty days late, the language of the lease does not deem late fees to be rent. This means that the landlord could not collect late fees in this nonpayment of rent case.

The defendant argued that she owes $3,200 in unpaid rent/use and occupancy on the grounds that she paid a security deposit of $1,000 and a last month rent of $1,800 at the outset of the tenancy which she still has on account. The plaintiff reported that the security deposit and last month rent were both applied to months in which the rent was not paid. He was asked to include the months to which they were applied on the ledger. However, there is no indication on the ledger submitted that either the security deposit or the last month rent was applied to any month of the tenancy although the landlord acknowledges that he received both amounts. Therefore, the court deducts the $1,800 last month rent from the arrearage, leaving a balance of $3,240.

Order

After hearing and a review of the evidence submitted the following orders will enter:

1. A monetary judgment only will enter against defendant Ana Reyez Salazar only for $3,240 in unpaid rent/use and occupancy through November 24, 2024 and costs of $304.52.
    a. This judgment amount includes a deduction for $1,800 last month rent.
    b. The plaintiff does not seek a default judgment against defendant Jane Salazar Hierro, although she has never appeared in this case.

[1] The defendant filed a change of address as she was requested to do.

c. The issue of possession is moot. No judgment for possession will enter.

2. The issue of late fees due under the lease is waived by the plaintiff.
3. The issue of the security deposit is left to be determined pursuant to G.L. c. 186 §15B.

January 2, 2025

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-1039

ANN ORTIZ,

Plaintiff,

v.

JOSE and SARA BORIA,

Defendants.

ORDER

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

1. The defendant property owners, Jose and Sara Boria, shall provide hotel accommodations for the plaintiff tenant and her household at the Candlewood Suites in West Springfield with cooking facilities until the condemnation is lifted by the City of Springfield.

So entered this 2nd day of January, 2025

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

CHICOPEE HOUSING AUTHORITY,

Plaintiff,

-v.-

DOCKET NO. 23SP03457

CLARIBEL RAMOS,

Defendant.

ORDER

This matter came before the court on January 3, 2025 for a hearing on the defendant's motion to stop the move-out scheduled for January 8, 2025 at 1:00 p.m. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Alysha White of the Tenancy Preservation Program (TPP) appeared at the hearing to report on TPP's efforts to assist Ms. Ramos.

The subject rental premises are a public housing unit owned and administered by the plaintiff. The plaintiff seeks possession of the premises and the unpaid portion of the tenant's share of the rent/use and occupancy. Since the case was filed on August 4, 2023, the defendant has never reached a zero balance despite four agreements and a maximum RAFT financial assistance payment of six months of the tenant's portion of the rent. Judgment has entered three times and three executions have issued. The most recent execution issued after a hearing at which both parties and TPP were present. This court ordered that a new execution would issue, but stayed the use of the execution on condition that the defendant pay $150 on October 23, 2024 as she agreed at the hearing, $299 on October 28, 2024, and her November use and occupancy ($199) by November 15, 2024. The defendant paid $150, but she has not paid the other two payments. Nor has she paid December ($199) or January ($199) use and occupancy. The court

finds that the defendant did not comply with the terms of the stay of the use of the execution set out in its October 24, 2024 order.

The defendant reports that $444 was removed from her bank account as an automatic withdrawal by Spectrum internet company in error in late December 2024. (There was an automatic withdrawal scheduled but it should have been less.) She objected to the withdrawal and Spectrum has agreed to restore the funds in ten business days. However, in light of the date when the withdrawal occurred this does not explain why the defendant failed to make the payments she was required to make on October 28, 2024, November 15, 2024, nor her December use and occupancy payment. The court notes that the $444 would not have covered the amount she owed since the October 24, 2024 order issued.[1]

TPP reported that they have been working with Ms. Ramos on problems with her SSI and tax refund. She reports that her tax refund was stopped based of identity theft that she describes as "family fraud". However, the plaintiff reports that the defendant's portion of the rent/use and occupancy ($199) is based on her actual household income which consists solely of TAFDC. SSI and any tax refund were not counted in calculating her portion of the rent/use and occupancy at $199 at this time. The problems she is having with Social Security and her tax refund do not explain her nonpayment of the payments required as a condition of staying the use of the execution as set out in the court's October 24, 2024 order.

If the move-out were stopped, the cancellation fee would be $700. The defendant would be responsible for this amount. However, she does not have any money to offer at this time. She said that she could pay $199 on January 8, 2025 when she receives her next TAFDC deposit. This falls short of the amount she was required to pay as a condition of the stay of the use of the execution in the October 24, 2024 order and far short of the arrearage through October 2024.

Order

After hearing, the court finds that the defendant is in substantial noncompliance with the conditions of the stay of the use of the execution as set out in the October 24, 2024 order. Therefore, the stay of the use of the execution is lifted. The defendant's motion to stop the

[1] In addition, execution issued for $5,133 in unpaid rent/use and occupancy.

move-out scheduled for January 8, 2025 at 1:00 p.m. is **DENIED**.[2] The plaintiff may proceed with the move-out as scheduled.

January 3, 2025

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

CC: Tenancy Preservation Program

[2] G.L. c. 239 §15 does not apply in this case because there is no pending application for RAFT financial assistance. RAFT benefits were exhausted in May 2024 and the defendant would not be eligible to apply again until May 2025.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden , ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24CV0930

RONALD TABB
PLAINTIFF(S),

v.

ORDER

EVAN CIOFFI
DEFENDANT(S),

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

Defendant represents that he is in the process of packing and moving.

Defendant shall vacate and remove all belongings from the premises located at 308 Springdale Road, Westfield, MA (the premises) no later than 5:00 pm on January 10, 2025.

If Defendant fails to comply with the previous term, Plaintiff may seek the assistance of law enforcement to have Defendant removed from the premises.

The Court specifically authorizes the Westfield Police Department to remove Defendant from the premises after 5:00 pm on January 10, 2025 based on its finding at the previous hearing that Defendant is not a lawful tenant and has no legal right to continue to occupy the premises.

SO ORDERED: /s/ Jonathan J. Kane DATE: 1/3/25
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-CV-1038

BEACON RESIDENTIAL MANAGEMENT, LP, PLAINTIFF v. JOSE SANCHEZ, DEFENDANT	)	ORDER

This application for injunctive relief came before the Court for an evidentiary hearing on January 2, 2025. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks a declaration that Defendant's tenancy is void pursuant to G.L. c. 139, § 19 in order to recover possession of a residential dwelling unit located at 414 Chestnut Street, #419, Springfield Massachusetts (the "Premises").

At the outset of the hearing, Defendant conceded the veracity of the factual allegations in the verified complaint. He testified [redacted] that he is now engaged in treatment. He is also in the process of obtaining the services of a personal care aide who appeared at the hearing.

Based on the facts set forth in the verified complaint and the evidence elicited at the hearing today, the Court finds that Plaintiff is likely to prevail on the merits, has no adequate remedy at law, and is likely to suffer immediate and irreparable harm should the Court not grant injunctive relief. Therefore, Plaintiff's motion for

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(3)

injunctive relief is GRANTED as follows:

1. Defendant is to refrain from harming or placing at risk of imminent harm any other person lawfully on the property where the Premises are located.
2. Defendant shall refrain from engaging in any unlawful activity at the property located at 414 Chestnut Street in Springfield.
3. To minimize the risk of fire, Defendant may not use the range in the Premises until further order of the Court. Plaintiff may temporarily remove or disable the range until further court order.
4. Plaintiff may inspect the Premises upon 24 hours' advance notice to ensure the safety of other residents.
5. The Clerk's Office shall schedule a status hearing in approximately thirty (30) days at which Plaintiff may seek additional injunctive relief as appropriate and at which Defendant may seek permission to use the range. This order does not preclude Plaintiff from seeking emergency injunctive relief sooner in the event of a material violation of this order.
6. The legislative fee for injunctive relief is hereby waived.

SO ORDERED.

DATE: January 6, 2025

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Franklin , ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24SP0472

Brown ,
PLAINTIFF(S)

v.

ORDER

Carroll ,
DEFENDANT(S)

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

The parties appeared on January 6, 2025 for hearing on Plaintiff's motion to amend the use and occupancy amount. Currently, use and occupancy is set at $800.00, an amount previously agreed upon by the parties. Mr. Carroll rents one or more rooms in Mr. Brown's home and shares common areas with other residents.

Plaintiff's arguments the the market rental rate for a bedroom in a shared living environment is higher than $800.00 and that he has experienced an increase in expenses (property taxes, insurance and utilities) are unsupported by any admissible credible evidence. The premise of Plaintiff's contention that he is entitled to equitable relief is that the current amount of use and occupancy is below market value, which he was unable to demonstrate, and therefore the argument is rejected. The Court is unmoved by his claim that he is entitled to additional compensation due to the presence of Defendant's cat. Without admissible credible evidence on the record, the Court has no basis to amend the rate of use and occupancy.

With respect to Plaintiff's statement that Defendant has failed to pay use and occupancy as required by the Court's October 17, 2024 order, he has a remedy at law; namely, he can file a motion to dismiss the appeal and issue the execution.

For the foregoing reasons, Plaintiff's motion to amend the amount of use and occupancy payments is DENIED.

SO ORDERED: /s/ Jonathan J. Kane DATE: 1/6/25
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-889

CLOVER KING,

Plaintiff,

v.

NANCY ABBY and CHICOPEE HOUSING AUTHORITY,

Defendants.

ORDER

After hearing on December 30, 2024, on the plaintiff's compliant and motion for injunctive relief at which all parties appeared, the following order shall enter:

1. **Re: Defendant Nancy Abby:** Plaintiff Clover King is seeking an injunctive order to prevent alleged harassment by the defendant Nancy Abby.
2. The court ascertained during this hearing that there is already an ongoing Harassment Prevention Order pursuant to G.L. c.258E in the Chicopee District Court ([redacted]) between these two parties.
3. That order is presently valid until October 1, 2025, when that matter is scheduled to be heard again in the Chicopee District Court.

4. So as to avoid hearings and rulings and possible injunctive relief orders being issued in two different court departments arising out of the same controversy, which might possibly be at odds with one another, Ms. King is directed to bring such matters to the attention of a judge in the Chicopee District Court in that case ([redacted]) by way of motions or in another Chicopee District Court matter.
5. **Re: Defendant Chicopee Housing Authority:** Plaintiff Clover King is also seeking injunctive relief regarding the defendant housing authority (her and Ms. Abby's landlord) for its alleged failures to address her complaints regarding Ms. Abby. The Court shares the same concerns as noted above regarding the possible confusion and conflicts of two different court departments conducting evidentiary hearings and issuing orders arising out the same allegations and controversy. It would be much more preferrable to have one court addressing the injunctive requests of the parties involved and not two different courts.
6. With agreement of the parties, the Court shall request an interdepartmental transfer of this case, pursuant to G.L. c.211B s.10. Given that the Housing Court Department does not have jurisdiction over G.L. 258E the request shall ask that this matter be transferred to the Chicopee District Court.

So entered this 6 day of January, 2025

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-3660

NANCY S. RAPISARDA,

Plaintiff,

v.

BONNIE ROGERS,

Defendant.

ORDER

After hearing on January 3, 2025, on the tenant's motion for cancelation of the physical eviction schedule for January 10, 2025, the following order shall enter:

1. In October 2024, RAFT paid the landlord $4,500 which brought the tenant's balance to $0.
2. Though the tenant failed to pay her rent in November 2024 (and thereafter) the RAFT payment dismissed this court action, having paid all of the outstanding rent, use, and occupancy.

3. Accordingly, the landlord must cancel the physical eviction noted above and this matter is dismissed.

So entered this 6 day of January, 2024.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-4067

RICHARD TALBOT,

Plaintiff,

v.

JENNIFER VELEZ,

Defendant.

ORDER of DISMISSAL

After hearing on January 2, 2025, on the tenant's motions to vacate the default judgment and to dismiss, the following order shall enter:

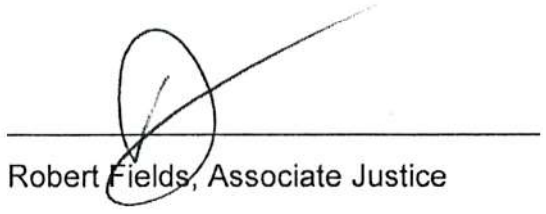
1. The tenant appeared with representation by Lawyer for the Day counsel (Gordon Shaw, Esq.) on her motions to vacate the default judgment and to dismiss.
2. **Motion to Vacate the Default Judgment:** The Court finds that the tenant has met her burden on her motion to vacate the default judgment as she was unable to appear at court for the Tier 1 event due to inclement weather and a delay in the start of her chilldren's school(s) and based on her defense that

the notice to quit is deficient to terminate her tenancy. Accordingly, the default judgment is vacated.

3. **Motion to Dismiss:** The tenant's motion to dismiss is also allowed for the reasons stated on the record. More specifically, this is a regulated tenancy (subsidized through the MRVP program) and the "for cause" notice to quit fails to state any specific allegations of fault.
4. Notices to quit in subsidized housing are required to state the reasons for the landlord's action with enough secificity so as to enable the tenant to prepare a defense. The requirement for detail and specificity in the notice to quit is rooted in the protections guaranteed by the Due Process Clause of the U.S. Constitution. The notice in the instant matter fails to provide sufficient details about any of the bases cited and was wholly insufficient to inform the tenant adequately of the allegations against her as required. See *Edgecomb v. Housing Authority of Town of Vernon*, 824 F. Supp. 312, 315 (D. Conn., 1993) and *Plowshares v Smith*, 294 F. Supp. 2d 1067 (N.D. Cal., 2002) (termination notice which alleged violent activity by subsidized tenant was held to be deficient by the court). *Lolacano v, Cooper*, Northeast Housing Court No. 93-SP-287, (Kerman, J., 5/11/93) (court held that the termination notice failed to provide the factual basis for termination of the subsidized tenancy with any meaningful level of specificity).
5. Accordingly, the motion to dismiss is allowed and the case is dismissed.[1]

[1] The tenant's motion for late Answer and Discover filed by LFD counsel were moot due to the dismissal of the action.

So entered this 6 day of January, 2025.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden , ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 25CV0003

LUIS OTERO DEJESUS
PLAINTIFF(S),

v.

ORDER

GILBERTO VEGA, JETZAIRA VEGA
DEFENDANT(S),

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

Plaintiff was represented by his son, Victor Otero Lopez, who based on preliminary evidence appears to have been appointed temporary guardian by a different court.

The Court finds that Plaintiff possesses no adequate remedy at law and is likely to prevail on the merits. Further, Plaintiff is likely to suffer immediate and irreparable harm if the injunctive relief is denied.

Therefore, Plaintiff's motion for emergency relief is GRANTED as follows:

1. Gilberto Vega testified that he does not live in Plaintiff's unit. By assent, he will remove his clothing and any other personal items.

2. Jetzaira Vega, Plaintiff's granddaughter, acknowledges that she is not an authorized occupant in Plaintiff's unit and has a letter of intent from Wayfinders for moving assistance. She will vacate promptly upon securing housing.

3. The legislative fee for injunctions is waived.

SO ORDERED: /s/ Jonathan J. Kane DATE: 1/7/25
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

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

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Docket No. 24-SP-04212

****
William Delgado *
PLAINTIFF *
*
v. *
*
Myra Abely *
DEFENDANT *
****

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

This is a summary process action in which the plaintiff seeks to recover possession of the premises from the defendant and damages for unpaid rent. The defendant appeared for trial and 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, Myra Abely, has resided at 108 Allyn Street, Holyoke, MA ("the premises") as a tenant under a written lease since February 2024. The plaintiff, William Delgado, is the owner of the premises and is the defendant's landlord. The rent for the premises is **$1,300.00** per month and is due on the first day of the month. The defendant has failed to pay the plaintiff any rent for the months of April 2024 through January 2025, and currently owes the plaintiff a total of **$13,000.00** in unpaid rent.

The Court finds that, on September 17, 2024, the plaintiff served the defendant with a legally sufficient 14 Day Notice To Quit.

The Court finds that the plaintiff has established his case for possession of the premises and damages for unpaid rent in the amount of **$13,000.00**, plus costs.

The defendant testified that she needs until February 15, 2025 or March 1, 2025 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 plaintiff testified that his wife is the defendant's sister, and that he and his wife offered the premises to the defendant in order to help her out. He testified that he opposes any

additional time for the defendant to vacate the premises because she has only paid one (1) month's rent since moving into the premises. The Court credits this testimony.

The Court finds that, in all of the circumstances of this action, a stay in the issuance of the execution is not 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 **$13,000.00**, plus costs.

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

Anne K. Chaplin
ANNE KENNEY CHAPLIN
ASSOCIATE JUSTICE

Date: January 7 , 2025

cc: William Delgado
Myra Abely

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

IQRA FARM LLC, MANAGED BY MCP UNLIMITED LLC,

Plaintiff,

-v.-

DOCKET NO. 24SP01647

ELISABETH RANDALL,

Defendant.

ORDER

This matter came before the court on January 3, 2025 for a hearing on the plaintiff's motion for entry of judgment. The plaintiff appeared through its attorney with Evan Powers of the management company. The defendant appeared and was self-represented. Janis Luna of Wayfinders joined the hearing to report on RAFT.

This eviction case is based on nonpayment of rent. The monthly rent is $1,300. On May 24, 2024 the parties entered into an Agreement to resolve the matter. By its terms relevant to this motion, the parties agreed that the defendant owed $5,500 in rent/use and occupancy through May 2024 and $232.25 costs. The defendant had a pending RAFT application which would have covered the total arrearage. Both parties agreed to submit all documentation that was needed to complete the application process. Specifically, the plaintiff agreed to include the court costs on the ledger. Beginning in June 2024, the defendant agreed to pay her rent/use and occupancy by the fifth of each month. The case would dismiss when the defendant reached a zero balance.

Ms. Luna reported that Wayfinders paid $5,585 to the plaintiff on behalf of the defendant on May 24, 2024, the same day the parties entered into the Agreement in court. The plaintiff submitted a ledger showing that the payment was received on May 31 (Exh). This paid the rent/use and occupancy arrearage through May but only some of the court costs. The plaintiff

had uploaded its documents on May 1, but did not add the court costs to the ledger until May 24. In September, the defendant used RAFT to pay a utility arrearage. Ms. Luna reported that the result is that the defendant is eligible for an additional $220.65 in RAFT financial assistance at this time but that she will not be eligible to apply for any further assistance until May 2025.

Ms. Randall paid the monthly use and occupancy on time for June through August, but she only made a partial payment in September. She paid $1,500 in October but only a partial payment in November. She did not pay anything for December. January use and occupancy was not yet due at the time of the hearing, but Ms. Randall reported that she was prepared to pay $1,300. The plaintiff reported that the arrearage is $3,700 through January 2025 with $182.25 costs (Exh). The plaintiff seeks entry of judgment on the grounds that the defendant did not comply with section 3 of the parties' May 24, 2024 Agreement.

The court does not enter judgment at this time. The court understands the plaintiff's argument that this tenancy is not viable. The defendant reported that she lost the part of her income from child support. However, the court continues the plaintiff's motion to enter judgment for thirty days to give the parties the opportunity to resolve the matter at last and for the defendant to demonstrate that the tenancy at $1,300 is viable. The court finds that the timing of the earlier RAFT application process was unfortunate because the defendant was eligible for sufficient RAFT financial assistance to reduce the arrearage to zero at the time.

Orders

After hearing, the following orders will enter:

1. The plaintiff's motion for entry of judgment is continued for thirty days for further hearing. The Clerk's Office is asked to schedule the hearing and to send notice. Any judge of this court may hear the continued motion.
2. The defendant will pay $1,300 use and occupancy for January immediately.
3. The defendant will continue to pay $1,300 use and occupancy for each month due on the first but payable no later than the fifth of each month.
4. The defendant will apply immediately for the balance of RAFT financial assistance for which she is eligible at this time.
    a. Both parties will submit to Wayfinders all documentation which is needed to complete the application process.
    b. This includes, but is not limited to, the court costs now due.

5. Because there will be a balance still owed, the defendant will propose a realistic payment plan for the balance to the plaintiff.
    a. The plaintiff will consider such proposed payment plan in good faith.

January 7, 2025

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

MAPLE STREET ROW HOUSES, LLC,

Plaintiff,

-v.-

DOCKET NO. 24SP03387

ANDREW LOOR,

Defendant.

ORDER

This matter came before the court on December 20, 2024 for a hearing on the defendant's motion to remove the default. The plaintiff filed an opposition. The plaintiff appeared at the hearing through its attorney. The defendant appeared and was self-represented.

The plaintiff filed this no-fault eviction case on August 23, 2024 seeking possession of the subject rental premises and unpaid rent/use and occupancy. At the First Tier Court Event on October 24, 2024 the parties entered into an interim Agreement continuing the case to November 6, 2024 for mediation and agreeing that if the parties were not able to resolve the matter then, the plaintiff assented to the defendant's filing a late answer and discovery. The parties did not reach a resolution in mediation on November 6, and the defendant filed a late answer with counterclaims and discovery that day. The case was scheduled for trial to be held on November 22, 2024 at 2:00 p.m. The defendant did not appear for trial. A default judgment entered against him for possession and unpaid rent/use and occupancy of $4,750 with costs and interest on December 6, 2024.

The defendant testified that he arrived fifteen minutes late for trial because his son's school called and required him to come to the school because his son, who has a disability, was having difficulty. He testified that he filed the motion to remove the default that same day. However, the court notes that the defendant's motion is date-stamped November 25 at 4:26 p.m. The defendant's certificate of service of the motion to the plaintiff's attorney is dated November

22, 2024, but the original 25 was crossed out. The motion itself appears to have been signed on November 25, 2024. However, whether the motion was filed on November 22 or 25, it was filed before judgment entered on December 6.

The court notes that the defendant filed an answer which included procedural defenses and substantive defenses and counterclaims. The plaintiff filed a written reply to the defendant's counterclaims and responded to his discovery. At the hearing on December 20, the defendant reported that he would have asked for an additional two months to move if he had appeared for trial on November 22.[1]

Although the court finds that there were some irregularities with the filing of the defendant's motion, he has at least met the standard of excusable neglect for not appearing on time for trial. Based on the answer he filed, the court further finds that he raised a non-frivolous defense to the no-fault eviction.

Orders

After hearing, the following orders will enter:

1. The defendant's motion to remove the default is **ALLOWED.** The default judgment which entered on December 6, 2024 is **VACATED** and the case is restored to the trial list.
2. The Clerk's Office is asked to schedule the case for the next available summary process trial date and to send notice.

January 7, 2025

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

[1] He had texted the property manager at 1:56 p.m. on the trial day proposing a six-month extension so the parties could "avoid trial".

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

STOCKBRIDGE VENTURES LLC,

Plaintiff,

-v.-

DOCKET NO. 24SP03474

ALICIA C. URYEVICK,

Defendant.

ORDER

This matter came before the court on January 3, 2025 for a hearing on the plaintiff's motion for entry of judgment. The plaintiff appeared through its attorney, together with the property manager. The defendant appeared and was self-represented.

This eviction case is based on nonpayment of rent. The monthly rent is $1,795. On August 14, 2024, the parties entered into an Agreement to resolve the matter and to establish a repayment agreement for the balance that would remain after RAFT paid a maximum of $7,000.[1] By its terms relevant to the pending motion, the parties agreed that the defendant owed $8,097.96 through October 14, 2024. The defendant had an application pending for RAFT financial assistance. She agreed to pay her November rent/use and occupancy by November 4, 2024 and then beginning in December 2024 to pay her ongoing rent/use and occupancy by the first of each month. She also agreed to pay $400 toward the balance that would remain after RAFT paid a maximum of $7,000 by the eighteenth of each month beginning in November until the balance reached zero. When it did, the case would be dismissed. If the defendant failed to comply with the terms of the Agreement, the plaintiff could file a motion for entry of judgment.

The plaintiff filed such a motion on the grounds that the defendant was late with her payments and/or did not pay in full (P Exh). RAFT paid $7,000, but this did not reduce the

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[1] The Agreement was filed with the court on November 18, 2024 (docket #9) when the parties appeared for mediation with a housing specialist of this court.

arrearage to zero. However, before the January 3 hearing, the defendant paid two additional cashier's checks to the plaintiff. This reduced the arrearage to $387.96 unpaid rent/use and occupancy through January 2025 and $253.01 costs. She agreed to pay the total ($640.97) on or before January 10, 2025. This would reduce the arrearage to zero.

The defendant reported that she believed the tenancy at $1,795 was sustainable. She had not been working full-time, but she would return to full-time hours as of January 6, 2025.

At the hearing, the plaintiff argued that judgment should enter because the defendant did not comply strictly with the payment schedule as set out in sections 5 and 6. The plaintiff further argued that the Agreement provided that the case would continue for three additional months *after* the defendant reached a zero balance. At the hearing, the court agreed with the plaintiff's arguments that judgment should enter now but execution be stayed pending compliance with the additional three month period. However, after the hearing the court reviewed the Agreement the parties signed and filed with the court. It does *not* contain such a provision for a three month "probationary period". Section 5 provides that the defendant would pay her rent/use and occupancy on or before the first of each month beginning in December, but section 9 provides, "In the event the Defendant reaches a zero balance, the pending case shall be dismissed."

Order

Based on the language of the parties' Agreement, the court vacates any oral orders stated at the January 3 hearing and instead enters the following findings and orders:

1. The plaintiff's motion for entry of judgment is continued for further hearing on **January 17, 2025 at 2:00 p.m.** The parties and/or their attorney may appear via Zoom, as they see fit.
2. The defendant will pay $640.97 in a cashier's check to the plaintiff no later than January 10, 2025, as the parties agreed at the hearing.
3. If the defendant makes the January 10, 2025 payment on time and in full thereby reducing the arrearage to zero, the court will address the issue of dismissal of the pending case pursuant to section 9 of the parties' Agreement at the January 17 hearing.

January 7, 2025

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0662

BOARD OF TRUSTEES THE CROSSING AT RIDGEWOOD VILLAGE CONDOMINIUM TRUST, Plaintiff	)	
v.	)	ORDER ON ASSESSMENT OF DAMAGES
BLUE RIVER PROPERTIES LLC, Defendant	)	

This matter came before the Court on October 31, 2024 on Plaintiff's motion for assessment of damages, attorneys' fees and costs. Both parties appeared through counsel.

Plaintiff is the Board of Trustees of the Crossing at Ridgewood Village Condominium Trust (the "Board"). Defendants own a residential dwelling located at 66 Mitchell Drive, Unit No. T2, Chicopee, Massachusetts (the "Unit") and belong to the condominium association of the Crossing at Ridgewood Village.

By way of procedural background, Plaintiff commenced this case by filing a verified complaint on March 21, 2023 in the Hampden County Superior Court. The complaint seeks damages and injunctive relief related to enforcement of the condominium association's governing documents (the "Constituent Documents").[1] Simultaneously, Plaintiff filed a motion for preliminary injunction. After hearing on March 29, 2023, a Superior Court judge issued an order for injunctive relief.

[1] The Constituent documents are the Master Deed, the Declaration of Trust with Bylaws, and the Rules and Regulations of the condominium association.

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On April 20, 2023, Defendants filed an answer and counterclaim and filed a motion to transfer the case to the Housing Court. On July 14, 2023, Plaintiff filed a motion to dismiss all counterclaims. On August 1, 2023, Defendants' motion to transfer the case to the Housing Court was allowed. The motion to dismiss Defendants' counterclaims (namely, elder abuse and discrimination) was allowed by this Court on March 29, 2024. No other action was taken in this matter until September 24, 2024, when Plaintiff filed the instant motion for assessment of damages, attorneys' fees, and costs.

To date, judgment has not entered on Plaintiff's claims set forth in its verified complaint.[2] In the memorandum in support of its motion for assessment of damages, Plaintiff claims that "it is entitled to judgment as a matter of law for all fees, costs and fines in full, and that said amounts have only been incurred by the actions of the Defendants...." Plaintiff adds that "The Defendants were in violation of the Constituent Documents and statute, as evidenced by Judge McDonough's Superior Court Decision." However, the Superior Court hearing was only for the purpose of securing preliminary injunctive relief, and the judge did not make any findings of fact. The hearing on Plaintiff's motion for a preliminary injunction is not an adjudication on the merits of the case.

If the Court considers Plaintiff's motion for assessment of damages as a motion for judgment on the pleadings under Rule 12(b) of the Rules of Civil Procedure, or in the alternative a motion for summary, the motion is denied. Although it may be

[2] The fact that the Court dismissed Defendants' counterclaims does not constitute a finding that Plaintiff is entitled to judgment on its claims against Defendants.

settled law in Massachusetts that a condominium association has the right to assess fines and legal fees to a particular unit owner, Plaintiff must demonstrate that the circumstances warranted the assessment of fines and legal fees. The Court finds material facts in dispute as to whether Defendants' conduct violated the Constituent Documents and/or Massachusetts law.

For example, all or nearly all the complaints to the police from August 31, 2022 to November 19, 2022 were placed by the same neighbor and it is unclear if her complaints were valid based on the materials submitted with the motion showing that the police officers responding to the calls repeatedly failed to substantiate the complaints. Moreover, Plaintiff's agent sent a letter informing Defendants that they would be fined $25.00 "each time that the police show up" in the future. Not only is the standard for the imposition of fines questionable, but also a question remains as to whether the Board enforced the fines consistently with the terms of the notice.[3]

Given that judgment has not entered in Plaintiff's favor and given that Plaintiff has not established that it is entitled to judgment on the pleadings at this time, the motion to assess damages, attorneys' fees and costs is DENIED. The Clerk's Office shall schedule a case management conference to schedule a trial date and any interim deadlines for completing discovery and filing further dispositive motions.

SO ORDERED.
January 8, 2025

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

cc: Court Reporter

[3] it appears that Defendants were fined for past calls despite being informed they would be fined only for future calls, and it appears that they were fined $50.00, not $25.00, on one occasion.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-2351

MANHAN PROPERTIES, LLC AND NOUVEAU PROPERTY MANAGEMENT LLC Plaintiffs v. MICHAEL SULLIVAN, Defendant	FINDINGS OF FACT, CONCLUSIONS OF LAW AND G.L. c. 239, § 8A ORDER

This no-fault summary process case came before the Court on November 18, 2024 for a bench trial. Plaintiffs appeared through counsel. Defendant appeared self-represented. Plaintiffs seek to recover possession of residential premises located at 8 Searle Ave., 3R, Easthampton, Massachusetts (the "Premises").

The parties stipulated to Plaintiffs' prima facie case for possession, including Defendant's receipt of the notice to quit dated March 29, 2024 terminating the tenancy as of May 1, 2024. Although a no-fault eviction case, the parties agree that monthly rent is $900.00 and that the amount of $5,700.00 has not been paid as of the date of trial.

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 lives with his two minor children, [redacted]. After a

gas leak in mid-February 2024, the gas service was shut off. Although the stove was repaired and returned to working order, the gas-fed heater that warms the back part of the Premises was not restored. Defendant claims Plaintiffs were aware that the heating system was obsolete and needed to be replaced but never did so. He testified credibly that the other heat source in the Premises only warms the two front rooms, leaving the rear of the unit without sufficient heat.

Plaintiffs' property manager conceded that Defendant has complained about inadequate heat and stated her belief that the heating system was working properly. She offered no evidence to show that the system was tested and adequately heats the entire Premises. The Court credits Defendant's testimony and finds that the issue of inadequate heat constitutes a material defect in the habitability of the Premises.

Defendant also testified about defective flooring. He repaired the bathroom floor and the kitchen floor himself, but the kitchen floor is "coming up" and the subfloor is in a state of disrepair. He acknowledges that he had agreed with prior management to fix the floors himself in exchange for a month of free rent, but that the problems with the kitchen recurred. It is axiomatic that a landlord may not reduce the rent to entice a tenant to live with substandard conditions, and although it was not the current property manager who made this agreement with Defendant, the Court finds that at least as of September 2024, Plaintiffs were aware of the need for repairs to the floors and windows.[1]

The Court finds that Defendant demonstrated by a preponderance of the evidence that he has had to endure significant conditions of disrepair about which

[1] Plaintiffs' property manager testified that new windows are on order.

Plaintiffs had notice. As a result, the Court concludes that Plaintiff has violated the implied warranty of habitability. The Court determines that inadequate heat diminished the fair rental value of the Premises by 15% during the heating season (February to June, and September to November), a period of eight months. With respect to the flooring and windows, the Court rules that the fair rental value of the Premises was diminished by 10% for the two-month period from mid-September 2024 to the date of trial. In the aggregate, Defendant is entitled to a rent abatement in the amount of $1,620.00.[2]

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

1. Plaintiffs are entitled to unpaid rent and use and occupancy in the amount of $5,700.00. Defendant is entitled to damages in the amount of $1,620.00 on account of his defenses and counterclaims. After setting off the damages due Defendant, Plaintiffs are entitled to damages in the amount of $4,080.00.

2. Pursuant to G.L. c. 239, § 8A, Defendant shall have one week after receiving written notice from the Court of the balance due to deposit with the Clerk the sum of $4,080.00, plus court costs of $ _____ and interest in the amount of $_____, for a total of $ _____. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."

[2] Defendant did not assert a claim under G.L. c. 93A.

3. If such deposit is made, judgment for possession shall enter for Defendant. Upon written request by Plaintiffs, the Clerk shall release the funds on deposit to Plaintiffs.

4. If the deposit is not timely received by the Clerk, judgment shall enter for Plaintiffs for possession and damages in the amount of $4,080.00 plus costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

5. Plaintiffs shall complete any outstanding repairs forthwith. Defendant shall not unreasonably deny access to provided he is given at least 24 hours' advance written notice.

SO ORDERED.

DATE: January 8, 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-SP-3579

RR AND COMPANY REALTY, LLC,

Plaintiff

v.

BRANDON O. MCELYA,

Defendant

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

This summary process case came before the Court on November 18, 2024 for a bench trial. Plaintiff appeared with counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 321 Belmont Ave., 1L, Springfield, Massachusetts (the "Premises").

At the outset of trial, the parties stipulated that Defendant received the notice to quit and has not vacated. The parties further stipulated that monthly rent is $1,100.00 and that rent has not been paid for 8 months. Defendant did not file an answer prior to trial and requested that he be allowed to do so. Plaintiff did not object and therefore the Court agreed to permit Defendant to assert defenses and counterclaims at trial.

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 moved into the Premises in February 2024. Defendant paid rent for

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the first two months and has not paid since. He claims he has suffered from significant conditions of disrepair, particularly an infestation of mice. The evidence shows that on February 16, 2024, Defendant sent a maintenance request complaining of mice, as well as clogged drains, the dining room light, the sliding porch door, window locks and blinds. Plaintiff marked the request completed on February 27 and Defendant acknowledges that many of the items initially complained of were addressed.

In April, he made further complaint, particularly about radiators and the loss of power. Although Defendant expressed frustration about his maintenance requests being cancelled in the tenant portal system, the evidence shows that the issues were resolved by April 25, 2024. The notice to quit for nonpayment of rent was dated as of May 7, 2024.[1]

After receiving the notice to quit, Defendant contacted the City of Springfield Code Enforcement Department ("Code Enforcement"). Code Enforcement inspected the Premises on June 28, 2024, and the only citation issued was for the elimination of pests. The pictures taken by Code Enforcement show rodent droppings on the stove and images of plastic food packaging having been gnawed through, presumably by rodents.

The evidence shows that Plaintiff began to treat for rodents soon thereafter. The initial exterminations were not effective, and Plaintiff changed vendors. Although Plaintiff's property manager claims that she received no further complaints after the

[1] Defendant did not argue that the notice to quit was served in retaliation for his complaints about conditions. Therefore, and given that the evidence shows that his first report to Code Enforcement came after receipt of the notice to quit, the Court does not find that Defendant is entitled to a retaliation defense (G.L. c. 239, § 2A) or to damages for retaliation and reprisal (G.L. c. 186, § 18).

new pest control company took over, Defendant testified that the infestation has not been eradicated.

A landlord is strictly liable for conditions of disrepair in residential housing. However, to violate the implied warranty of habitability, the conditions must rise to the level of significant defects in living conditions or constitute substantial code violations. See *McAllister v Boston Housing Authority*, 429 Mass. 300, 305 (1999) (the warranty of habitability applies only to "substantial" violations or "significant" defects, and not every breach of the State sanitary code supports a warranty of habitability claim). The Court finds that, apart from the issue with rodents, Defendant failed to demonstrate that the conditions complained of constitute a violation of the warranty of habitability. This finding is supported by evidence indicating that Plaintiff responded to and made repairs promptly and the Code Enforcement report in June 2024 in which no violations were cited except for the elimination of pests.

With respect to the issue with rodents, the Court finds that Plaintiff sustained his burden of proving by a preponderance of the evidence that the persistent presence of rodents constitutes a breach of warranty. Despite Plaintiff's attempt to eliminate the infestation, the infestation persisted. Landlords are strictly liable for conditions of disrepair unless caused by the tenant, so Plaintiff's efforts to treat the pests are not a defense to liability.[2] Further, the evidence is insufficient to find that it is Defendant who caused the infestation or that his conduct prevented efficient

[2] The landlord's attempts to address the infestation are considered in determining whether it violated G.L. c. 186, § 14, however. See *Al-Ziab v. Mourgis*, 424 Mass. 847, 850 (1997) (a tenant must show some negligence by the landlord to recover under the statute). Here, Defendant failed to show that Plaintiff was negligent in the manner it treated for rodents, and therefore the Court concludes that Plaintiff is not liable under G.L. c. 186, § 14.

treatment of the problem. Particularly given the impact on Defendant's use of the stove due to the rodent infestation, the Court concludes that the presence of the rodents reduced the fair rental value of the Premises by 15% for the ten months of the tenancy through the trial date. At a rental rate of $1,100.00 per month, Defendant is entitled to a rent abatement in the amount of $1,650.00.

"[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). See *Ndoro v Torres*, 105 Mass. App. Ct. 128, 133 (2024) (citation omitted). See also 940 Code Mass. Regs. § 3.17(1)(b). There is no credible evidence that the infestation has been adequately addressed as of the trial date. Although Plaintiff offered into evidence notices of scheduled treatments, it did not present any witnesses nor any business records from the pest control company to show that the rodent problem has been substantially eliminated. Given that Defendant first complained about rodents in February 2024, the Court concludes that Plaintiff has violated G.L. c. 93A by failing to reasonably address the pest problem for ten months. As damages for violation of G.L. c. 93A, the Court doubles the warranty damages to $3,300.00.[3]

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

1. Plaintiff is entitled to unpaid rent and use and occupancy in the amount of $8,800.00. Defendant is entitled to damages in the amount of $3,300.00 on account of his defenses and counterclaims. After setting

[3] Defendant appeared self-represented, so the Court makes no award of attorneys' fees or costs.

off the damages due Defendant, Plaintiff is entitled to damages in the amount of $5,500.00.

2. Pursuant to G.L. c. 239, § 8A, Defendant shall have one week after receiving written notice from the Court of the balance due to deposit with the Clerk the sum of $5,500.00, plus court costs of $ 245.77 and interest in the amount of $ 220.76, for a total of $ 5966.53. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."

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

4. If the deposit is not timely received by the Clerk, judgment shall enter for Plaintiff for possession and damages in the amount of $5,500.00 plus costs and interest, and execution shall issue by written application pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: January 8, 2025

/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

DOMS HOME IMPROVEMENT, LLC,

Plaintiff,

-v.-

DOCKET NO. 24SP03642

EDDIE STRYCHARZ & MELISSA BOUTET,

Defendant.

ORDER

This matter came before the court on January 10, 2025 for a hearing on defendant Melissa Boutet's motion to stop the move-out scheduled for January 13, 2025 at 1:00 p.m. The plaintiff appeared through its attorney. Defendant Melissa Boutet appeared; defendant Eddie Strycharz did not appear. Both defendants are self-represented. A representative of the Tenancy Preservation Program (TPP) joined the hearing at the request of the court.

This is a no fault eviction case in which the plaintiff seeks possession of the subject rental premises and unpaid rent/use and occupancy. A default judgment entered on November 21, 2024 for possession and $4,520 in unpaid rent/use and occupancy with costs and interest. Neither defendant had appeared for the First Tier Court Event on November 7, 2024. The execution issued on the plaintiff's written application.

The monthly rent is $450. No rent/use and occupancy has been paid since the judgment entered. Ms. Boutet reported that Mr. Strycharz has been in the hospital or a rehab facility since August and could not come to court. [redacted]. The landlord and Ms. Boutet have discussed a stay of the execution until March 1, 2025 if certain payments were made. However, Ms. Boutet does not have the legal authority to make any agreement on behalf of Mr. Strycharz. As discussed at the hearing, the court is concerned that Mr. Strycharz has not been able to participate in this case for medical reasons.

Orders

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

1. The move-out scheduled for January 13, 2025 at 1:00 p.m. is **STOPPED**.
    a. This move-out is stopped as a reasonable accommodation to what has been described to the court as defendant Strycharz' disability. Nothing in this order is to be interpreted as a determination by the court regarding the underlying merits of this case.
    b. The plaintiff's attorney agreed to notify the constable/deputy sheriff of this order forthwith.
    c. This stay of the execution is ordered within the meaning of G.L. c. 235 §23.
2. The case is scheduled for further hearing on **January 17, 2025 at 2:00 p.m.** All parties and their attorney(s) may appear via Zoom.
3. The defendants are responsible to pay the $700 cancellation fee to the landlord directly *before* the January 17, 2025 hearing.
4. The case was referred to the Tenancy Preservation Program at the hearing with the TPP representative present.
    a. The parties met with the Housing Specialist and the TPP representative in a breakout room after the hearing.
    b. The Housing Specialist is asked to complete the TPP referral forthwith, as needed.
    c. TPP is asked to use its best efforts to contact the social worker at the rehab facility where Mr. Strycharz is currently to arrange for his participation in the January 17, 2025 hearing viz Zoom or at least by telephone.
    d. TPP is asked to be present at the January 17 hearing and to report on the attempts to arrange for Mr. Strycharz' participation and/or the reason(s) he cannot participate at this time.
    e. TPP is asked to evaluate the case to determine if they can provide any further assistance to the defendants.

January 10, 2025

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

CC: Tenancy Preservation Program
CC: Housing Specialist Department

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-787

SARAH JEROME,

Plaintiff,

v.

DOMINIQUE DENT,

Defendant.

ORDER

After hearing on January 8, 2025, on the defendant-tenant's motion to enforce the court's earlier agreed-upon order dated October 9, 2024, the following order shall enter:

1. The landlord shall have its contractor inspect and make any necessary repairs to the kitchen flooring (including but not limited to the completing edges at baseboard, removal of excess glue, and repair of any compromised portions) on Wednesday, January 15, 2025, beginning at 10:00 a.m.

2. The parties shall limit their conversation that day to only what is necessary for the task at hand and may use their smart phones to photograph, videograph, and record one another in a non-aggressive manner.

So entered this 10th day of January, 2025.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden , ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24SP4110

SHERIDEAN CIRCLE HOUSING COO ,
PLAINTIFF(S)

v.

ORDER

MOLLY STEELE ,
DEFENDANT(S)

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

The parties appeared today for no fault eviction trial. Defendant appeared self-represented.

Plaintiff is a tenant-run housing cooperative. Defendant resided there with her parents, who have passed away. Plaintiff indicating a willingness to preserve the tenancy if Ms. Steele had services in place to assist her follow Plaintiff's rules and regulations. Ms. Steele expressed a desire to relocate, but she is unsure how to do so.

Although Defendant's CSO case worker appeared in the courtroom, she refused to offer any information without a subpoena. The court asked Tenancy Preservation Program do do an intake (Ms. Craig was in the courtroom) to determine if TPP can be of assistance.

Based upon Defendant's presentation in the courtroom today, the Court concludes that the appointment of a GAL for Defendant in this matter is necessary to secure the full and effective administration of justice and is in the best interests of the parties.

The Court will appoint a GAL to speak to all interested parties/providers and to investigate and make recommendations about the services necessary to preserve Defendant's tenancy and any services in place or available to assist Defendant in relocating, if that is her intention. The GAL is further authorized to assist Defendant in understanding the legal process and her rights in a no-fault eviction case.

The trial will be continued for approximately 45 days. The Clerk's Office shall send notice of the new trial date.

SO ORDERED: /s/ Jonathan J. Kane DATE: 1/10/25
Jonathan J. Kane, First Justice

cc: ACM Kara Cunha
TPP of Pioneer Valley

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

APLETON 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 20, 2024 for a continued hearing on the plaintiff's motion for entry of judgment and issuance of the execution. The plaintiff appeared through their attorney with the senior property manager. The defendant appeared and was self-represented. Janis Luna of Wayfinders joined the hearing to report on RAFT.

The court reviewed the chronology of this nonpayment of rent case in its December 10, 2024 order and incorporates it here. At the time of the hearing, there remained an arrearage of $3,800 through December 2024. December's use and occupancy ($960) had not been paid as ordered by the court, although the defendant said that she had received her paycheck that day and that she would pay the December use and occupancy by money order the same day.

Ms. Luna from Wayfinders reported that the defendant's application for RAFT financial assistance was still pending and was under review. If approved, the defendant would be eligible for only $994.79 from RAFT because she had received $6,005.21 in June 2024.[1] If the defendant paid the December use and occupancy as she agreed and RAFT paid $994.79, the arrearage would be reduced to $1,845.21 through December 2024. Ms. Luna reported that

[1] The June RAFT payment did not reduce the arrearage to zero because of a check paid by the defendant that was returned for insufficient funds.

Wayfinders had not received a repayment agreement for the balance. As she had offered at an earlier hearing, the defendant offered to pay the balance when she receives her expected tax refund in late February. The plaintiff did not accept this proposed repayment plan. The court cannot order a landlord to accept a specific repayment proposal. It is up to the tenant to convince the landlord that her proposed repayment plan is realistic and will resolve the nonpayment of rent issue. The plaintiff urged the court to enter judgment and issue execution based on the court's finding after the December 6, 2024 hearing that the defendant is in substantial noncompliance with material terms of the parties' most recent Agreement filed on June 21, 2024. However, because there is a pending RAFT application, again the court does not order judgment and execution at this time pursuant to G.L. c. 239 §15. Instead the court continues the hearing on the plaintiff's motion in order to give the defendant a final opportunity to complete the RAFT application process and to negotiate a repayment 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 **January 31, 2025 at 9:00 a.m.**
2. The parties will try in good faith to agree on a realistic repayment plan for the balance that would remain if RAFT paid $994.79.
3. The defendant will pay her December and January use and occupancy before the January 31, 2025 hearing.

January 13, 2025

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

CITY VIEW COMMONS I,

Plaintiff,

-v.-

DOCKET NO. 22SP03208

MARCUS A. RAMSEY,

Defendant.

ORDER

This matter came before the court on January 10, 2025 for a hearing on the plaintiff's motion for an amended judgment and issuance of the execution. The plaintiff appeared through its attorney. The defendant appeared and was self-represented. Leonor Pena of Wayfinders joined the hearing to report on RAFT.

This eviction case was filed on September 19, 2022 based on cause, chronic late payment of the rent. The most recent judgment entered on November 17, 2023. On June 25, 2024 the parties entered into a further Agreement to resolve the matter. By its terms relevant to this motion, the parties agreed that the defendant owed $8,395 in unpaid rent/use and occupancy through June 2024 and $205.54 costs. The defendant agreed to pay the monthly use and occupancy of $1,064 and a payment toward the arrearage in two installments each month beginning in July 2024. The parties agreed that the defendant was not eligible for RAFT financial assistance. Finally, the parties agreed that the case would be dismissed when the defendant's account reached a zero balance and he made three consecutive timely payments.

The plaintiff filed the motion to amend the judgment and issue the execution on the grounds that the defendant made some but not all of the agreed-upon payments and that some of the payments were made late. The arrearage is $7,028 through January 2025 and $205.54 costs.[1]

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[1] This arrearage reflects an $800 payment made on December 31, 2024 which was not listed on the ledger.

The defendant reported that he tried to avoid a shutoff of his electricity in November, so he paid money to the utility company instead of his rent/use and occupancy. He applied for RAFT financial assistance again this month.

Ms. Pena of Wayfinders joined the hearing. She confirmed that the defendant applied for RAFT on January 9, 2025 and that Wayfinders is waiting for the landlord documentation. The plaintiff's attorney confirmed the email address for his client. Ms. Pena reported that the defendant's last application was denied in June 2024 because he was over-income. Mr. Ramsey reported that he still works for the Post Office so there is a question whether he is income-eligible for RAFT financial assistance now. If he were eligible for RAFT, the maximum that Wayfinders could pay is $7,000. Ms. Pena explained that he applied for more than $3,000 for a utility arrearage in the January 9 application. The balance would go to the rent/use and occupancy arrearage. However, this would leave a balance owed, so the parties would have to submit a repayment agreement for the balance.

Orders

After hearing, the following orders will enter:

1. The plaintiff's motion for an amended judgment and issuance of the execution is continued for thirty days for further hearing. The Clerk's Office is asked to schedule the hearing and to send notice.
2. Both parties will submit all documentation as required by Wayfinders promptly to complete the defendant's application for RAFT financial assistance as soon as possible.
    a. The plaintiff will include the costs on the ledger.
    b. The defendant will submit to the landlord a proposed repayment plan for the balance that would remain if RAFT makes a payment on his behalf.
    c. The plaintiff will review such proposed repayment plan in good faith.
3. As he agreed to do, the defendant will pay January use and occupancy ($1,064) no later than the close of business on January 17, 2025 and an additional payment toward the arrearage no later than January 31, 2025.

January 13, 2025

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-429

DAN DOWNER, **Plaintiff,** **v.** **DOUGLAS SO, ANTHONY EKA, and RYAN BARNOSKY,** **Defendants.**	**ORDER**

After conducting a Case Management Conference on January 8, 2025, at which all parties appeared self-represented by Zoom, the following order shall enter:

1. Though the defendants did not file Answers, the parties understand that the upcoming trial will include the plaintiff's claim for unpaid rent, use, and occupancy and that the defendants' defenses and claims include challenges to the amount of rent (use and occupancy) being sought by the landlord, both by way of miscalculation as well as no meeting of the minds and no contract, alleged conditions of disrepair, and a refusal by the plaintiff to accept monies.

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2. The plaintiff shall propound discovery upon the defendants by no later than January 24, 2025, and the defendants shall have until February 28, 2025, to respond.
3. A trial shall be scheduled, live and in-person, on **March 14, 2025, at 9:00 a.m.**

So entered this 13th day of January, 2025.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampshire, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

HAMPTON HOUSING ASSOCIATES,

Plaintiff,

-v.-

DOCKET NO. 24SP02078

CELESTE ORTEGA,

Defendant.

ORDER

This matter came before the court on January 10, 2025 for a hearing on the defendant's motion to stop the move-out scheduled for January 14, 2025 at 9:00 a.m. The plaintiff appeared through its attorney. The defendant appeared with her attorney.

This eviction case is based on nonpayment of the tenant's portion of the Section 8 rent ($209 per monthly). A default judgment entered against the defendant on October 1, 2024 for the plaintiff for possession and $2,937 in unpaid rent/use and occupancy with costs and interest. The defendant failed to appear for trial on September 30, 2024. She filed a motion to remove the default which was denied after hearing.[1] The execution issued on November 18, 2024 on the plaintiff's written application. The defendant reported that she does not have a pending application for RAFT financial assistance. Her earlier applications timed out.[2]

The defendant argues that she paid her portion of the rent/use and occupancy for the past eight months (a total of $1,672) by dropping off checks at the landlord's office, but that they were not cashed. The landlord denies receiving any such tendered checks. The hearing was

[1] This was the second default judgment against the defendant. She did not appear for trial on August 12, 2024 and a default judgment entered against her on August 13, 2024. She filed a motion to remove the default. After hearing a judge of this court restored the case to the trial list for September 30, 2024.

[2] Because this is a subsidized tenancy, RAFT could pay a maximum of six months of the tenant's portion of the rent for the months for which she demonstrates a hardship caused the nonpayment, together with costs if reflected on the ledger.

recessed for the parties to review the ledger, which did not include any payments for the past eight months. Payments which the defendant made in 2023 are reflected in the ledger.

The defendant's Limited Assistance Representation (LAR) attorney had just been retained by the defendant and reported that she had not yet had the opportunity to investigate or confirm the defendant's position. The court does not take any action on the defendant's motion at this time but continues the motion to give counsel the opportunity to present a comprehensive argument on her client's behalf. Likewise, a continuance will give the plaintiff's attorney the opportunity to consult with his client to resolve any issues about the ledger and tendered checks that were not cashed.

Orders

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

1. **The defendant's motion to stop the move-out is continued to January 13, 2025 at 2:00 p.m. in the Springfield session of the court.**
    a. The parties and/or their attorneys may appear via Zoom.
    b. Any judge of this court may hear the continued motion on January 13.
    c. Both parties should be prepared to address the issue of tendered payments and any alleged discrepancies on the ledger.
2. Before the hearing on January 13, 2025 the defendant will pay $1,672 in certified funds to the plaintiff. This represents a replacement of the eight checks which she reports were not cashed by the plaintiff.
    a. The plaintiff will accept such certified funds as use and occupancy only.
3. If the January 14, 2025 move-out is stopped, the defendant will be responsible to pay the cancellation fee. Such fee would have been $130 if the move-out had been stopped on January 10. However, because the court does not find that that the defendant presented sufficient grounds to stop the move-out to date, the cancellation fee may increase if the move-out were to be stopped on January 13.
4. Defendant's LAR attorney was asked to remain in the case pending the hearing on January 13, 2025.

January 13, 2025

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-4309

CLEVELAND HOUSEY,

Plaintiff,

v.

MICHEL HOUSEY,

Defendant.

ORDER of DISMISSAL

This matter came before the Court for trial on January 9, 2025, at which both parties appeared self-represented. The tenant filed a motion for late Answer and after hearing, the following orders shall enter:

1. The tenant filed his motion for late Answer the day after the Tier 1 event. The Court credits his testimony that until then he was not aware of how to file an Answer. Additionally, the Court finds that the tenant has viable defenses and claims.
2. Accordingly, the motion for filing the late Answer is allowed.

3. The tenant asserts in his Answer that the notice to quit is fatally flawed, ending the tenancy not on a day when rent is due.
4. The parties stipulated that the tenancy is at-will and that the rent is due on the first---or by the 3rd—of each month. The stipulated-to July 15, 2024, notice to quit attempts to terminate the tenancy on October 15, 2024, which is not a rent day.
5. Based on the foregoing, this summary process action is dismissed, *without prejudice.*

So entered this 13 day of January, 2025.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-492

LORD JEFFERY APARTMENTS, **Plaintiff,** **v.** **SHANNON CAVANAUGH,** **Defendant.**	**ORDER**

After hearing on January 13, 2025, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared with LAR counsel (Raquel Manzanares), the following order shall enter:

1. Based on the fact that the tenant has made substantial payments after filing of the Agreement of the Parties dated March 18, 2024, and based on a colorable claim that the tenant's failures to make rent payments stems from her disabilities, and also given the other terms of this order, the landlord's motion is denied.

2. LAR counsel, Manzanares, shared with the court that Community Legal Aid will work with the tenant on her RAFT application and that she believes that the tenant has a very good chance to obtain RAFT funds for the entire amount of outstanding rent and costs.
3. The tenant shall work with CLA on her RAFT application and with TPP with its recommendations.
4. The tenant shall pay her use and occupancy going forward beginning with February 2025 plus $100 per month extra towards arrearage.
5. The tenant shall use her tax returns for 2024 to pay an arrearage which is not covered by RAFT.
6. The landlord shall inspect and make all necessary repairs within 30 days of this order.

So entered this 13 day of January, 2025.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 25-CV-14

BRENDA MICHALCYZK,

Plaintiff,

v.

ANNA DAGOSTINO,

Defendant.

ORDER

After hearing on January 10, 2025, at which both parties appeared self-represented and by Zoom, the following order shall enter:

1. This hearing was scheduled for review as a follow up to the Court's Order after the January 6, 2025, emergency hearing.
2. Though the defendant landlord Anna D'Agostino was ordered to restore the tenant Brenda Michaelcyzk to occupancy at the subject premises and provide hotel accommodations until that occurs, she paid for only two nights at the hotel and did not restore her tenancy.

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3. The landlord is again ordered to restore the tenant to her occupancy of the subject premises and to provide hotel accommodations until the tenant is restored to her tenancy.
4. This matter shall be scheduled for a Status Hearing live and in-person on **January 14, 2025, at 9:00 a.m.**

So entered this 13 day of January, 2025.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-922

SUSAN PASSERELLO and RONALD SIMPSON, Plaintiffs, v. CAVALIER MANAGEMENT, Defendant.	ORDER

After hearing on January 9, 2025, on the plaintiff tenants' motion for injunctive relief regarding a lack of sufficient heat at which the tenants appeared self-represented and the landlord appeared through counsel, the following order shall enter:

1. This civil action was dismissed on November 26, 2024. The plaintiff tenants' motion for further injunctive relief is treated also to be a motion to reopen this civil action, which is allowed.
2. After recessing the hearing so that the landlord could secure his plumber to testify, the court resumed the hearing and the plumber confirmed that the

boiler is cracked and that until it is replaced the system will not likely be able to maintain temperatures that are required by the State Sanitary Code at the premises.

3. The plumber, Richard Pierce, has been able to secure a new boiler and anticipates installing it on January 10, 2025. He believes that such work will cause the heat to be off completely for several hours in order to install the new boiler.
4. The landlord shall immediately provide hotel accommodations for the tenants at the Hotel North (which has cooking facilities) starting the evening of January 9, 2025, until the heating system is fully restored and able to consistently provide temperatures required by state law.
5. This matter shall be scheduled for a Status Hearing on **Monday, January 13, 2025, at 10:00 a.m. by Zoom.**

So entered this 13 day of January, 2025.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS ACTION
NO. 24H79SP003727

JANET ROONEY,

Plaintiff

VS.

DARLA CARNES KNIGHT,

Defendants

FINDINGS OF FACT, RULINGS OF LAW AND ORDER OF JUDGMENT

This is a summary process action in which plaintiff Janet Rooney is seeking to recover possession of a residential dwelling from defendant Darla Carnes Knight based upon nonpayment of rent. The defendant did not file a written answer to the complaint. The jury-waived trial was conducted on January 8, 2025.

There is no pending RAFT application. See G.L. c. 239, § 15.

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

The plaintiff owns the three-bedroom, two-floor row house residential dwelling at 24 New Street, North Adams, Massachusetts. The defendant, together with her six children, occupy the dwelling as a tenant at will. The last agreed upon monthly rent was $814.00 due by the first day of each month.

The defendant has been unable to pay her monthly rent with any regularity since 2022. she received RAFT assistance in April 2024 in the amount of $5,176.00. After the plaintiff received the April 2024 RAFT payment, the defendant owed a rent balance of $2,994.00. The defendant made one $300.00 rent payment in May 2024; however, she has not made any rent payments in any amount from June 2024 through January 2025. The defendant's rent arrearage increased by

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$6,512.00 during that period. As of the January 2025 trial date the defendant owed $9,206.00 in unpaid rent.

On July 15, 2024 the plaintiff had served upon the defendant a legally sufficient 14 Day Notice to Quit.

The court recognizes that the defendant has experienced serious financial difficulties over the past years and that he has made efforts, so far unsuccessful, to address her financial problems. However, her financial difficulties does not constitute a defense to the plaintiff's claim for possession and rent.

The plaintiff has established its claim to recover possession of the premises for nonpayment of rent and damages in the amount of $9,206.00 plus costs and statutory interest.

With the plaintiff's consent, execution shall not issue until February 28, 2025. During this stay period the defendant must pay the plaintiff $814.00 per month for her continued use of the dwelling by January 21 and February 21, 2025

ORDER FOR JUDGMENT

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

1. Judgment enter for the plaintiff for possession of the premises at 24 New Street, North Adams, Massachusetts, and unpaid rent damages in the amount of $9,206.00, plus costs and statutory interest.
2. Execution shall issue on February 28, 2025.

SO ORDERED this 13th Day of January 2025.

w/permission

Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 22-SP-3521

462 FRONT STREET, LLC,

Plaintiff,

v.

ANN ASHLEY,

Defendant.

ORDER

After hearing on January 9, 2025, the following order shall enter:

1. The parties were last before the court on December 10, 2024, and agreed that the parties would apply for RAFT and the tenant would pay her December 2024 rent.
2. The tenant paid her rent and there is a RAFT application pending. A representative from Way Finders, Inc. confirmed that the RAFT application is presently in Case Manager Status.
3. The landlord's motion for entry of judgment is denied, without prejudice.

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4. Even if the RAFT application is successful, there will be outstanding rent, use, and occupancy owed by the tenant.
5. The tenant shall pay $50 per month extra towards any arrearage that RAFT does not pay. The parties should submit a copy of this Order to RAFT which should view this paragraph as a "repayment agreement".
6. The tenant shall pay her rent plus $50 going forward in the following manner:
    a. $314 on January 10, 2025;
    b. $314 on January 17, 2025;
    c. $50 on January 24, 2025;
    d. Thereafter, half her rent by the first week, the other half of her rent by the second week, and $50 by the third week of each month going forward.
7. If the tenant does not use her tax returns to purchase a vehicle, she shall use 100% of them to pay her rental arrearage.
8. The tenant is urged to consult with Community Legal Aid (CLA) regarding the non-payment to her of her child support payments, as well as this eviction case. CLA can be reached at 413-781-7814.
9. The tenant is also urged to consult with Springfield Partners at 721 State Street (413-263-6500) regarding financial literacy assistance and with VOC (Valley Opportunity Council) regarding fuel assistance.
10. The landlord may file a motion for entry of judgment if the tenant fails to comply with this order and/or it wishes to seek an amendment to the repayment plan amount.

So entered this 14 day of January, 2025.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden , ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24SP3866

APPLETON CORP. ET A;
PLAINTIFF(S),

v.

ELIUD PIZZARO
DEFENDANT(S),

ORDER

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

Plaintiff established a material violation of the agreement of the parties entered on December 2, 2024. Defendant failed inspections on December 12, 2024 and January 10, 2025. Further, Defendant failed to cooperate with GSSSI or CCA as required. Therefore, judgment for possession shall enter in favor of Plaintiff.

Issuance of the execution will be stayed (and the period in G.L. c. 253 s. 23 tolled) for six months to permit Defendant an opportunity to address the substantial health and safety issues in his apartment. Defendant shall:

1. Not burn any incense or use open flames in the apartment.
2. Not permit rotted food to remain in the apartment but instead shall dispose of it properly.
3. Organize his apartment to allow for unimpeded ingress and egress.
4. Meet with and cooperate with service providers from any agency that offers assistance with correcting the health and safety issues in his apartment, particularly TPP, GSSSI and/or CCA.

Plaintiff may schedule an inspection of Defendant's unit upon 24 hours' advance notice no more than one time every two weeks, with the first inspection the week of January 27, 2025. The purpose of the inspections is to monitor progress [redacted] cleaning it to prevent a pest infestation. Further, Plaintiff is authorized to contact the agencies cited herein to ensure that Defendant is accepting services (if offered).

If after an inspection Plaintiff believes that Defendant is not making reasonable progress toward correcting the health and safety issues in the apartment, or if he is willfully failing to engage with services offered, it may file a motion for issuance of the execution to be heard by the undersigned judge. If such a motion is filed, the Clerk's Office will schedule a hearing within two weeks.

SO ORDERED: /s/ Jonathan J. Kane DATE: 1/14/25
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 24-SP-3632

JOSE L. MATUTE,

Plaintiff,

v.

ERICA HARRIS,

Defendant.

ORDER

After hearing on January 9, 2025, on the landlord's motion for entry of judgment, at which the landlord appeared with counsel and two of the occupants, Sandra Ruiz and Vincent Siebles, appeared self-represented, the following order shall enter:

1. The basis for the motion was the allegation that the tenant failed to make her rent payment for November and December 2024 timely. The landlord asserts that such failures should result in a judgment for the landlord for possession and for $45,000 in otherwise waived use and occupancy.

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2. First off, even if there was a violation of the use and occupancy payments since the Agreement of the Parities (dated November 8, 2024), the remedy for such a violation would not be the reinstitution of the $45,000 in waived use and occupancy.
3. Paragraph 2 of the Agreement states:

> In exchange for a complete vacate date of February 28, 2025 with no further stays, waiver of all claims, counterclaims and defenses from the beginning of time through today by both parties the plaintiff agrees to waive all arrears, court costs, and further reduce the monthly use and occupancy to $3,000.00 to $1,500.00.

4. As such, the waiver of the $45,000 rental arrearage was conditioned on the move out date in February 2025 and the waiver of counterclaims and defenses and **not** the obligation to pay use and occupancy in the months following the Agreement.
5. Regarding the alleged breach in use and occupancy payment of use and occupancy for November 2024, the landlord withdrew its assertion that November 2024 use and occupancy was not paid on time, stipulating in open court that it was in fact paid in full and on time.
6. As to December 2024's payment of use and occupancy, the court finds the testimony of the occupants present at the hearing (Ruiz and Siebles) credible and accurate in their description of communications with the landlord and that he agreed to amend the deadline of the December 2024 use and occupancy by allowing them to pay $1,000 on December 19, 2024, and $500 on December 26, 2024; both sums he received without asserting his right to

accept the funds and retain a claim that their tardiness violated the Agreement.

7. Based on the foregoing, the Court finds that the tenants have not violated the payment terms agreed to by the parties and the landlord's motion for entry of judgment is denied.

So entered this 14 day of January, 2025.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-4280

MARIA RASCHILLA,

PLAINTIFF

v.

ANA NEGRONI AND ROBERT RAMOS, JR.,

DEFENDANTS

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

This summary process case came before the Court for a bench trial on January 14, 2025. Plaintiff (the landlord) seeks to recover possession of 95 Cliftwood Street, 1R, Springfield, Massachusetts (the "Premises") from Defendants (the tenants) based on a no-fault termination of a tenancy at will. The tenants appeared at trial and represented themselves. The landlord appeared with counsel. The tenants appeared and represented themselves. The tenancy having been terminated without fault of the tenants, the Court accepted their testimony as an oral petition for a stay pursuant to G.L. c. 239, §§ 9 et seq. The hearing on the stay was consolidated with the trial on the merits.

Based on all the credible testimony, the other evidence presented at trial and the reasonable inferences drawn therefrom, in light of the governing law the Court finds as follows:

The landlord owns the Premises where the tenants continue to reside with five children (and twins on the way). Monthly rent is $1,100.00. The unpaid balance owed is $1,499.94 including the month of January 2025. The tenants stipulated to receipt of the notice to quit terminating their tenancy as of October 1, 2024. Accordingly, the Court finds that the landlord established her prima facie case for possession and damages in the amount of $1,499.94.

The tenants did not file an answer and asserted no defenses at trial. They simply seek additional time to move. The Court finds that (i) the Premises are used for dwelling purposes, (ii) the tenants have been unable to secure suitable housing in a neighborhood similar to that in which the Premises are located, (iii) the tenants have used due and reasonable effort to secure other housing, and (iv) the tenants' application for stay is made in good faith and that they will abide by and comply with such terms and provisions as the Court may prescribe. *See* G.L. c. 239, § 10. The Court finds that the tenants meet the criteria for a statutory stay of execution.[1]

Based upon all the credible testimony and evidence presented at trial, and considering the governing law, it is ORDERED that:

1. Judgment shall enter for Plaintiff for possession and $1,499.94 in damages, plus court costs.

2. Issuance of the execution shall be stayed until March 31, 2025 (and the time period in G.L. c. 235, § 23 tolled) on the conditions that:

[1] The Court took no evidence on whether the Premises are "occupied by a handicapped person or an individual sixty years of age or older" as set forth in c. 239, § 9. The issue is deferred until a future hearing should the tenants seek an additional stay.

a. The tenants pay $1,100.00 representing January use and occupancy by January 27, 2025.

b. Beginning in February 2025 and for each month thereafter during their occupancy of the Premises, the tenants shall pay half of each month's use and occupancy ($550.00) by the 1st and half by the 15th. There shall be a 3-day grace period for each payment required in this order.

c. The tenants shall continue to make reasonable efforts to locate and secure replacement housing and shall document those efforts by keeping a log of all locations as to which they have visited or made inquiry, including the address of the unit, date and time of contact, method of contact, name of contact person and result of contact.

3. If the tenants fail to make one or more of the required payments, the landlord may file a motion to issue the execution.

4. If the tenants do not vacate by April 1, 2025, and if they have not previously filed a motion for a further stay, the plaintiff shall be entitled to issuance of the execution by written application (with a copy sent to the tenants) without further hearing.

5. If the tenants seek a further stay of issuance of the execution, their motion must include the information required in section 2(c) herein.

SO ORDERED.
January 14, 2025

/s/ Jonathan J. Kane
Jonathan J. Kane, First 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-02591

****
SHP Management Corp., as lessor, and Pheasant Hill Village Associates, as owner
PLAINTIFFS

v.

Odalys Colon
DEFENDANT
****

ORDER

After hearing on the **Plaintiff's Motion For Entry of Judgment and Issuance of Execution**, the Court rules as follows:

On August 27, 2024, the parties executed an Agreement in this action with respect to 32 Paul Revere Drive, Feeding Hills, MA ("the premises"), which provides, in pertinent part: "... 2. Ms. Colon agrees not to smoke anywhere on the premises except in designated smoking areas. 3. Ms. Colon agrees to refrain from causing disturbances or engaging in harassing conduct anywhere on the premises...."

The plaintiff contends that the defendant is in substantial violation of these material terms of the Agreement, and that it is entitled to the entry of judgment and issuance of the execution in this action. The defendant appeared at the hearing on this Motion and testified.

At the hearing on this Motion, Patricia Landers testified that she is a neighbor of the defendant, and that the defendant smokes marijuana "day and night" in the premises. She

testified that the most recent occasion on which she smelled marijuana was the night of January 6, 2025. She testified that her apartment smells of marijuana because of the defendant's actions. She testified that the defendant disturbs her quiet enjoyment by slamming the door, banging on the walls and that she has hacked into her cable and hacked into her phone. She testified on cross- examination that she has never seen the defendant smoking marijuana.

Katherine Landers testified that she lives next door to the defendant and that she smells the marijuana smoke coming from the premises. She testified that the defendant disturbs her quiet enjoyment with loud music, and the sound of pounding and yelling at night. She testified that she now has asthma because of the defendant's smoking. She testified that the disturbances occur every night. She testified on cross-examination that she has never seen the defendant smoking marijuana. She testified on cross-examination that she and the witness Patricia Landers, who is her mother, are involved in a summary process action in this court. She testified on cross-examination that she does not get along with the defendant.

Lana Travers testified that she is a neighbor of the defendant and that she can smell the marijuana smoke from the defendant's unit. She testified on cross-examination that she has never seen the defendant smoking marijuana. She testified that the most recent occasion on which she smelled marijuana from the defendant's unit was the prior weekend.

The defendant testified that she has been a resident of the premises for two (2) years. She testified that she has a five (5) year old son, [redacted], and that he makes noise, which she tries to control. She testified that she does play music in the premises, but she does take the "quiet hours" at the development into consideration. She testified that she does not smoke cigarettes, and that she does smoke marijuana. She testified that she has had [redacted] since she was 13 and has had no treatment for this condition since she was 15. She testified that she has not seen a therapist in three (3) months. She testified that she smokes marijuana because "people complain even when I'm not doing it so why not do it." She testified that the marijuana helps her

[redacted].

The Court credits the witnesses' testimony on these issues.

The Court finds that the defendant's ongoing course of conduct in smoking marijuana and disturbing other residents constitutes a substantial violation of Paragraphs 2 and 3 of the August 24, 2024 Agreement. Accordingly, the **Plaintiff's Motion For Entry of Judgment and Issuance of Execution** is **ALLOWED**. Judgment shall enter this day for the plaintiff for possession of the premises. Execution shall issue in due course.

ANNE KENNEY CHAPLIN
ASSOCIATE JUSTICE

Date: January 14, 2025

cc: Frank A. Flynn, Esq.
Josh Gutierrez, Esq.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden , ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 25CV0010

TIA WALSH
PLAINTIFF(S),

v.

ORDER

ARVIND TREHAN AND NICK BOCCIC
DEFENDANT(S),

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

Defendant Trehan is the principal of the LLC that owns a condominium unit occupied by Plaintiff.

To the extent that Plaintiff seeks an order that Defendant Trehan make repairs, the motion is ALLOWED. Defendant Trehan shall complete all repairs cited by the West Springfield Board of Health within the time frames specified by the Board of Health.

With respect to Plaintiff's request for an order that Defendant Trehan not pass along fines to her that have been assessed by the condominium association, the request is DENIED. This request is is not an appropriate matter for a temporary restraining order hearing.

Defendant Nick Boccio shall be dismissed from this case. He is the condominium manager for Wentworth Estates and the allegations do not support a claim for personal liability against Mr. Boccio.

The legislative fee for injunctions is waived.

SO ORDERED: /s/ Jonathan J. Kane DATE: 1/14/25
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79SP004065

JOSHUA FITZGERALD,

Plaintiff,

v.

KRYSTAL LEWIS and ALLEN KISTLER,

Defendant

Order for Judgment

This matter came before the court on January 15, 2025 for hearing on the defendants' *Motion to Vacate (Remove) Default Judgment*. Neither defendant appeared at the hearing.

Plaintiff Joshua Fitzgerald commenced this summary process seeking to recover possession for Defendants Krystal Fitzgerald and Defendant Allen Kistler. The defendants were defaulted when they failed to appear at the scheduled time for First Tier Court Event on December 11, 2024. They appeared late and filed their *Motion to Vacate (Remove) Default Judgment* (judgment had not yet entered). The motion was scheduled for hearing on January 15, 2025 with notice sent to all parties. Since the defendants have again failed to appear in court for a scheduled hearing, their *Motion to Vacate (Remove) Default Judgment* is **DENIED**.

It is **ORDERED** that judgment enter for the plaintiff on his claim for possession against the defendants, with execution to issue in due course.

So entered this 15th day of January 2025.

Jeffrey M. Winik
Associate Justice (Recall Appt.)

41 W.Div.H.Ct. 89

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23H79SP004010

JOSEPHINE HART,
Plaintiff,
v.
GWEN LEWIS,
Defendant

Order for Judgment

This matter came before the court on January 15, 2025 for hearing plaintiff Josephine Hart's *Motion to Enforce Mediated Agreement and Enter Judgment*. Defendant Gwen Lewis did not appear at the hearing.

The plaintiff commenced this summary process seeking to recover possession and unpaid rent from the defendant. The parties entered into an agreement on November 15 2023. Under the terms of the agreement the defendant acknowledged that she owed $4,739.99 through December 15, 2023. She agreed to vacate the premises by December 15, 2023 and pay the $4,739.99 arrearages by June 1, 2024.

The defendant vacated the premises by December 15, 2023; however she breached a material term of the agreement when she failed to pay the $4,739.99 arrearages by June 15, 2024 (or anytime thereafter). As of January 15, 2025 the defendant owes the plaintiff $4,739.99 in unpaid rent.

Accordingly, the plaintiff's *Motion to Enforce Mediated Agreement and Enter Judgment* is **ALLOWED**.

41 W.Div.H.Ct. 90

It is **ORDERED** that judgment enter for the plaintiff on his claim against the defendant for damages only in the amount of $4,739.99, plus costs of $339.99 for monetary and statutory interest, with execution to issue in due course.

So entered this 15th day of January 2025.

w/permission

Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

PARTYKA PARTNERS, LP,

Plaintiff,

-v.-

DOCKET NO. 24SP01674

FRANK GOMEZ,

Defendant.

ORDER

This matter came before the court on December 6 and 13, 2024 for hearing on the defendant's motion to dismiss the eviction case and to waive "all applicable appeal fees/bond", the defendant's motion to stay the execution, and on the plaintiff's motion for a payment order.[1] The plaintiff appeared at both hearings through its attorney with the manager. The defendant appeared at both hearings and was self-represented. This order includes rulings on all motions pending before the court.

This is a no fault eviction case in which the plaintiff seeks possession of the subject rental premises. The defendant transferred the case from Palmer District Court where it had been filed on March 21, 2024. On June 4, 2024, with the assistance of a housing specialist of this court, the parties entered into an Agreement to resolve the case. By its terms, the defendant agreed to move on or before September 4, 2024. In exchange for "strict compliance with the vacate date"

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[1] Although the four motions were scheduled for hearing on December 6, 2024 at 2:00 p.m. the court continued the hearing on the defendant's motion to waive the appeal bond for further hearing on December 13, 2024 at 9:00 a.m. The December 6 hearing was recessed for the defendant to complete and file an affidavit of indigency. However, he did not complete it in a way that the court could determine if he met the statutory definition of indigency. The defendant reported to the court that he had to leave the courthouse by 4:15 p.m. and then by 4:00 p.m. for religious reasons. To accommodate the defendant's request, the court concluded the hearing at 3:35 p.m. and continued the motion to waive the appeal bond to December 13, 2024 at 9:00 a.m. The defendant was instructed to complete an affidavit of indigency by the end of the day on December 12, 2024.

the plaintiff agreed to waive unpaid rent/use and occupancy through June 2024 and to pay the defendant $3,000 when he returned the keys. In consideration of any potential claims (exclusive of personal injury claims) the plaintiff also agreed to waive the use and occupancy for July, August and September 1 - 4, 2024 as well as costs. The parties agreed that the case would be dismissed unless either party brought it forward by October 4, 2024. If the defendant failed to vacate as he agreed, the plaintiff could bring a motion for entry of judgment.

The plaintiff filed such a motion on September 5, 2024 on the grounds that the defendant did not move as he agreed to do. After a hearing at which both parties appeared, the court issued an order on September 25, 2024 allowing the motion and ordering that judgment enter for possession only. Judgment entered on September 30, 2024 for possession only. The plaintiff requested the execution, but the execution did not issue because the defendant had filed a timely notice of appeal on October 9, 2024.

Defendant's Motion to Dismiss. Defendant seeks to dismiss the eviction case on the grounds that it was brought in retaliation, that the landlord made unspecified inaccurate statements, and that he was pressured into signing the June 4, 2024 Agreement because he was going to class and he was naïve and lacked knowledge. The plaintiff opposed the motion on the grounds that the case resolved after two mediations with a housing specialist of this court. The housing specialist explained the terms. Between the two mediations, the defendant consulted with an attorney. The defendant did say that he had class later in the day, but that there was sufficient time allotted to the mediation.

The court finds no grounds to dismiss the eviction case at this time. Whether the case was brought in retaliation for a statutorily protected activity and whether the landlord made inaccurate statements are defenses to the eviction. There is no evidence before the court other than the defendant's assertions to support his argument. The court notes the timing of the assertions. The defendant did not file a motion to set aside the Agreement in the previous four months since he entered into the Agreement. It was raised in his motion filed on October 9, 2024, after judgment entered and after the date he had agreed to move. Finally, the court notes that the Agreement contains the following acknowledgement initialed by both parties:

> **I UNDERSTAND THAT I DO NOT HAVE TO SIGN THIS AGREEMENT, AND THAT I HAVE THE RIGHT TO GO IN FRONT OF A JUDGE FOR A DECISION IN THIS CASE. I ACKNOWLEDGE THAT I AM SIGNING THE**

AGREEMENT VOLUNTARILY. I UNDERSTAND THE TERMS OF THE AGREEMENT, AND I AGREE THAT THE TERMS ARE FAIR AND REASONABLE.

The court considers that the defendant signed this acknowledgment in good faith and accurately.

Defendant's Motion to Stay the Execution. Section 7 of the court's September 25, 2024 order for entry of judgment provides that the defendant could file and serve a motion for a stay of the use of the execution as he saw fit in this no-fault eviction case. The defendant filed such a motion. At the December 6 hearing, he requested a stay of the execution to January 13, 2025. He reported that he was very confident that he would move on that date. He had a letter of intent for RAFT financial assistance for moving expenses. The plaintiff would not oppose such a further stay on condition that the defendant pay the use and occupancy for the time he remained in the premises. In any event, the court finds that the motion for a stay of the execution is moot because no execution may issue while the defendant's appeal is pending.[2]

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

The defendant submitted a second affidavit of indigency for the December 13 hearing, although it was not complete. The hearing was recessed for the defendant to complete all pages of the form. The hearing resumed when he completed the affidavit. The court finds that the defendant's affidavit of indigency in support of his motion demonstrates that he is indigent within the meaning of G.L. c. 261 §27A-27G at this time.

Turning to the second prong of the test for waiver of an appeal bond, whether the defendant has any defense or issue to present on appeal which is not frivolous, the court finds that he does have such a defense within the meaning of G.L. c. 239 §5. The court notes that although the defendant filed a motion to file a late answer twice, there is no proposed answer in

[2] The plaintiff requested the execution in writing on October 11, 2024. However, the Clerk's Office did not issue an execution because the defendant had filed his notice of appeal on October 9, 2024.

the docket.[3] However, the defendant argued at the hearing that he had certain defenses to the no-fault eviction. The court finds that such defenses meet the "non-frivolous" standard.

The court notes that there is no monetary judgment that could be set as a bond in this case. Under the unique circumstances of this case, the court does not find any other amount that should be ordered to be paid as bond. In any event, the court finds that the defendant meets the criteria for a waiver of the bond. However, the court is required by G.L. c. 239 §5(e) to order the defendant to pay use and occupancy as it becomes due while the appeal is pending. The defendant argued persuasively that he was moving out of the premises relatively soon, on January 13, 2025. If he moved as he agreed, there will be no future use and occupancy required while his appeal is pending. If he did not move as he agreed, the defendant must pay use and occupancy of $1,050 to the plaintiff beginning on February 1, 2025 and continuing each month that he remains living in the premises while his appeal is pending.

Plaintiff's motion for payment order. The plaintiff requested that the court order the defendant to pay use and occupancy of $1,050 for December and the prorated amount for the thirteen days in January which the defendant says he will occupy the premises. The plaintiff also requests that the court order the defendant to pay use and occupancy since September 4, 2024 when he agreed to move or since September 30, 2024 when judgment entered. The defendant argued in opposition that the request does not respect his work hours which have been reduced. For example, he did not work any hours the week before the hearing.

Except as ordered as part of the appeal bond waiver above, the court finds no grounds to order payment of use and occupancy at this time. There is no monetary judgment for unpaid rent/use and occupancy or costs in this case. The plaintiff may pursue any valid claim for use and occupancy between September 4, 2024 and the date included in this order in a separate civil case.

Orders

After hearing and for the reasons stated above, the following orders will enter:

1. The defendant's motion to dismiss the eviction case is **DENIED**.
2. The defendant's motion for a stay of the execution is **MOOT.**

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[3] The motion(s) were to be heard on June 4, 2024, but the parties entered into their Agreement to resolve the case that day.

3. The defendant's motion to waive the appeal bond is **ALLOWED** to the extent that the amount of such a bond could be established.
4. The defendant will pay use and occupancy of $1,050 beginning on February 1, 2025 and continuing on the first of each month while the appeal is pending and he occupies the premises.
    a. If the defendant does not occupy the premises effective February 1, 2025, he is not required to make use and occupancy payments while his appeal is pending.
5. If the defendant fails to pay the use and occupancy as ordered above, the plaintiff may file a motion to dismiss the appeal pursuant to G.L. c. 239 §5(h).
6. The plaintiff's motion for a payment order is **DENIED**, except to the extent use and occupancy is ordered pursuant to order no. 4 above.

January 15, 2025

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79SP001179

PITTSFIELD HOUSING AUTHORITY,

Plaintiff,

v.

VANESSA BARBOSA,

Defendant

Order for Judgment

This matter came before the court on January 15, 2025 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 May 1, 2024 the parties entered into a written agreement. Under the terms of the agreement the defendant acknowledged that she owed $14,037.00 in unpaid rent through April 2024. The defendant agreed to pay her monthly rent by the fifth day of each month, pay $300.00 each month towards her rent arrearage, and apply for RAFT assistance. The agreement further provided that if the defendant failed to comply with her payment obligations the plaintiff could file a motion for entry of judgment.

At that time the agreement was signed in May 2024 the defendant's monthly rent was set at $00.00 (with a $74.00 utility credit). The defendant's rent obligation did not change through November 2024. The defendant's rent was adjusted in November 2024 (based upon her reported income) to $192.00 effective December 1, 2024. The defendant's RAFT application was denied.

The defendant has not complied with material terms of the May 1, 2024 agreement. First, she did not make any of the monthly $300.00 payments that were to be applied towards her rent

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arrearage. Second, the defendant has failed to pay her monthly rent ($192.00) for December 2024 or January 2025. As of December 18, 2024 the defendant's rent arrearage $13,256.00.[1]

As of January 15, 2025 the defendant does not have a pending RAFT application.

Because the defendant has not complied with her payment obligations under the May 1, 2025 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 $$13,256.00, plus 239.50 costs.

Execution for possession and damages shall not issue until July 1, 2025 (a date after the school term for the defendant's children ends) provided the defendant complies with these payment terms:

1. The defendant must pay the plaintiff $384.00 (December and January rent) by January 29, 2025;
2. The defendant must pay the plaintiff $192.00 by the tenth (10th) day of February, March, April, May and June.

If the defendant fails to make one or more of these payments the plaintiff may file a motion to issue the execution immediately.

So entered this 15th day of January 2025.

Jeffrey Winik w/Permission

Jeffrey M. Winik
Associate Justice (Recall Appt.)

[1] This amount is less than the amount due on May 1, 2024 because while the defendant's portion of the rent was $0.00 the plaintiff applied the monthly utility credit towards the defendant's rent arrearage.

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,** **Defendants.**	**ORDER**

After hearing on January 2, 2025, at which the plaintiff landlord appeared through counsel and the defendant tenant Ms. Kulak appeared self-represented and Mr. Kulak appeared by Zoom also self-represented and also at which a representative from the Tenancy Preservation Program appeared, the following order shall enter:

1. **Mr. Kulak's Motion to Vacate the Default:** MR. Kulak's default is vacated.
2. **Landlord's Motion for Use and Occupancy Pending Trial:** Though counsel for the landlord asserted that the landlord has not received rent in many months and that the arrearage is now $50,000, the landlord did not

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assert any other factor that would tend to weigh in its favor. On the other hand, the tenants are asserting various counterclaims including Retaliation, Breach of Warranty of Habitability, Sex Discrimination, Sexual Harassment, Violations of the Security Deposit Laws, Breach of the Covenant of Quiet Enjoyment, a change in rent charged upon taking occupancy. The tenants asserted at the hearing that there are major conditions of disrepair including lack of heat and leaks from the ceilings a lack of screens, and broken stairs with supporting photographs.

3. Additionally, given that the trial in this matter is being scheduled within a month of this hearing on the motion for use and occupancy and given all the factors to be considered under *Davis v. Comerford,* 483 Mass. 164 (2019), the motion is denied without prejudice.

4. **Scheduling of the Trial:** Mr. Kulak has now [redacted], and it is anticipated that he will be able to be able to attend a trial after 30 days in said program. To provide accommodation to Mr. Kulak so that he may appear and participate in the trial, the trial date shall be scheduled for February 18, 2025, at 9:00 a.m.

5. This matter shall be scheduled for a Status Hearing on **February 11, 2025, at 9:00 a.m.**

So entered this 16 day of January, 2025.

Robert Fields, Associate Justice

Cc: Bekki Craig, TPP
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79CV000922

SUSAN PASSERELLO and RONALD SIMPSON,

Plaintiffs,

v.

CAVALIER MANAGEMENT,

Defendant

ORDER

After conducting a hearing on January 15, 2025, the January 13, 2025 order is modified as follows:

The defendant is **ORDERED** to restore heat immediately to the bedroom at 13 Second Street, Apt. 40, Pittsfield, MA, together with a working thermostat, all in compliance with the requirements of the State Sanitary Code.

It is further **ORDERED** that commencing on January 15, 2025, and continuing each day thereafter, the defendant shall secure/reserve a hotel room in Pittsfield to be used by the plaintiffs at the defendant's expense, until either:

1. Heat is restored to the bedroom at 13 Second Street, Apt. 40, Pittsfield, MA, together with a working thermostat, by 11 a.m. that day, with notification given to the plaintiffs by 11 a.m. that day; or

2. The defendant provides the plaintiffs with space heater suitable for temporary use in the bedroom by 11 a.m. on the day it is delivered to the apartment. The space heater must be approved in writing for temporary residential use by the Pittsfield Health Department before it is delivered to the apartment.

The clerk is requested to schedule this matter for further hearing on January 22, 2025 at 9 a.m.

So entered this 16th day of January, 2025. w/Permission

Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 25-CV-9

MIGDALIA CAMACHO,

Plaintiff,

v.

KAYLIN LIGON and COMMUNITY BUILDERS, INC.,

Defendants.

ORDER

After hearing on January 13, 2025, on the plaintiff's motion for injunctive relief at which she and her upstairs neighbor defendant Kaylin Ligon appeared self-represented and at which the defendant landlord appeared through counsel, the following order shall enter:

1. Plaintiff Camacho is seeking an order that addresses the sounds coming into her apartment from the upstairs' unit (in which defendant Ligon resides), particularly during the "quiet hours" of 11:00 p.m. to 7:00 a.m.

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2. Camacho also makes a claim that due to her disabilities, she is awoken frequently during the night and unable to sleep sufficiently, causing her health to decline significantly.
3. Camacho is also and seeks an order that includes provision of a hotel accommodation until she can be relocated to a third-floor unit.
4. Camacho has been complaining to the landlord for the past year and she has also worked with the Mass Fair Housing office in seeking a reasonable accommodation to be transferred to a third-floor unit.
5. The landlord reported on the record that the tenant has been placed on the waiting list for a third-floor unit.
6. It appears from the report of the landlord's counsel and its Property Manager present at the hearing that it has not investigated the plaintiff's complaints about noise. Its response to the plaintiff's complaints has been solely to direct her to call the police. The landlord's argument that because this is a "tenant-on-tenant" issue and that the landlord is not in a position to "solve" the problem, is an abdication of the landlord's duty when a tenant complains of excessive noise from an upstairs neighbor. The Property Manager added that the situation is "she said/she said" as if nothing more can be done.
7. Ms. Ligon denies that she or her household members are purposely causing noise. She explained, though, that her unit has no carpets or area rugs and that she is a student who sometimes works late into the night.
8. **Order:** The landlord shall take reasonable steps to engage in a good faith investigation of the sounds that travel from Ms.Ligon's unit to Ms. Camacho's

unit. Additionally, if needed, to investigate the use of means of quieting said sounds such as carpets or rugs or other materials.

9. The landlord shall also maintain its waiting list for transfer to a third-floor unit consistent with its rules and policies for same and shall provide a description of said policies to the tenant.

10. Ms. Ligon shall take all reasonable steps to reduce sound from traveling from her unit to Ms. Camacho's unit during "quiet hours" between 11:00 p.m. and 7:00 a.m. and shall cooperate with the landlord's efforts to investigate and, possibly, address said sound travel.

So entered this 21 day of January, 2025.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-239

NICHOLAS HURLIN,

Plaintiff,

v.

NICHOLAS FOLEY and SABRINA SHAVER,

Defendants.

ORDER

After hearing on January 14, 2025, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and tenant appeared self-represented, the following order shall enter:

1. The tenants explained and alleged that since the landlord failed to make the repairs that are agreed to in the May 9, 2024, Agreement (hereinafter, Agreement), they could withhold paying the rent. They then learned from a lawyer that because they are in a court agreement they can not do so without

permission by the court. After learning that, they have paid all the rent since the Agreement until and through November 2024.

2. The tenant explained further that they then did not pay December and January rent (@ $1,200) because they received letters from the landlord that the rent was going to be raised to $1,800.
3. The tenants shall pay $2,400 (for December 2024 and January 2025) today and then pursue their pending RAFT application.
4. The terms of the Agreement were that if RAFT pays $7,000 the landlord will waive $1,400 to bring the balance to $0. With today's payment of $2,400 (noted above), the tenants will have paid all intervening rent since the Agreement. And given that the tenant shall continue to make their rent payments going forward, the terms of the Agreement shall remain in effect. Specifically, if the pending RAFT application is successful and pays the landlord $7,000, the landlord shall waive $1,400.
5. The landlord shall make all of the repairs promptly that are listed in the Agreement.

So entered this 21 day of January, 2025.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 24-SP-3612

MIHCAEL P. MENDYK, JR.,

Plaintiff,

v.

MEGAN O'LAUGHLIN,

Defendant.

ORDER of DISMISSAL

After hearing on January 17, 2025, at which the landlord appeared self-represented and the tenant appeared with Lawyer for the Day Counsel (Gabriel Fonseca), the following order shall enter:

1. The tenant's verbal motion to dismiss is allowed. The landlord failed to name an indispensable party, to wit: Bryce Cass.
2. The landlord has a tenancy with joint tenants, O'Laughlin and Cass and though he is seeking to evict both he only served a termination notice and served a summons to O'Laughlin.
3. This matter is hereby dismissed, making all other motions moot.

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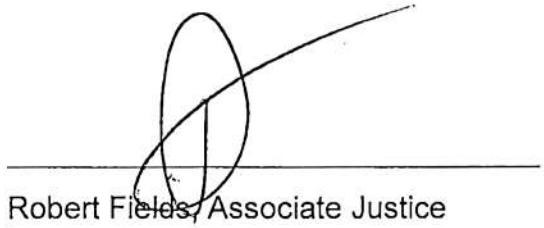
So entered this 21 day of January, 2025.



Robert Fields, Associate Justice

Cc: Gabriel Fonseca, Esq., Lawyer for the Day (CLA)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION

JAQUELINE SILVA,

Plaintiff,

-v.-

DOCKET NO. 25CV00024

KYANSARIH DIAS,

Defendant.

ORDER

This matter came before the court on January 17, 2025 for a hearing on the plaintiff's request for an emergency order. The plaintiff appeared, but the defendant did not. Both parties are self-represented.

The plaintiff is the owner of the subject rental premises located at 32 Woodside Terrace in Springfield, Massachusetts. She lives in the third floor apartment there. She rented the second floor apartment to the defendant approximately five months ago at a monthly rent of $1,800. She served a thirty-day notice to quit on the defendant, but she did not begin an eviction case against her because Ms. Dias moved out of the premises on December 19, 2024. Ms. Silva's security camera recorded the move. However, the defendant left a box and two single bed frames behind in the apartment.

The plaintiff now asks the court for an order allowing her to change the password on the electronic locks to the premises so that she can make repairs to the unit, on the grounds that Ms. Dias has surrendered possession of the unit. Ms. Silva submitted a return of service from a deputy sheriff that she left a copy of the pleadings at 32 Woodside Terrace at 10:15 a.m. and mailed a copy to the defendant at the same address, both on January 14, 2025. The plaintiff reported that she does not know where the defendant moved, but she believes that Ms. Dias

checks her mailbox at the premises every day. She last saw her on the evening of January 14, 2025 with the former first floor tenant, Jenniffer Santiago,[1] and two men working on a car across the street from the premises. Ms. Silva was "pretty sure" that she saw the former tenants, or at least Ms. Santiago, checking the mail via her security camera, although it was dark.

While the evidence indicates that Ms. Dias has moved out of the premises, there is uncertainty about whether she intends to retrieve the few remaining belongings from the apartment. It is not clear why she would be checking for mail at the premises a month after she moved. Because the locks are electronic, there was no "key" to return to the landlord. Service was at the defendant's last and usual address known to the plaintiff, although she does not reside there. As discussed with the plaintiff at the hearing, the court will continue this matter for two weeks to allow time for the defendant to receive forwarded mail and to allow her the opportunity to appear in court or otherwise resolve the issue with the plaintiff.

Order

The following orders enter:

1. **The hearing on the plaintiff's request for an emergency order is continued to January 31, 2025 at 9:00 a.m. Both parties must attend. At the hearing, the defendant may show cause why the court should not grant the relief requested by the plaintiff.**
2. Immediately after the hearing, the Clerk's Office sent a notice of the January 31 hearing to both parties. As soon as she receives it, the plaintiff will post a copy of that notice on the front door of the defendant's apartment and on the front door of the building.

January 21, 2025

Fairlie A. Dalton

Fairlie A. Dalton, J. (Rec.)

[1] The plaintiff seeks the same relief in a separate case filed in this court against Jenniffer Santiago, No. 24CV00875. A separate order issues in that case today.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-3160

NAYLOR NATION REAL ESTATE LLC,

Plaintiff

v.

ALEXIS MURCHISON,

Defendant

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

This summary process case for nonpayment of rent came before the Court for a bench trial on November 21, 2024. Plaintiff appeared with counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of residential premises located at 149 Bowles Street, 3rd Fl., Springfield, Massachusetts (the "Premises").

At the outset of trial, the parties stipulated to Plaintiff's prima facie case for possession. Defendant acknowledged that she received the notice to quit dated July 12, 2024 and has not vacated. She did not contest the legal sufficiency of the notice. The parties further stipulated that monthly rent is $1,500.00 and that rent has not been paid for five months for a total of $7,500.00. Defendant filed an answer with defenses and counterclaims.[1]

Based on the credible testimony and the other evidence presented at trial, the

[1] A default judgment previously entered was vacated and Defendant was permitted to file a late answer.

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reasonable inferences drawn therefrom and the pretrial stipulations, the Court finds as follows:

Defendant moved in during the month of February 2024. She claims that she had "critters" in the walls and ceilings upon moving but she first notified Plaintiff on March 12, 2024. She claims that she continues to hear these animals. Plaintiff scheduled a series of appointments with a wildlife removal service beginning on April 2, 2024. As of July 19, 2024, Plaintiff had sealed all entry points, added "critter caps," installed bait boxes, and it reported that it found no evidence of animals in the walls or ceilings. Defendant offered no credible testimony that the noises were ongoing beyond this date. In fact, Defendant at no time offered substantial credible evidence to support her claims that she could hear animals in the walls and ceilings.

In addition to the animal noises, from time to time Defendant complained to Plaintiff about fleas, rodents and roaches in her unit, as well as insects collecting in the building's back hallway adjacent to her door. The pictures she offered at trial support her claims to some extent, but the evidence does not support a finding that these issues were significant or persistent. The Court finds that each time Defendant complained, Plaintiff responded promptly to schedule treatments or to otherwise address Defendant's complaints.

Separate from animals and pests, Defendant complained of plumbing problems, including a leaking toilet and sink. The credible evidence shows that Plaintiff addressed her complaints successfully and promptly, despite Defendant's claims that the leak under the sink continues. The Court finds that the plumbing issues about which Defendant complained do not rise to the level of a significant defect or

substantial code violation.

In sum, the Court finds that Plaintiff responded promptly and appropriately to the complaints made by Defendant. There is no evidence the Plaintiff was negligent in addressing issues reported by Defendant, and there was no witness or housing inspection report to corroborate Defendant's claims of conditions of disrepair. Therefore, the Court concludes that Plaintiff is not liable under G.L. c. 186, § 14.

Despite Plaintiff's reasonable efforts to address Defendant's complaints, Defendant did endure sporadic intrusions of pests in the unit in the form of animals in the ceilings and walls, fleas, stink bugs, roaches and mice. The repeated presence of vermin constitutes a breach of the warranty of habitability.[2] A landlord who violates the warranty of habitability is strictly liable. *Berman & Sons v. Jefferson*, 379 Mass. 196 (1979). The typical measure of damages in a warranty of habitability case is the difference between the rental value of the premises as warranted less the fair value of the premises in their defective condition. *Id.*, 363 Mass. at 203. Damages in rent abatement cases are not capable of precise measurement. See *McKenna v. Begin*, 5 Mass. App. Ct. 305, 311 (1977) ("While the damages may not be determined by speculation or guess, an approximate result is permissible if the evidence shows the extent of damages to be a matter of just and reasonable inference.").

The breach of warranty in this case is not substantial or material. Defendant did not offer credible evidence that she suffered from an infestation but merely demonstrated that vermin entered her unit periodically from March 2024 to November

[2] The Court finds that the plumbing issues about which Defendant complained were minor and do not constitute a breach of the implied warranty of habitability

2024. The Court concludes that, during this period, the fair rental value of the Premises was diminished by 5%. Therefore, the Court awards damages to Defendant damages in the amount of $825.00 for breach of warranty.[3]

Based upon the foregoing, and considering the governing law, the following order shall enter:

1. Plaintiff is entitled to unpaid rent in the amount of $7,500.00.

2. Defendant is entitled to damages in the amount of $825.00 on account of her claims and defenses.

3. Pursuant to G.L. c. 239, § 8A, Defendant shall have one week from the date this order is entered on the docket to deposit with the Clerk the sum of $6,675.00, plus court costs of $ 223.52 and interest in the amount of $ 371.14, 6for a total of $ 7269.66. The deposit shall be made by money order or bank check payable to the "Commonwealth of Massachusetts."

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

5. If the deposit is not received by the Clerk within the allotted time, judgment shall enter for Plaintiff for possession and damages in the amount of $6,675.00 plus costs and interest, and execution shall issue by written application.

SO ORDERED.
January 22, 2025

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

cc: Court Reporter

[3] Any claims relating to retaliation are deemed waived as they were not raised at trial.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-2182

JOSEPH LUNA TORRES,

Plaintiff

v.

JESSICA RIVERA RODRIGUEZ,

Defendant

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

This no-fault summary process case came before the Court for a bench trial on October 31, 2024 and November 21, 2024. Plaintiff appeared self-represented. Defendant appeared with counsel. Plaintiff seeks to recover possession of a single-family home located at 175 Fiberloid Street, Indian Orchard, Massachusetts (the "Premises").

The parties entered a pretrial stipulation pursuant to which Defendant acknowledged that Plaintiff owns the home, that she received the notice to quit dated December 29, 2023 terminating the tenancy as of January 31, 2024, and that she remains in possession of the Premises. Defendant filed an answer with defenses and counterclaims.

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

For several years beginning in 2017, the parties resided together with their minor children. In May 2023, Plaintiff purchased the Premises for the family to live and operate a child-care business.[1] The parties agreed to share certain household expenses, including mortgage payments. The credible evidence shows, and the Court finds, that Defendant made regular monthly payments toward the mortgage at the same time each month until November 2023. The parties' oral agreement for Defendant's occupancy of the Premises for an unstated term supported by consideration constitutes a tenancy at will. Given this finding, Plaintiff's rental period notice was legally sufficient to terminate Defendant's tenancy.[2]

The parties' personal relationship ended in late 2023. On December 4, 2023, Plaintiff obtained an abuse prevention ("209A") order against Defendant, and as a result, Defendant and her children left the Premises. The order was vacated on December 14, 2023, and in its place a 209A order entered in favor of Defendant. Plaintiff was then removed from the Premises by the police, and other than a single visit to retrieve belongings, Plaintiff has not returned. Since mid-December 2023, then, Defendant has had exclusive use of the Premises. Plaintiff seeks to recover possession of the Premises because he is the owner of the home and wishes to live there.

By way of defenses and counterclaims, Defendant argues that Plaintiff's

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[1] Defendant does not seek a constructive trust based on her contributions to the purchase of the Premises. Even if she did make this claim, the weight of the credible evidence does not support a finding of a constructive trust.

[2] Defendant's defense to possession based on the argument that she was entitled to a 90-day notice is dismissed. Likewise, Defendant's claim that the notice is defective because it is inconsistent with the reason for eviction stated in the summons and complaint is dismissed. Both the notice to quit and the summons and complaint describe a no-fault basis for eviction.

termination notice on December 29, 2023 was sent in retaliation of her seeking the 209A order earlier in the month. The facts do not support an affirmative claim for retaliation or reprisal under G.L. c. 186, § 18 because Defendant did not exercise any rights related to laws or regulations which have as their objective the regulation of residential premises. Unlike the affirmative claim for retaliation under § 18, a defense to possession based on retaliation as codified in G.L. c. 239, § 2A does consider a tenant's exercise of legal rights under G.L. c. 209A.

Here, Plaintiff served a notice to quit within six months of Defendant obtaining the 209A order. A rebuttable presumption of retaliation arises if a tenancy is terminated within six months after any the tenant takes action under G.L. c. 209A, and such presumption may be rebutted only by clear and convincing evidence that such action was not a reprisal against the tenant and that Plaintiff 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 Defendant had not commenced said action. See G.L. c. 239, § 2A. Plaintiff did not demonstrate by clear and convincing evidence that he would have sent the notice to quit when he did had Defendant not sought a restraining order under c. 209A. Accordingly, Plaintiff's claim to possession is dismissed.

Turning to the other counterclaims alleged by Defendant, a claim for intentional infliction of emotional distress is comprised of the following elements: (1) that [Plaintiff] intended to inflict emotional distress, or knew or should have known that emotional distress was the likely result of his conduct, (2) the conduct was "extreme and outrageous," "beyond all possible bounds of decency" and "utterly

intolerable in a civilized community," (3) [Plaintiff's] actions caused [Defendant's] emotional distress, and (4) [Defendant's] emotional distress was "severe" and of a nature "that no reasonable [person] could be expected to endure." *Agis v. Howard Johnson Co.*, 371 Mass. 140, 144-45 (1976). Here, Plaintiff's behavior was not so "extreme and outrageous" as to exceed all possible bounds of decency. His domestic partnership crumbled, and he no longer wanted Defendant to reside in the Premises. Even though the house was intended to be the family domicile, commencing a legal process to recover possession after the dissolution of a relationship does not exceed all possible bounds of decency. He did not change the locks on the doors or throw Defendant's belongings in the street, but instead left it to the courts to determine his rights. The Court finds in favor of Plaintiff on Defendants' counterclaim for infliction of emotional distress.

With respect to Defendant's counterclaim for breach of quiet enjoyment and threatened interference with utilities and use of the home, Defendant failed to prove her allegations by a preponderance of the evidence. The parties were in a domestic partnership and Plaintiff was forcibly removed from the home after Defendant obtained a 209A order. The evidence shows that both parties stopped making mortgage payments and Plaintiff stopped contributing to the expenses of the home where he no longer resided. Defendant has had exclusive possession of the Premises for many months. Her utilities have not been cut off. Under these circumstances, where the parties lived together as a couple for years, the evidence does not warrant a finding that Plaintiff violated Defendant's tenancy rights under G.L. c. 186, § 14.

Lastly, Defendant's claim for unjust enrichment is unsupported by substantial

evidence. Although Defendant may have contributed toward the house and a major repair for their couples' previous home, the evidence does not show that Defendant's expenditure of money toward the family's expenses violates the fundamental principles of justice or equity and good conscience. Plaintiff testified that the parties held some of their savings jointly and used them toward family expenses.[3] Without evidence of how joint expenses were paid by each party over time, there is no basis to conclude that Plaintiff was unjustly enriched.

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

1. Judgment for possession shall enter in favor of Defendant.[4]

2. The Court finds in favor of Plaintiff on Defendant's counterclaims.

SO ORDERED.

DATE: January 22, 2025

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

cc: Court Reporter

[3] To the extent that a further financial reckoning is warranted, the parties have an existing case pending in the Probate and Family Court regarding child support claims.
[4] Court costs were not incurred by Defendant.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 24-SP-4347

U.S. BANK TRUST, N.A.,

Plaintiff,

v.

MACK A. LYNCH, MARCUS D. LYNCH and LUIS G. GONZALEZ,

Defendants.

ORDER

This matter came before the Court on January 9, 2025, for trial, at which the plaintiff bank appeared through counsel and the defendants all appeared self-represented, the following Order shall enter:

1. The defendants explained that they believe that the foreclosure was not proper due to their paying the amount of the outstanding payments (arrears and fees) due on their mortgage in advance of the foreclosure auction. They explained further that they withdrew funds from their retirement accounts after learning the amount of funds they needed to pay the Servicer and that they

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sent a check in the amount of $100,000. They believed that their mortgage was going to be reinstated at that time, possibly after sending them another check in the amount of $3,000.

2. They described how they were in "constant contact" the Servicer multiple times over many days and thought that they were going to be able to reinstate their mortgage with the payment(s) they sent.
3. Their bank check in the amount of $100,000 was eventually sent back to them and they brought it with them to the hearing.
4. In response to questions by the judge they credibly explained that they did not know that they were required to file an Answer or Discovery or that they could apply for assistance from Community Legal Aid and/or Springfield No One Leaves.
5. The Court is concerned that the defendants may have colorable defenses to this summary process action and, possibly, viable challenges to the foreclosure but that same is not properly before the court solely due to their appearing without the assistance of legal counsel.
6. The defendants' oral motion for filing a late Answer and Discovery Demand is allowed and the trial is continued generally.
7. The defendants shall have until February 21, 2025, to file and serve an Answer and a Discovery Demand.
8. The defendants are urged to reach out to Springfield No One Leaves at 413-342-1804 and/or Community Legal Aid at 413-781-7814 for assistance in this

matter (including for learning what an Answer and a Discovery Demand are and to help with filing them with the court).

9. The defendants may wish to work with the Court Service Center located at the Roderick Ireland Courthouse in Springfield.
10. This matter shall be scheduled for a Status Hearing on **February 27, 2025, at 9:00 a.m.**

So entered this 23rd day of January, 2025.

Robert Fields, Associate Justice

Cc: Rose Webster-Smith, Springfield No One Leaves
Jane Edmonstone, Esq., Community Legal Aid
Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 24-SP-4015

SANDRA DIAZ,

Plaintiff,

v.

MIRIAM SANABRIA,

Defendant.

ORDER

This matter came before the court for trial on January 23, 2025, at which each party appeared self-represented.[1] After consideration of the evidence admitted at trial, the following findings of fact and rulings of law and order for judgment shall enter:

1. **Background:** The plaintiff, Sandra Diaz (hereinafter "landlord") owns a two-family dwelling located at 166 Darling Street in Indian Orchard, Massachusetts (hereinafter, "premises"). The defendant, Miriam Sanabria

[1] The civil matter of Miriam Sanabria v. Sandra Diaz, 24-CV-772 was consolidated into this Summary Process Action by Order of the Court dated December 31, 2024.

(hereinafter "tenant') resides in one of the units located at the premises and has lived there as the landlord's tenant since October 2019.

2. The landlord served the tenant with a notice to quit for non-payment of rent in September 2024 and thereafter filed a timely summary process action. The tenant filed an Answer and asserted claims and defenses including breach of the warranty of habitability and breach of the covenant of quiet enjoyment.
3. **The Landlord's Claim for Possession and Unpaid Rent, Use, and Occupancy:** The parties stipulated to the landlord's claims for rent and possession, agreeing to proper service of the notice to quit and summons and to an amount of rent, use, and occupancy through January 2025 totaling **$6,600**. What remains for adjudication by the court are the claims and as much as they may act as defenses to the landlord's claim for possession of the tenant.
4. **Breach of the Covenant of Quiet Enjoyment:** There have been conditions of disrepair over the term of this tenancy (almost five years), but it appears that as they are brought to the attention of the landlord, she has them repaired. The exception has been the many floods caused by plumbing back-ups of which the parties agree there have been at least ten instances. The flooding has caused damage to the tenant's personal belongings stored in the basement and has led to chronic moisture within the basement ceiling's insulation. Though the landlord has removed some of the insulation in the basement ceiling she has not done so in an area of the basement above the tenant's belongings; nor has the landlord offered to assist in the removal or

compensation for the tenant's belongings. Further, the tenant complained credibly that the removed insulation in the basement has not been replaced and the basement's cold temperatures make the premises unreasonably cold, and the smell of the moisture form the basement permeates the premises. The landlord did not make it clear that the insulation was replaced and the photograph that she put into evidence shows the basement ceiling without insulation.

5. Landlords are liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of their acts or omissions causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s.14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent in not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997). The Court finds that the landlord's failure to address the insulation and moisture caused by repeated floods as described above violated the tenant's covenant of quiet enjoyment and G.L. c.186, s.14 and hereby award the tenant damages equaling three months' rent for her claim of breach of quiet enjoyment, totaling ($1,100 X 3) **$3,000**.[2]
6. **Conclusion and Order:** Based on the foregoing, the tenant shall have ten days from the date of this order noted below to deposit $ 2952.50 with the Court's Clerk's Office. This represents

[2] Though the tenant also made a claim of breach of warranty of habitability, the damage award under such a claim would have been of less value than those awarded under a claim of breach of quiet enjoyment and any such award would have been duplicative.

an award to the landlord for unpaid rent, use, and occupancy totaling $6,600 MINUS the award to the tenant for breach off the covenant of quiet enjoyment totaling $3,300 plus court costs of $ 229.16 plus interest in the amount of $ 118.34 . If the tenant makes this deposit, judgment shall enter for the tenant for possession and the funds shall be disbursed by the Court to the landlord. If the tenant fails to make this payment to the Court, judgment shall enter for the landlord for possession plus $3,300 plus court costs and interest.

So entered this 24TH day of January, 2025.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: **HOUSING COURT DEPARTMENT**

WESTERN DIVISION

Case No. 24-SP-1234

DAVID GRAHAM,

Plaintiff,

v.

NINA DUPUIS and STEVEN SANTIAGO,

Defendants.

ORDER

After hearing on January 23, 2025, on the landlord's motion for issuance of the execution and the tenant's motion for a stay on the execution, the following order shall enter:

1. The motions are continued to the date noted below for several reasons.
2. First, the moving parties did not have co-defendant Steven Santiago served notice of the motions and hearing date. Though Mr. Santiago is presently incarcerated, he remains a party to this summary process action and must be served notice.

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3. Second, Attorney Sanjiv N. Reejhsinghani was never properly withdrawn from this matter having filed a full appearance and then filing an LAR withdrawl notice. If Attorney Reejhsinghani was intending to disappear from this action he did not accomplish this successfully. Thus, he is noticed to appear at the below-noted hearing.
4. The clerks' office shall send notice of the below-noted hearing to all the parties, including Steven Santiago and shall also make arrangements for Mr. Santiago to appear either by Zoom or in person vis-à-vis *habeas corpus*. The clerks' office is also requested to send this Order and notice of hearing to Nina Dupuis as well as Attorney Reejhsinghani.
5. Additionally, the landlord shall repair the tenant's main door by no later than January 31, 2025.
6. This matter shall be scheduled for hearing on the two pending motions, and any other properly marked motions, on **February 4, 2025, at 2:00 p.m.**

So entered this 24th day of January, 2025.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-553

HSBC BANK, USA, N.A.,

Plaintiff,

v.

ROBERT MARONA,

Defendant.

ORDER for JUDGMENT

After hearing on January 22, 2025, on the plaintiff's motion for summary judgment at which all parties appeared through counsel, the following order shall enter:

1. The defendants did not submit written opposition, affidavits, or any other document to support an assertion that there are any material facts in dispute.
2. Though the defendants allege in their Answer that the bank refuses to sell the subject property to one of them---even though he was the highest bidder at the auction---there was nothing submitted to support that position. Additionally, the defendants' counsel did not even re-assert that during the

hearing but merely said that defendant Hoffman is seeking time to obtain sufficient financing to purchase the property from the bank.

3. As there appears to be no material facts in dispute, judgment for possession shall enter for the plaintiff.

So entered this 24 day of January, 2025.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-3403

MALKA APTS EQUITIES, LLC,

Plaintiff,

v.

ERICA RIVERA,

Defendant.

ORDER

After hearing on January 23, 2025, 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. After some payments from the tenant and from RAFT since the October 23, 2024, Agreement of the Parties (Agreement), the landlord states that the outstanding arrearage is $8,750 and no court costs.

2. Due to the tenant's failure to comply with the terms of the Agreement, judgment shall enter for the landlord for possession plus $8,750 in arrearage plus court costs.
3. There shall be a stay on the issuance of the execution contingent upon the tenant making the payments noted below.
4. The tenant shall pay $1,000 today and beginning in February 2025 shall pay her rent timely plus $100 towards arrearage by mid-month.
5. The tenant shall also pay $4,500 within five days of receiving her 2024 tax returns.
6. If and when the tenant's son's Social Security benefits begin, the tenant will increase the monthly arrearage payments from $100 to $500 (in addition to her rent).
7. This matter shall be dismissed upon a $0 balance.

So entered this 24 day of January, 2025.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 25-CV-14

BRENDA MICHALCZYK,

Plaintiff,

v.

ANNA D'AGOSTINO,

Defendant.

ORDER

After hearing on January 14, 2025, at which only the plaintiff tenant appeared but for which the defendant landlord failed to appear after proper notice, the following order shall enter:

1. The tenant reported to the court that the landlord only paid for two nights of the hotel bill and that the tenant has been required to pay for the hotel for all the other nights.
2. A *capias* (civil arrest warrant) shall issue for the defendant landlord Anna D'Agostino.

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3. The court's earlier orders requiring the defendant to restore the plaintiff tenant to her tenancy at the subject premises and to provide hotel accommodations for the tenant until her tenancy is restored.

So entered this 24th day of January, 2025.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-SP-2275

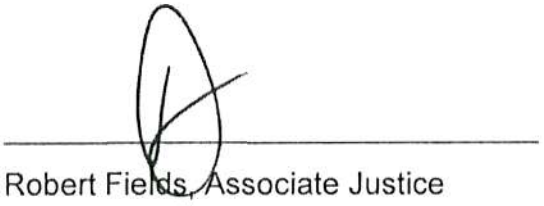
SLF REALTY, Plaintiff, v. KENNIA LOPEZ, Defendant.	ORDER

After hearing on January 22, 2025, at which the landlord appeared through counsel and the tenant appeared self-represented, the following order shall enter:

1. The parties reported that the landlord received RAFT funds on December 19, 2024, totaling $2,136.45, leaving a balance of $934 (and no court costs).
2. Thereafter, the tenant paid $700 in January 2025, leaving a balance of $1,168.
3. A judgment shall enter for the landlord for possession plus $1,168 plus no interest and no court costs.

4. The tenant shall pay the landlord $900 by January 31, 2025, and then $268 by February 11, 2025, and then $934 (February's rent) by February 14, 2025.
5. If the tenant makes these payments, the balance will be $0 and the case dismissed.
6. If the tenant does not make these payments, the landlord may file and serve to the tenant a Rule 13 application for the issuance of an execution.

So entered this 24 day of January, 2025.



Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Hampden , ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 25CV0554

WICKED DEALS LLC ,
PLAINTIFF(S)

v.

ORDER

BRIAN T GAUDREAU ,
DEFENDANT(S)

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

The Court finds that the electricity in Defendant's home has not been restored and that he uses a generator for power as needed. A home without electricity is uninhabitable, and temporary use of a generator is not a replacement for full-time electrical service. If the electrical service to the home has not been restored by 10:00 a.m. on January 25, 2025, Defendant must vacate the home and may not return until the electricity has been restored.

Because Defendant has not complied with previous court orders precluding him from residing in the home without electrical service, Plaintiff, the record owner of the property, is authorized to change the locks after 10:00 a.m. on January 25, 2025 (if power is not restored) to ensure that Defendant does not return without permission. It must provide a key to Defendant immediately upon restoration of power. It must also permit Defendant reasonable access to the home by appointment if he needs to retrieve personal items.

The Ludlow, Massachusetts Police Department is authorized to enter the subject premises at 1634 Center Street after 10:00 a.m. on January 25, 2025 and to remove Defendant if the power has not been restored by that time.

This order does not vest legal right to possession in Plaintiff, but is a temporary order barring Defendant from the property pending restoration of power. Plaintiff may take reasonable and necessary steps to prevent pipes from freezing, but it may not remove any of Defendant's possession without further court order.

Defendant was given notice of the terms of this order in person at the hearing on January 23, 2025.

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

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPSHIRE, ss.

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

NORTHAMPTON HOUSING AUTHORITY,

Plaintiff

v.

LINDA KIELSON,

Defendant

ORDER ON MOTION FOR RECUSAL

Defendant's motion for recusal was heard on January 23, 2025. She is under the mistaken impression that a judge can be disqualified by some inherent power exercised by the court, when in fact recusal is governed by the Code of Judicial Conduct set forth in Supreme Judicial Court Rule 3:09.

The test for disqualification requires that the judge satisfy both a subjective and an objective standard. "The subjective standard requires disqualification if the judge concludes that he or she cannot be impartial. The objective standard requires disqualification whenever the judge's impartiality might reasonably be questioned by a fully-informed disinterested observer...." *See* Rule 2.11.

I have done a subjective inquiry and conclude that I harbor no bias or prejudice toward Defendant. My orders in the matter have resulted from the application of the law to the facts of the case and are not motivated by any personal animosity toward Defendant. I have been and can remain impartial with respect to Defendant.

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With respect to the objective test for disqualification, I have no personal knowledge of Defendant outside of my role as judge hearing matters involving her landlord-tenant relationship. I have never had business dealings with Plaintiff and have never had a business or personal relationship with Plaintiff's counsel. I do not believe my impartiality could be reasonably questioned by a fully informed disinterested observer.

For the foregoing reasons, the motion for recusal is denied.

SO ORDERED.

January 26, 2025

/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. 24-SP-0226

NORTHAMPTON HOUSING AUTHORITY,

Plaintiff

v.

LINDA KIELSON,

Defendant

ORDER ON MOTION FOR STAY OF EXECUTION

Defendant's motion for stay of execution was heard on January 23, 2025. Defendant appeared self-represented, and Plaintiff appeared through counsel. As an accommodation to Defendant, the hearing was conducted by video at approximately 2:45 p.m.[1]

By way of background, judgment for possession entered on August 21, 2024. Defendant filed a timely notice of appeal. The Court subsequently waived the appeal bond and ordered use and occupancy payment during the appeal process. The order was reviewed and upheld by a single justice of the Appeals Court. When Defendant failed to pay use and occupancy as ordered, the Court allowed Plaintiff's motion to dismiss the appeal, which entered on the docket on December 6, 2024. Defendant did not file a notice of appeal as to the dismissal. The instant motion to stay execution was filed on December 19, 2024, although a levy has not yet been scheduled.

[1] Defendant previously requested accommodations to appear by video in the afternoon, which request was allowed.

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Defendant seeks a stay of execution of twelve months due to her medical condition and disability.[2] The address of the dwelling unit in question is 56 Maple Street, # 108, Florence, Massachusetts (the "Premises"), although this is not the address where Defendant lives. She [redacted] has not physically occupied the Premises as her principal residence since early 2022. Accordingly, Defendant's request for a stay is not to find alternative accommodations, but instead she seeks a stay to get additional time to remove her personal property from the Premises.

In a summary process case based on material lease violations, there is no statutory right to a stay of execution. *See* G.L. c. 239, §§ 9 et seq. (applicable to a tenancy terminated without fault and not based on a failure to pay rent). In a for-cause eviction as in the instant action, a stay is available only upon the exercise of judicial discretion based upon equitable principles in light of the circumstances of the particular case. The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.

Here, Defendant does not reside in the Premises and thus will not become unhoused following the levy on execution. Despite being given ample opportunity to do so, Defendant did not provide a credible explanation of why the circumstances would change if a stay was granted. She argued that moving one's home is a major life event and that it takes time to arrange for a move, but she could not articulate what the additional time would permit. She does not need to seek a new place to

[2] Although her appeal was dismissed, Defendant also references ongoing appellate proceedings and her motion for recusal as other bases for the stay.

live, only a place to store her belongings. If she cannot remove her personal property from the Premises, it will be stored for her benefit with a licensed public warehouser for at least six months pursuant to G.L. c. 239, § 4. Accordingly, even without a stay of execution, Defendant will have several additional months to make the necessary arrangements for her items to be removed to the location of her choosing.

Weighing against a lengthy stay is the need for Plaintiff to make available a subsidized housing unit within a housing project designed for individual who are elderly and/or have disabilities in an extremely tight housing market. The Premises have been unoccupied as a primary residence for approximately three years, and as a matter of public interest, the unit should be made available to a needy individual.

On balance, after considering all of the relevant factors, the Court shall allow a stay of execution to February 28, 2025. Defendant shall not be entitled to further stays from this Court for the purpose of moving her belongings.

For the foregoing reasons, the motion for stay of execution is ALLOWED through February 28, 2025.[3]

SO ORDERED.

January 26, 2025

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

cc: Court Reporter

[3] This order shall toll the period for use of the execution set forth in G.L. c. 235, § 23. If the execution in Plaintiff's possession will expire before it can be levied upon, Plaintiff may return it to the Court and a new execution shall issue without the need for further hearing.

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-515

TRICIA CREIGHTON and JEFFREY MCCARTHY, **Plaintiff,** **v.** **PRESTIGIOUS ONE, LLC,** **Defendant.**	ORDER

After hearing on January 8, 2025, at which all parties appeared through counsel, the following order shall enter:

1. **Contempt Trial:** A contempt trial was scheduled but instead of going forward, the parties entered into an Agreement regarding repair of the kitchen flooring, signed off by judge.
2. **Wilkerson Knaggs' Competency:** Attorney Weiner proffered to the court that Wilkerson Knaggs, Manager for the defendant LLC is not competent to

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engage in this litigation and has been found to be incompetent for trial purposes by other courts; both state and federal.

3. Attorney Weiner has until January 31, 2025, to file and serve documents from various courts that have found Mr. Knaggs incompetent. Additionally, Weiner shall provide a letter that he is awaiting from a psychiatrist that substantiates a finding of incompetence as soon as he receives same. A protective order shall issue henceforth that restricts the plaintiffs and their counsel from using the contents of said documents other than in furtherance and part of this litigation and they shall not copy, cut and past, or otherwise share their content with any one or entity outside this litigation.
4. **Motion to Recuse:** The defendant is seeking the recusal of the undersigned judge because in the judge's judicial career he has only incarcerated one litigant as a contempt remedy and it was Wilkerson Knaggs---the Manager of the defendant LLC. Though the judge has in fact incarcerated another defendant in an unrelated contempt matter, it is accurate that over the sixteen years of his judicial career he has only incarcerated two litigants.
5. There is a two-part test with a *subjective* and *objective* component when faced with the question of recusal. Recusal is required if the judge feels that he cannot decide the case impartially (the subjective test) or if he concludes that the case is one in which his impartiality might reasonably be questioned (the objective test). See, *Lena v Commonwealth*, 369 Mass 51 (1976); CJE Opinion 98-19.

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6. The judge, having consulted his own emotions and conscience, is fully satisfied that he can adjudicate this matter without disabling prejudice. CJE Opinion 2004-1.
7. Next, the undersigned judge must consider whether his impartiality might be reasonably questioned given the fact that more than a dozen years ago he incarcerated Mr. Knaggs as a remedy after finding him in contempt to coerce him to reimburse the City of Springfield for funds the city incurred in demolishing and removing the debris of a house owned by Knaggs (or in his control); costs Mr. Knaggs paid in full and was freed from incarceration.
8. Given the nature of the cases that come before a Housing Court judge, he or she often has the same landlords and their counsel over and over, and often many times each day. The job of the judge is to look at each one anew, based on the relevant facts and the law. Just because a party wins or loses one case will not have bearing on whether that party will win or lose the next case. The same with Mr. Knaggs' confinement those many years ago to coerce him to finally comply with the court's order as a contempt remedy. It has no bearing on what facts and law will apply to this instant matter.
9. Having engaged in the two-part test for consideration of recusal, the undersigned judge finds no basis to allow the motion to recuse and it is denied.
10. **Motion to Disappear:** Attorney Weiner's motion to withdraw as counsel for the defendant shall be scheduled for the next hearing noted below.

11. **Next Hearing:** This matter shall be scheduled for a Status Hearing on February 4, 2025, at 9:00 a.m. by Zoom.

So entered this 27 day of January, 2025.

Robert Fields, Associate Justice

Cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss: HOUSING COURT DEPARTMENT

WESTERN DIVISION

Case No. 24-CV-735

KERBY ROBERSON,

Plaintiff,

v.

BOUBACAR KOMOU,

Defendant.

ORDER

This matter came before the court on January 23, 2025, for a hearing on damages at which only the plaintiff appeared. After hearing, the following order shall enter:

1. The hearing on damages was scheduled after the defendant Boubacar Komou was ostensibly defaulted for failure to file an Answer.
2. Because Mr. Komou has appeared in this and two other related matters (24-CV-766 and 24-CV-850) which involve the plaintiff Mr. Roberson and because Mr. Komou filed an affirmative complaint for injunctive relief (24-CV-766)

directly after the filing of this instant matter, it is not clear that he has failed to "otherwise defend" and that his failure to file an Answer is worthy of a default entering against him.

3. Additionally, the default entered by way of an endorsement by the Clerk Magistrate on the face of the plaintiff's Request for Default without any date affixed to same, and without a separate entry of default in MassCourts.
4. As such, the entry of default shall be suspended for 45 days from the date of this Order noted below to allow for the defendant to file an Answer in this matter. If an Answer is filed, the default shall be vacated.
5. This matter shall be scheduled for a Judicial Case Management Conference on **March 27, 2025, at 2:00 p.m.**[1]

So entered this 27 day of January, 2025.

Robert Fields, Associate Justice

Cc: Court Reporter

[1] If and when this matter is scheduled for a damages hearing and/or trial, it shall be by jury in accordance with the plaintiff's jury demand filed along with the Complaint, unless both parties file a written jury waiver.

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
SUMMARY PROCESS ACTION
NO. 24H79SP004448

JOSPHINE FAIJUE, D/B/A RK REALTY PROPERTIES, LLC,

Plaintiff

VS.

CHRISTIAN RICHARDSON,

Defendant

FINDINGS OF FACT, RULINGS OF LAW AND ORDER OF JUDGMENT

This is a summary process action in which Plaintiff Josphine Faijue, D/B/A RK Realty Properties, LLC (Faijue) is seeking recover possession of a residential dwelling from Defendant Christian Richardson (Richardson) based upon nonpayment of rent. Richardson did not file a written answer.

Based upon all the credible testimony and evidence presented at bench trial conducted on January 29, 2024, and the reasonable inferences drawn therefrom, the Court finds as follows:

Faijue owns the four-unit residential dwelling at 74 West Main Street, in North Adams, Massachusetts. Richardson first occupied Apartment 1 in February 2024. The monthly rent was $1,125.00 due by the first day of each month. Richardson made only two payments to Faijue in 2024, $709.00 in February and $300.00 in June.

On July 23, 2024 Faijue served Richardson with a legally sufficient notice to quit that terminated Richardson's tenancy effective September 1, 2024.

Faijue agreed that Richardson vacated Apartment 1 on January 7, 2025. Accordingly, the claim for possession has been rendered moot. However, as a of the date that Richardson vacated the premises, he owed Faijue $12,941.00 in unpaid rent.

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Faijue has established her case to recover unpaid rent damages in the amount of $12,941.00.

ORDER FOR JUDGMENT

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

1. Judgment enters for the plaintiff and against the defendant for unpaid rent damages in the amount of $12,941.00.
2. Execution for money damages only shall issue in due course.

SO ORDERED this 30th Day of January, 2025.

Jeffrey Winik w/permission TC

Jeffrey M. Winik
Associate Justice (On Recall)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23H79SP002516

PITTSFIELD HOUSING AUTHORITY,

Plaintiff,

v.

ANTWAN HILL,

Defendant

Order for Judgment

This matter came before the court on January 29, 2025 for hearing on Plaintiff Pittsfield Housing Authority's *Motion for Issuance of Judgment and for Execution for Possession.* The defendant did not appear.

The plaintiff commenced this summary process action against defendant Antwan Hill based upon allegations of nonpayment of rent. On August 7, 2024 the parties entered into a written agreement. Under the terms of the agreement the defendant acknowledged that he owed $1,589.00 in unpaid rent through February 2024. The defendant agreed to pay her rent ($193.00) by the fifth day of each month, pay $25.00 each month towards her rent arrearage, and apply for RAFT assistance. The defendant's rent was adjusted to $176.000 effective January 1, 2025. The agreement further provided that if the defendant failed to comply with her payment obligations the plaintiff could file a motion for entry of judgment.

The defendant has not complied with material terms of the agreement. Since December 18, 2024 has not made any rent or arrearage payments. As of January 29, 2025 the defendant's rent arrearage is $1,571.00.

As of January 29, 2025 the defendant does not have a pending RAFT application.

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Because the defendant has not complied with his payment obligations under the August 7, 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 $1,571.00, plus 281.85 costs.

Execution for possession and damages shall issue in due course; but the plaintiff shall not levy on the execution until on or after March 3, 2025.

So entered this 30th day of January 2025.

Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23H79SP005851

PITTSFIELD HOUSING AUTHORITY,

Plaintiff,

v.

JACQUELINE SINOPOLI,

Defendant

Order for Judgment

This matter came before the court on January 29, 2025 for hearing on Plaintiff Pittsfield Housing Authority's *Motion for Issuance of Judgment and for Execution for Possession.* The defendant did not appear.

The plaintiff commenced this summary process action against defendant Jacqueline Sinopoli based upon allegations of nonpayment of rent. On February 7, 2024 the parties entered into a written agreement. Under the terms of the agreement the defendant acknowledged that she owed $8,701.30 in unpaid rent through February 2024. The defendant agreed to pay her rent ($404.00) each month, pay $100.00 each month towards her rent arrearage, and apply for RAFT assistance. The agreement further provided that if the defendant failed to comply with her payment obligations the plaintiff could file a motion for entry of judgment.

The defendant has not complied with material terms of the agreement. Since February 7, 2024 he has made only one payment of $900.00. As of January 29, 2025 the defendant's rent arrearage has increased to $9,930.00.

As of January 29, 2025 the defendant does not have a pending RAFT application.

Because the defendant has not complied with her payment obligations under the February 7, 2024 agreement, plaintiff's *Motion for Issuance of Judgment and for Execution for Possession* is **ALLOWED**.

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It is **ORDERED** that judgment enter for the plaintiff for possession and unpaid rent totaling $9,930.00, plus 234.65 costs.

Execution for possession and damages shall issue in due course.

So entered this 30th day of January 2025.

Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 25H79CV000061

SPRINGFIELD HOUSING AUTHORITY,

Plaintiff,

v.

JENNIFER LOWNDS,

Defendant

Preliminary Injunction Order Pursuant to G.L. c. 139, § 19

The plaintiff, Springfield Housing Authority, commenced this civil action seeking an injunction to recover possession of a residential apartment from the defendant Jennifer Lownds after voiding her lease pursuant to G.L. c. 139, § 19. The plaintiff contends that the Defendant (and others in present in her apartment) engaged in drug-related criminal activity at her residence (31 Morgan Street, Apt. 1, Springfield, Massachusetts) proscribed by Section 19. The plaintiff filed a motion for a preliminary injunction order to bar the defendant from the premises.

After conducting a motion hearing on January 30, 2024 (at which the plaintiff and defendant appeared, the plaintiff's motion is **ALLOWED** in part.

New Bedford Housing Authority v. Olin, 435 Mass. 364 (2001) provides that a claim for possession under Section 19 is similar to a summary process claim for possession, and that a tenant is entitled to a trial on the merits before the tenant is deprived of legal possession of the premises. Section 19 provides the issuance of an injunction as the specific remedy available to the plaintiffs. Pending a trial on the merits of a Section 19 claim a plaintiff may seek a preliminary injunction against a tenant, but such an injunction should be narrowly tailored to address any immediate danger to health or safety that might exist pending the trial on the merits.

The plaintiff has demonstrated a reasonable likelihood of prevailing on the merits of its claim that the defendant (and others) used the defendant's apartment to engage in drug-related criminal activity.

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Accordingly, a preliminary injunction shall enter against defendant Jennifer Lownds pursuant to G.L. c. 139, § 19. It is **ORDERED** that:

1. The Defendant shall not possess or keep any Class A or Class B narcotics (or any other narcotics without a lawful prescription) on the premises of 31 Morgan Street, Apartment 1, Springfield, MA or on her person;

2. The Defendant shall not engage in any criminal activity on or off the premises at 31 Morgan Street, Apartment 1, Springfield, MA;

3. The Defendant shall not engage in any conduct that endangers the health or safety of the public housing residents or plaintiff's employees;

4. The Defendant shall not to allow Angel Laboy-Ortiz or Omar Antonio Rojas (the individuals arrested in her apartment) to enter her apartment at 31 Morgan Street, Apt. 1, Springfield, MA at any time for any reason;

5. The Defendant shall not allow any individuals to enter her unit other than her named children, and shall not anyone, including her children, to enter her unit from 11 p.m. to 6 a.m. The named children are [redacted].

6. The Defendant shall cooperate with any efforts by the plaintiff to obtain injunction orders against the individuals referred to in Paragraph 4 of this Order to bar them from entering upon all Springfield Housing Authority properties;

The Defendant may continue to reside at 31 Morgan Street, Apartment 1, Springfield, Massachusetts during the pendency of this G.L. c. 139, § 19 action so long as she complies with the preliminary injunction conditions (1 – 6) set forth in this order.

If the Defendant fails to comply with this preliminary injunction order the plaintiff may move to modify this order to bar the Defendant from residing at or entering upon the premises pending the trial on the merits of the plaintiff's G.L. c. 139, § 19 action.

This case is scheduled for hearing on February 20, 2025 at 2 p.m. in the Western Division Housing Court, 37 Elm Street, Springfield, MA.

So entered this 3rd day of February, 2025.

w/permission TC

Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CIVIL ACTION NO. 25H79CV000046

CONSTRUCT INC.

Plaintiff,

v.

ALEX TATRO,

Defendant

Order On Plaintiff's Application for Preliminary Injunctive Relief

After conducting an evidentiary hearing on January 29, 2025, for which Counsel for Plaintiff appeared and for which Defendant failed to appear, the following preliminary injunction order shall enter:

Plaintiff Construct Inc. has demonstrated a likelihood of success on the merits of its claim for injunctive relief based upon its preliminary showing that Defendant Alex Tatro has engaged in conduct that has violated the terms of the Guest House Agreement he executed that governs his residential occupancy at 314 State Road, Room 2, in Great Barrington, Massachusetts.

Plaintiff Construct Inc. has demonstrated that until such time as it can obtain relief in a summary process action, it does not have an adequate remedy at law to address Defendant Alex Tatro's serious acts of misconduct. Plaintiff Construct Inc. will be exposed to the risk of suffering significant and irreparable harm if interim relief is not granted. The terms of this preliminary injunction order will not cause Defendant Alex Tatro to suffer irreparable harm.

Accordingly, it is **ORDERED** that:

1. Defendant Alex Tatro **SHALL COMPLY** with all behavioral terms of the Guest House Agreement that governs his occupancy of 314 State Road, Room 2, Great Barrington, Massachusetts

2. Defendant Alex Tatro **SHALL NOT** consume alcohol or drugs on or off the Guest House premises, or cause damage to property, including fixtures, at 314 State Road, Great

Barrington, Massachusetts.

3. Defendant Alex Tetro **SHALL COMPLY** with all drug and alcohol testing, including random testing, as required pursuant to the Guest House Agreement.

4. Defendant Alex Tetro **SHALL NOT** interfere with other residents' their quiet enjoyment of the premises.

5. Defendant Alex Tetro **SHALL NOT** harass, threaten, or cause physical harm to Construct Inc.'s employees or agents on or off the Guest House property.

The legislative injunction fee is waived. If Defendant Alex Tetro violates this Order, or if Defendant Alex Tetro engages in other behavior that violates the terms of the Guest House Agreement, Plaintiff Construct Inc. may seek further relief (that may include an order barring the defendant from entering the Guest House property) by motion or by seeking leave to bring a complaint for contempt. including an order may file an appropriate motion or complaint for contempt.

Plaintiff shall serve the attached Order via Sheriff or Constable service at the Defendant's last known address.

Jeffrey Winik u/Permission 2/4/25

Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24-SP-3050

JEFFREY GINSBERG,

Plaintiff

v.

EDWARD RIGGIO AND DEVONA GRAHAM,

Defendants

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

This summary process case for nonpayment of rent came before the Court for a bench trial on December 16, 2024. Plaintiff appeared self-represented. Defendants appeared with counsel. The subject residential property is located at 172 Belmont Ave., Apt.2, Springfield, Massachusetts (the "Premises"). The Premises are part of a two-family house.

At the outset of trial, the parties stipulated to certain facts; namely, that Defendants moved into the Premises in June 2024 and continue in possession, that Defendants received the notice to quit, that monthly rent $1,500.00 and the amount of $10,300.00 is unpaid through December 2024.

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

1. On May 3, 2024, the Massachusetts RAFT program issued a letter informing future landlords that Defendant Graham ("Ms. Graham") was eligible for moving assistance, including first and last month's rent and a

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security deposit. It invited the landlord to file an application for payment, subject to verification that Ms. Graham was eligible for the requested amount. In reliance upon this letter, Plaintiff allowed Defendants to take possession of the Premises. Defendants paid $380.00 representing the difference between the amount Defendants owed for the up-front payments and the amount RAFT committed to pay.

2. After Defendants took possession, RAFT determined that Defendant Graham was ineligible for assistance because Defendant Riggio ("Mr. Riggio") had received an award within the previous twelve months, and therefore, the household eligibility had been exhausted.

3. At the time Defendants took possession, Plaintiff resided in the first-floor unit. He moved out in stages between October and November 2024 and is not currently residing at the property.

4. Defendants did not make any rent payments in June or July (other than the $380.00 described above), and Plaintiff served a notice to quit dated July 2, 2024. At the time of the service of the notice, $2,620.00 was owed in rent (two months at $1,500.00 per month minus $380.00).[1]

5. Including the $380.00 paid at move-in, the total amount paid by Defendants is $3,930. Had the tenants paid rent each month for the seven months of the tenancy through the trial date, a total of

[1] Although the notice to quit indicates a balance due of $5,620.00, this amount includes the security deposit ($1,500.00) and last months' rent ($1,500.00) payments required by the landlord. A summary process case is limited to unpaid rent (and use and occupancy arising after the complaint is filed), and advance payments, even if required in a lease, do not constitute unpaid rent for purposes of eviction.

$10,500.00 would have been paid. Thus, the Court finds the remaining rent balance owed through trial is $6,570.00.[2]

6. Plaintiff filed this case on August 2, 2024.

7. Defendants contacted the City of Springfield Code Enforcement Department ("CED"). The CED inspected on August 2, 2024 and identified signs of a mouse infestation, a slight leak in the bathroom sink and a broken drain pipe under the kitchen sink, as well as missing smoke/carbon monoxide detectors. Plaintiff made the repairs cited by the CED the next day.

8. After this case was filed, the parties agreed to a repayment plan (the "repayment agreement") for Defendants to pay the outstanding balance, including August rent. Per the understanding of the parties, beginning on September 8, 2024, Mr. Riggio would pay $500.00 per week and Ms. Graham would pay $500.00 every two weeks. At the time of the first payment due date, $5,620.00 of rent was outstanding (excluding deposits due).

9. Defendants made the first payment on September 8, 2024 in the amount of $500.00. Over the next several weeks, a total of $3,050.00 was paid.[3]

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[2] The Court cannot account for the difference between the stipulated amount of unpaid rent (excluding deposits) in the amount of $7,300.00 and the amount found to be due by the Court ($6,570.00). The Court will use the number it calculated based on the evidence.

[3] At trial, Plaintiff testified that Defendants made subsequent payments in the amounts of $380.00, $870.00, $1,000.00, $180.00 and $620.00. The Court accepts his testimony as there was no evidence to the contrary.

10. Because they had made the repayment agreement, none of the parties appeared for the First Tier Court Event scheduled for September 26, 2024 and the case was dismissed.

11. Defendants failed to make the payment due on October 12, 2024, and have made no payments after this date.

12. Immediately after moving into the Premises, Defendants noticed minor water leaks in the bathroom and kitchen sinks, as well as mouse traps (but no mouse droppings) and missing carbon monoxide and smoke detectors.

13. Mr. Riggio claims he notified Plaintiff of the issues in the first week of July 2024 but offered no credible evidence of same.

14. When Defendants did not make the payment due on October 12, 2024, Plaintiff texted Mr. Riggio and banged on Defendants' apartment door demanding payment. He admitted banging quite hard on several occasions and testified that Defendants repeatedly failed to respond to his demands for payment.

15. In early October 2024, Defendants began having problems with the heat. They claim the heat was inadequate. The heat in the Premises was controlled by a thermostat located on the first floor where Plaintiff was then residing.

16. When they complained about the heat, Plaintiff left a note on their door which recited "Rent = Heat, No Rent = No Heat."

17. Plaintiff denies there has been any problem with the heat. He set the thermostat at 65 degrees in the first-floor apartment and assumed it is several degrees warmer in the Premises because "heat rises."

18. Plaintiff admits using his key to enter the Premises on October 21, 2024. He claims he had not received responses to his text messages for payment and that no one responded when he knocked on the door. He further claims that as soon as he opened the door and saw Ms. Graham, he left. Ms. Graham testified she forced Plaintiff to leave the Premises and that, in response, Plaintiff shouted a racial epithet at her. Ms. Graham called the police. The Court finds insufficient credible evidence that Plaintiff used a racial epithet toward Ms. Graham.

19. On October 23, 2024, Defendants filed an application for a temporary restraining order in this Court seeking an order that Plaintiff not enter the Premises without permission. A hearing was scheduled on Defendants' motion on October 31, 2024.

20. On October 30, 2024, an ex parte hearing was held in Springfield District Court on Ms. Graham's application for a harassment prevention order (the "258E order"). Plaintiff was ordered to stay at least 25 yards away from Ms. Graham, but he was allowed to contact her by mail or written message left on her door regarding landlord-tenant matters.

21. On October 31, 2024, the date of the hearing in Housing Court on Defendants' application for injunctive relief, Plaintiff filed a motion to reopen this case.

Turning to Defendants' defenses and counterclaims, the Court rules as follows:

A. Breach of Warranty

Implied in every residential tenancy is a warranty that the rental unit will be in compliance with the State Sanitary Code and will remain in compliance for the duration of the tenancy. Mr. Riggio testified about issues with the heat, electrical wiring, mice and leaks. Regarding the electrical issues, mice and leaks, Defendants offered little credible evidence about the extent, duration and nature of these problems and therefore failed to prove by a preponderance of the evidence that these conditions were substantial code violations or material defects that could endanger or impair the health, safety, or well-being of the occupants. 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).

With respect to the heat, the State Sanitary Code requires that a landlord provide sufficient heat to allow the temperature in the residence to be at least 68 degrees between 7:00 A.M. and 11:00 P.M. and at least 64 degrees between 11:01 P.M. and 6:59 A.M. The Premises does not have a thermostat, and the heat is controlled by the first-floor occupants. Plaintiff admitted he sets the first-floor thermostat to 65 degrees during the heating season. Given this admission, and without any evidence that he checked the temperature in the Premises after Defendants complained of insufficient heat, the Court concludes that Defendants had insufficient heat from September 15, 2024 (the start of the heating season) through

the date of trial, a period of three months.[4] The Court rules that Defendants are entitled to a rent abatement of 10% for this time period, which amounts to $450.00.[5]

B. Violation of G.L. c. 186, § 14

The statutory right of quiet enjoyment set forth in G. L. c. 186, § 14 protects a tenant from "serious interference" with the tenancy, meaning any "acts or omissions that impair the character and value of the leasehold." *Doe v. New Bedford Housing Auth.*, 417 Mass. 273, 285 (1994). Plaintiff admits entering the Premises without permission, and at the time he was frustrated that Defendants were not responding to his demands for payment. Based on the credible testimony of Ms. Graham about the impact of finding Plaintiff in her apartment when she was wearing only underclothes, the Court rules that Plaintiff's entry of the Premises without advance notice and without permission constitutes substantial interference with quiet enjoyment in violation of G.L. c. 186, § 14. Defendants are entitled to statutory damages in an amount equal to three months' rent, which in this case is $4,500.00.[6]

C. Retaliation

Pursuant to G.L. c. 239, § 2A, it is a defense to a summary process action if a landlord terminates a tenancy or pursues eviction because, among other things, a tenant complains about housing conditions or seeks a harassment prevention order under G.L. c. 258E. A rebuttable presumption of retaliation arises if such action by the landlord occurs within six months of the tenant's protected conduct.

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[4] The evidence does not warrant finding that the insufficient heat constituted a violation of G.L. c.186, § 14 for the failure to furnish heat.

[5] Defendants did not argue that the breach of warranty gives rise to a violation of G.L. c. 93A; even if they had, the Court finds that Plaintiff is not in the trade or commerce of renting residential housing.

[6] Statutory damages exceed the actual damages (in the form of emotional distress) that the Court would award for violation of G.L. c. 186, § 14.

Here, a few days after Ms. Graham filed an emergency motion in this court to preclude Plaintiff from entering the Premises without permission and one day after she obtained a 258E order, Plaintiff asked this Court to reopen this case in order to pursue eviction. The Court finds clear evidence of Plaintiff's retaliatory intent and rules that Plaintiff failed to rebut the presumption of retaliation with clear and convincing evidence that he had sufficient independent justification for reopening the eviction case and would have done so at that time even if Ms. Graham had not sought the 258E order.[7] Therefore, pursuant to G.L. c. 239, § 2A, Plaintiff's claim to possession shall be dismissed.

Different standards apply to an affirmative claim for damages for retaliation under G.L. c. 186, § 18. First, the tenant's protected action must relate to housing conditions. Second, there is no presumption of retaliation in case brought for nonpayment of rent. Therefore, to prevail on their counterclaim for retaliation, Defendants must prove by a preponderance of the evidence that Plaintiff served the notice to quit or reopened this case because of their complaints about the conditions of disrepair in the Premises, which they made in August 2024.

The Court rules that Defendants have failed to sustain their burden. After Defendants contacted the CED, the parties resolved their differences with a repayment agreement and the summary process case was dismissed. Plaintiff only reopened the case because Defendants failed to comply with the repayment plan and

[7] In fact, Plaintiff essentially admitted that he decided to pursue the eviction only after Ms. Graham brought him to court for entering her apartment and obtained relief under c. 258E. He testified he would have started a new eviction case had he not learned that he could file a motion to reopen the instant matter when he came to Court on Defendants' emergency motion.

because Ms. Graham brought him to court for entering her unit. The Court rules in favor of Plaintiff, then, on Defendants' counterclaim for retaliation.

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

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

2. Judgment for monetary damages only in the amount of $1,620.00, plus court costs, shall enter in favor of Plaintiff.[8]

SO ORDERED.

DATE: February 5, 2025

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

cc: Court Reporter

[8] This figure is derived from the unpaid rent balance through trial ($6,570.00) less the damages awarded Defendants on their claims ($4,950.00).

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

Berkshire, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79SP004324

PITTSFIELD PROPERTY MANAGEMENT,

Plaintiff,

v.

MARC RACICOT and BAILEY SPIEHAWK,

Defendant

Order for Judgment

This matter came before the court on February 5, 2025 for hearing on the plaintiff's *Motion to Enter Judgment*. The defendants did not appear.

Under the terms of the Agreement executed by the parties on January 8, 2025 the defendants acknowledged that they owed $9, 650.00, plus $234.24 in court costs. Under Paragraph 4 of the Agreement the defendants agreed to vacate the premises by February 5, 2025. The Agreement further provided that the parties were to return to court on February 5, 2025, and that on that date the plaintiff could request that judgment enter if the defendants failed to vacate the premises and return the keys.

The plaintiff represented to the court that the defendants have not vacated the premises. It is **ORDERED** that upon the filing of an affidavit by plaintiff to be prepared on or after February 6, 2025 attesting to the fact that the defendants have not vacated the premises by February 5, 2025 and failed to return the keys to the plaintiff, judgment shall enter in favor of the plaintiff for possession and unpaid rent damages of $9,650.00 plus court costs of $234.24.

So entered this 5th day of February 2025.

w/permission

Jeffrey M. Winik
Associate Justice (Recall Appt.)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 24H79CV001028

TOWN OF DALTON, by and through its BOARD OF HEALTH,
Plaintiff,
v.
CAROLYN WALAT and ANN FOLTZ,
Defendants
And
EMMA WALAT,
Party-in-Interest

Preliminary Injunction Order

On December 18 plaintiff Town of Dalton commenced this State Sanitary Code enforcement action against the defendants by filing a *Verified Complaint for Enforcement*. This matter came before the court on the plaintiff's *Motion for a Preliminary Injunction* seeking to require the defendants to comply with the State Sanitary Code.

After conducting an evidentiary hearing on February 5, 2025, at which all parties appeared via Zoom, the motion is **ALLOWED**. The Court finds and rules as follows:

Defendants Carolyn Walat and Ann Foltz own the single-family dwelling at 356 North Street, in Dalton, Massachusetts (the "premises"). Foltz lives in Virginia and is Walat's mother. Walat lives at the premises with her daughter, Emma Walat. Between August 8 and November 26, 2024 an agent for the Town of Dalton Board of Health, responding to complaints it received regarding the condition of the premises, conducted visual inspections of the premises on four occasions and issued four Orders to Correct state sanitary code violations dated August 8, September 4, November 7 and November 26, 2024. The Board of Health ordered the defendants to correct the following State Sanitary Code violations, 105 CMR 410.00 et. seq.: obstruction of numerous means of egress and passageways (410.260); missing or inoperable smoke detectors and

carbon monoxide alarms (410.260); failure to maintain smooth and impervious surfaces in the kitchen (410.110); failure to maintain the exterior land in a clean safe and sanitary condition, including the failure to remove junk, abandoned cars and other debris; and failure to maintain the heating system, including the boiler in safe operating condition (410. 180).

The Town of Dalton is likely to prevail on its claim that the above-referenced State Sanitary Code violations endanger the health and safety of the current occupants and abutting property owners.

The Town of Dalton's Health Department, which is tasked with enforcing the State Sanitary Code, does not have an adequate remedy at law to compel the defendants to correct serious and dangerous sanitary code violations in a timely manner. This is so because there exists a significant risk that the Town of Dalton, a municipality that is obligated to protect the health and safety of all its residents, would suffer irreparable harm if its residents were harmed from a fire, an explosion or an insect/rodent infestation that resulted from the defendants' failure to maintain the premises in compliance with the State Sanitary Code. The defendants have not shown that they would suffer irreparable harm if they were required to comply with the four Town of Dalton orders to correct serious sanitary code violations.

Accordingly, a preliminary injunction shall issue in favor of the plaintiff, and it is **ORDERED** that defendants Carolyn Walat and Ann Foltz must correct all sanitary code violations in and around the premises identified in the four Town of Dalton Orders to Correct, dated August 8, September 4, November 7 and November 26, 2024. The defendants must correct these violations in accordance with the following set of deadlines:

1. By March 5, 2025 - install or repair smoke and carbon monoxide detectors in compliance with all state laws; and remove all materials that are with in 6 feet of the boiler in the basement, and remove all materials that block or clog heating vents;
2. By April 18, 2025 – remove all material (including boxes, equipment, books, clothing or other materials) that block clear access to and egress from the doors and windows;
3. By May 30, 2025 – remove from the yard surrounding the premises all materials (including abandoned cars, equipment, and other items that are flammable or may provide harborage for insects or rodents); and correct all other sanitary code violations set forth in the Orders to Correct.

The defendant shall upon 48 hours advance written or text notice allow access to the premises to the Town of Dalton's health agent (and electrical code inspectors, plumbing inspectors and fire department inspectors) to conduct visual inspections:

1. On or after March 5, 2025;
2. On or after April 21, 2025;
3. On or after June 2, 2025.

The clerk is requested to schedule this matter for further hearing on June 11, 2025 at 9:00 a.m. via Zoon.

So entered this 5th day of February, 2025.

w/Permission TC

Jeffrey M. Winik
Associate Justice (Recall Appt.)