

THIS IS AN EDITED MEMO I FILED TO SUPPORT A TENANT IN WORCESTER IN A MOTION TO DISMISS AFTER SHE HAD DEFAULTED. THE CASE WAS SETTLED AFTER OBTAINING RENTAL ASSISTANCE THROUGH RAFT. NAMES ARE REMOVED

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

WORCESTER, ss.

HOUSING COURT DEPARTMENT  
CENTRAL DIVISION  
NO.

LANDLORD	)
Plaintiff	)
	)
v.	)
	)
TENANT,	)
Defendant	)

**DEFENDANT'S SUPPLEMENTAL MEMO ON MOTION TO DISMISS FOR SERVING  
AN IMPROPER NOTICE**

Now comes the Defendant through counsel appearing via limited appearance for the purpose of this motion, who hereby supplements her motion filed on September 26, 2024, asking that the Court dismisses this Summary Process action pursuant to U.R.S.P. 2(d) and Mass R. Civ. P. 12(b)(6) or pursuant to Mass. R. Civ. P. 56 on the grounds that sPlaintiff failed to provide a 30 day notice to quit in violation of the Federal Cares Act which requires a 30 day notice of termination to be served when terminating a section 8 mobile voucher holder. In support of his motion, tenant states as follows:

**Factual and Procedural History**

1. Tenant resides at.
2. Tenant's tenancy is supported by a housing choice voucher administered by the Worcester Housing Authority. See Exhibit A.
3. On or about April 1, 2024, Plaintiff created and allegedly served a notice of termination based on non-payment of rent. The Notice to quit, provided tenant 14 days to vacate her apartment. See Docket Entry 1.

4. Plaintiff subsequently commenced this case by Summons and Complaint,
5. The proceeding was scheduled for a first-tier court event on September 12, 2024; however Defendant came to court late. Defendant missed her court date due to her depression. See Exhibit B.
6. Defendant then through the assistance of counsel filed multiple motions, including a motion to remove default on the grounds that she had missed her court date due to excusable neglect and had defenses to the proceeding contained herein and a motion for late answer and discovery and a motion to dismiss.

**The Court Must Dismiss the Proceeding as Plaintiff Failed to Serve a 30 day Notice of Termination As Required By The Federal CARES Act**

7. A proper notice to quit is a condition precedent required to evicting a tenant. Cambridge St. Realty, LLC v. Stewart, 481 Mass. 121, 127, 113 N.E.3d 303, 309 (2018) (“We conclude that a legally adequate notice to quit is not jurisdictional but rather a condition precedent to a summary process action that is part of the landlord's prima facie case.”)
8. After the start of the COVID 19 pandemic Congress enacted the “CARES [Coronavirus Aid, Relief, and Economic Security] Act.” Contained within the CARES act is a modification to eviction proceedings against tenants who reside in a covered property, specifically that a landlord “may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate”) 15 USC 9058(c)
9. The term covered properties is defined as follows: 15 USC § 9058(a)(2)(A)(i), any property that participated in a covered housing program (as defined in section 12491(a) of Title 34)), which in turn refers to 34 USC § 12491(a)(3)(H) (programs under 42 USC §§ 1437d, 1437f. Specifically, with relevance to this motion, 1437f(o) is the housing choice voucher program
10. The notice provision to the CARES Act as opposed to the eviction moratorium which has expired, remains in effect. Compare 15 USC 9058(b)(moratorium) with (c)(notice); Arvada Vill. Gardens LP v. Garate, 2023 CO 24, ¶ 13, 529 P.3d 105, 108 (“But the Notice Provision includes no expiration date. We cannot insert an expiration date where Congress omitted one”); D.H. v. Common Wealth Apartments, 231 N.E.3d 284, 288 (Ind.

Ct. App. 2024), as amended (June 12, 2024) ( We follow the lead of our sister states and hold that the notice provision did not expire with the temporary eviction moratorium.”)

11. The CARES act, must be interpreted to have modified the Commonwealth’s rules of summary process as under the Supremacy Clause of the United States Constitution. Felder v. Casey, 487 U.S. 131, 138, 108 S. Ct. 2302, 2307, 101 L. Ed. 2d 123 (1988)( , '[t]he relative importance to the State of its own law is not material when there is a conflict with a valid federal law,' for 'any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield'”), , quoting Free v. Bland, 369 U.S. 663, 666, 82 S.Ct. 1089, 1092, 8 L.Ed.2d 180 (1962); see also Patterson v. Piano Craft Guild Assocs., L.P., No. CIV.A. 01-4376, 2002 WL 31931580, at \*8 (Mass. Super. Dec. 30, 2002) (“federal law is supreme, and Congressional policy takes precedence”).
12. Throughout the Commonwealth specifically, multiple Housing Court judges have ruled the same. See Andover Apartments Venture LLC, D/BA The Slate at Andover, v. Courtnee Brisbon, 23H77SP00927(Northeast Housing court, Sept 26, 2024) (Del Puerto, J.); AAG Properties, LLC. V. Ballantine, 22H77SP004964 (N.E. Housing Court, Jun. 9, 2023) (Malamut, J.); Veiga v. Lobo, 23H82SP01784 (Metrosouth Housing Court, Sep. 14, 2023) (Sherring, J.).
13. Additionally, throughout the United States, multiple courts have held that where a tenant resides in a covered property including a housing choice voucher, a landlord must provide at least a 30 day notice prior to terminating a tenant’s tenancy. Arvada Vill. Gardens LP v. Garate, 529 P.3d 105, 108 (Colo. 2023) (dismissing non-payment of rent proceeding when tenant had a housing choice voucher and landlord served 10 day notice); Olentangy Commons Owner LLC v. Fawley, 228 N.E.3d 621, 629 (Ohio App. Ct. 2023) (“the list of covered federal housing programs is expansive and includes the section 8 voucher program”); Sherwood Auburn LLC v. Pinzon, 24 Wn. App.2d 664, 521 P.3d 212, 220 (2022); Nwagwu v. Dawkins, No. BPHCV215004438S, 2021 WL 2775065, at \*3 (Conn. Super. Ct. Mar. 2, 2021)(“[I]t is evident when evicting a tenant who utilizes a Section 8 voucher for nonpayment of rent, the *CARES Act* requires a 30-day Notice to Quit.”)
14. Here as evidenced by exhibit A, Defendant receives a housing choice voucher administered by the Worcester Housing Authority.
15. As the notice to quit is a 14-day notice and not a 30 day notice as required by the Federal CARES act, Plaintiff’s notice to quit is not legally adequate.
16. As such, Plaintiff has failed to meet a condition precedent and therefore the case must be dismissed.

Date: \_\_\_\_\_

By her attorney **for the limited purpose of  
this motion,**

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Benjamin Levine

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#### CERTIFICATE OF SERVICE

I, Benjamin Levine, hereby certify that I served the Defendant's Supplemental Memorandum by mailing to Plaintiff on this date.

Dated: Date \_\_, 2024

/s/ Benjamin Levine

Benjamin Levine