

Western Division Housing Court
Unofficial Reporter of Decisions

Volume 23

Apr. 20, 2023 — May 26, 2023

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*

Attorneys Dulles, Manzanares, and Vickery serve 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.

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

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

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

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

PUBLICATION

Volumes are published in PDF format at www.masshousingcourtreports.org. We also have a listserv for those who wish to receive new volumes by e-mail when they are released. Those wishing to sign up for the listserv should e-mail Aaron Dulles (dulles@jd11.law.harvard.edu).

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

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CONTACT US

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

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0271

<hr/>)	
CITY OF CHICOPEE,)	
)	
PLAINTIFF)	
)	
v.)	ORDER REGARDING ALTERNATIVE
)	HOUSING
DALTON ALEXIS, ET AL.,)	
)	
DEFENDANTS)	
<hr/>)	

This receivership matter came before the Court on April 30, 2023 for further proceedings regarding the alternative housing arrangements for the former tenants of a multifamily residential building located 18 Bemis Street, Chicopee, Massachusetts (the "Property"). Counsel appeared for Plaintiff, the receiver, Alfred Shattelroe (the "Receiver"), the owner, Dalton Alexis (the "Owner"), the mortgagee, City National Bank (the "Mortgagee") and four of the six families that formerly resided at the Property ("Tenants"). All parties seek to obtain a ruling from the Court with respect to alternative housing for the Tenants. Upon obtaining the Court's ruling, the Receiver's lien can be established (either by agreement or evidentiary hearing) and the issues relating to alternative housing for the Tenants will be clarified.

By way of brief background, the Receiver was appointed as a limited receiver on June 22, 2022 after the Property had been condemned by Plaintiff. All occupants of the Property were required to vacate and the Receiver was ordered to provide alternative housing for the Tenants. The Receiver located apartments in Holyoke,

Massachusetts for each of the Tenants and entered into leases in his own name with the respective property owners or managers and allowed the Tenants to take possession. In each case, the rent for each of the temporary units (“Alternative Housing Units”) was higher than the respective rent the Tenants paid at the Property.

The Court is charged with supervising receiverships, and it does so by requiring pre-approval of all expenses and monitoring the progress with regular reporting and itemization of all expenses. Here, the Receiver here did not obtain approval from the Court to enter into subleases with the Tenants. The Court did not have the opportunity to determine if the rental agreements were arms-length transactions and rents set at fair market rental value, nor did the Court weigh in on whether the execution of subleases was the appropriate method of providing temporary alternative housing. In fact, the process of securing the Alternative Housing Units was done without transparency and remains a mystery to the Court.

Moreover, there is no evidence that the Receiver has collected any rents from the Tenants. A receiver who is appointed to manage an occupied building is charged with collecting rents from the occupants and (with Court approval) taking appropriate legal actions when tenants fail to pay rent. Now, the Receiver seeks to be reimbursed for all rents accrued after placing the Tenants in the Alternative Housing Units despite doing little if anything to ensure that the Tenants were paying rent.¹

Complicating matters is the fact that the only reason the Tenants had to be placed in Alternative Housing Units is the failure of the Owner to be a responsible

¹ The Court is troubled by the fact that the Receiver apparently has not actually paid rent for the Alternative Housing Units but instead made a deal to provide services to the landlord in exchange for rent. The lack of transparency is unacceptable in a receivership that is supposed to proceed under the supervision of the Court.

property owner who maintained the Property in habitable condition. It would be a windfall for the Owner if all of the burden of the cost of alternative housing was borne by the Receiver and he was absolved of the cost of providing alternative housing as a result of his malfeasance.

In an attempt to fashion an equitable remedy, the Court will allow the Receiver to include as part of his lien the difference between the rents charged at the Property (that he should have been collecting) and the rents charged for the Alternative Housing Units. For example, if the rent for a particular unit at the Property was \$1,000.00 per month and the family was provided an Alternative Housing Unit at a rate of \$1,350.00 per month, the Receiver may charge against the lien \$350.00 per month for that family.² Using the same example, the Receiver may take action outside of the receivership to attempt to collect the \$1,000.00 from the family, the amount the Receiver should have been collecting each month. Because the Receiver entered into subleases with the Tenants without Court approval, any legal action that Receiver takes against the Tenants to collect the unpaid rent (up to the amount charged at the Property) will be subject to any defenses asserted by the Tenants related to their housing in the Alternative Housing Units.³ Claims that the Tenants

² If the Owner or Mortgagee believes that the monthly rent for the Alternative Housing Units exceeds the fair market rental value, either may file a motion for the Court to conduct an evidentiary hearing to determine the fair market rental value of the Alternative Housing Units to be used to determine the amount that will be included in the Receiver's lien.

³ Although the Tenants may object to the requirement that they pay their old rental rate at the Property for the period of time that they have resided in the Alternative Housing Units, they cannot expect to live for free. They knew they had the obligation to pay rent at the Property, and they should be responsible to continuing paying that same amount of rent for the Alternative Housing Units, subject to any defenses that they may have to the amount owed.

may have against the Owner related to their displacement from the Property can be brought in separate civil actions for damages.⁴

The Court previously ordered that the alternative housing for the Tenants only continue through March 31, 2023. Therefore, the amount that the Receiver can charge against the lien (namely, the difference between the rents) must be calculated between the date the alternative housing began and March 31, 2023. The Receiver, no longer in his capacity as the receiver but in his capacity as the master tenant in the sublease arrangement, may attempt to collect the balance (up to the amounts each family had agreed to pay at the Property) from the Tenants.⁵ To the extent that the Tenants have claims against the Owner, those claims may be brought in one or more separate legal proceedings.

Accordingly, based on the foregoing, the following order shall enter:

1. The Receiver may include in its lien the difference between the rents charged at the Property and the fair market rental value of the Alternative Housing Units for each month that Tenants occupied the Alternative Housing Units through March 31, 2023.
2. The Receiver may institute legal proceedings to recover possession of the Alternative Housing Units and unpaid rent up to the amount of the Tenants'

⁴ By way of illustration only, if Tenant A seeks a rent abatement related to the conditions of Tenant A's Alternative Housing Unit, Tenant A may assert the claim against the Receiver. If Tenant A has claims relating to being forced to vacate the Property and to live in an Alternative Housing Unit that was less desirable than Tenant A's apartment at the Property, Tenant A may bring those claims against the Owner.

⁵ The Tenants and the Receiver may seek RAFT funds to pay the unpaid rent to the Receiver. Although Way Finders apparently takes the position that they cannot pay the Receiver because he is not the property owner nor property manager, the Court finds that he stands in the shoes of the landlord as the court-appointed Receiver, and he should be allowed to collect unpaid rent. If Way Finders refuses to allow the Receiver to seek unpaid rents, the Receiver may seek leave of Court to implead Way Finders into any eviction cases it brings against the Tenants.

former rent obligation at the Property, subject to any payments the Tenants have paid and any defenses they raise in a proceeding to collect rent.

3. The Receiver may reschedule its motion to establish the Receiver's lien.

SO ORDERED.

DATE: 4.20.23

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. 23-SP-0617

ALBERT CUEVAS,¹

PLAINTIFF

v.

FERMIN PEÑA,

DEFENDANT

FINDINGS OF FACT, RULINGS
OF LAW AND ENTRY OF
JUDGMENT

This no fault summary process case came before the Court on April 18, 2023 for an in-person bench trial. Both parties appeared self-represented. Plaintiff seeks to recover possession of 406 Page Boulevard, Springfield, Massachusetts (the "Premises").

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

Plaintiff owns the Premises. Prior to trial the parties stipulated that monthly rent is \$1,200.00, that Defendant owes no back rent, and that Defendant received the notice to quit. In this case, the notice, dated October 1, 2022, was actually a notice of non-renewal effective January 1, 2023. The Court finds that the written lease actually expired on June 1, 2022, but the notice is legally adequate as a no-fault notice to quit as of January 1, 2023. Defendant did not vacate and continues to reside at the Premises.

¹ The Court's file should be changed to reflect that Plaintiff's name is Albert, not Alberto.

Defendant did not file an answer. He did not assert any claims against Plaintiff. He testified that his is 68 years old and has numerous health problems and he does not understand why he has to vacate his apartment. Defendant provided the Court with no reason to think that Plaintiff seeks to evict him for an illegal reason, and Plaintiff does not have to have good cause to end the tenancy (which is not subsidized).

In a no-fault eviction case, pursuant to G.L. c. 239, § 9, the Court has discretion to give Defendant up to twelve-months from January 1, 2023 to find replacement housing. In order to be entitled to the stay, Defendant must continue to pay his monthly rent and he must be able to prove to the Court that he is diligently searching for new housing. He was provided with a sample housing search log in Court today.

Based on the foregoing, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Issuance of the execution will be stayed pending further Court order.
3. Defendant shall pay \$1,200.00 each month by the 5th of the month beginning in May, 2023.
4. Defendant shall keep careful records of his housing search and he shall bring records of his search to the next Court date for review by the judge.
5. The parties will return for review of Defendant's compliance with this order on June 27, 2023 at 9:00 a.m. in-person in the Springfield session.

SO ORDERED.
DATE: 4.20.23

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-4788

_____)	
TAMMY DONOGHUE-WALKER,)	
)	
PLAINTIFF)	
v.)	FINDINGS OF FACT, RULINGS
)	OF LAW AND ORDER FOR JUDGMENT
MARK WALKER,)	
)	
DEFENDANT)	
_____)	

This no fault summary process case came before the Court on March 30, 2023 for a bench trial. The parties appeared self-represented. Plaintiff seeks to recover possession of a two-family house located at 8 Clark Street, Holyoke, Massachusetts (the "Property").

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

Plaintiff purchased the Property in 2002 and she initially resided there. In or about 2008, when Plaintiff was about to be incarcerated, Plaintiff conveyed the Property to her sister, Terry Walker, apparently on the condition that it be reconveyed when Plaintiff exited prison. In 2022, when Plaintiff's period of incarceration ended, her sister refused to convey the Property back and Plaintiff brought a legal action in Superior Court. The parties entered into an agreement for judgment on August 25, 2022 wherein Terry Walker agreed to convey the Property back to Plaintiff and, once

all tenants vacated, Plaintiff agreed to list the Property for sale and make a payment to Terry. The agreement contained a clause providing that, if any tenant had not left within 45 days of the execution of the agreement, Plaintiff could start eviction proceedings against them.

On October 28, 2022, a date that is more than 45 days after the execution of the agreement, Plaintiff served a notice to vacate to Defendant, who was then residing on the 1st floor of the Property. Defendant moved into the Property in 2019 after suffering a stroke. He proffered a lease signed by Terry created a long-term tenancy extending from January 3, 2021 to December 31, 2026. Despite its term, the lease contains a provision allowing termination upon 30-days written notice. The notice to vacate provided more than enough notice pursuant to the terms of the lease. Defendant did not vacate after the notice period. The Court finds that Plaintiff has established her prima facie showing of her right to possession.

Defendant did not file an answer and raised no legal defenses at trial. The Court has discretion in a no fault eviction case to grant a stay on judgment and execution. See G.L. c. 239, § 9. If Defendant seeks a stay, he must demonstrate to the Court that he has been unable to secure suitable housing elsewhere despite a diligent housing search, and that he will pay Plaintiff for his continued use and occupation for the duration of the stay. See G.L. c. 239, § 11.

In light of this law, and based on the findings at trial, the following order shall enter:

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

2. If Defendant seeks a stay on use of the execution (eviction order), he shall serve and file a motion for stay within ten days of the date this order is entered on the docket. He must be prepared to demonstrate to the Court the efforts he has made to find new housing.
3. If Defendant has not served and filed such a motion within the time frame provided, Plaintiff may request issuance of the execution by written application without the need for further hearing.

SO ORDERED.

DATE: 4.20.23


Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0300

FEDERAL NATIONAL MORTGAGE ASSOCIATION,)

PLAINTIFF)

v.)

ELEANOR MOORE,)

DEFENDANT)

ORDER FOR ALTERNATIVE
HOUSING DURING REPAIRS

This matter came before the Court on April 19, 2023 on Plaintiff's complaint for injunctive relief. Plaintiff seeks an order that Defendant accept alternative housing to allow Plaintiff to abate lead paint and make other repairs at the premises located at 471-473 West Street, Unit #1, Pittsfield, Massachusetts. Defendant does not oppose the request. Therefore, with the assent of Defendant, the following order shall enter:

1. Plaintiff shall arrange and pay for alternative housing at the Holiday Inn & Suites in Pittsfield, Massachusetts from Saturday, April 22, 2023 through Saturday May 13, 2023. If this particular hotel is not available, Plaintiff shall select a similar hotel (pet friendly, rooms with cooking facilities) within the City of Pittsfield.
2. Plaintiff shall begin the lead paint abatement as soon as the unit is vacated and work diligently to complete the work as soon as possible.

3. The parties shall return for review on the status of the lead paint abatement work (and other repairs that may require the unit to be vacant) on **May 10, 2023 at 9:00 a.m.**
4. The legislative fee for injunctive relief is waived.

SO ORDERED.

DATE: 4.20.23

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

notice to quit on or about September 23, 2021. Defendant does not challenge receipt of the notice. Defendant did not vacate by the end of the notice period, namely October 31, 2021, and Plaintiff timely served and filed a summons and complaint with this Court.

At trial, Plaintiff put into evidence certified copies of the Foreclosure Deed and the Affidavit of Sale in the statutory form, as well as the Quitclaim Deed, thereby satisfying his prima facie showing that he obtained a deed to the Property and that the deed and affidavit of sale, showing compliance with statutory foreclosure requirements, were recorded. See *Bank of N.Y. v. Bailey*, 460 Mass. 327, 334 (2011). See also *Fed. Nat'l Mortg. Ass'n. v. Hendricks*, 463 Mass. 635, 637 (2012) (the plaintiff establishes its prima facie showing of its right to possession by producing an attested copy of the recorded foreclosure deed and affidavit of sale under G.L. c. 244, § 15).

In her defense, Defendant asserts that the foreclosure is void because the Bank failed to comply with the requirements of HUD's "face-to-face meeting" obligation as detailed in 24 C.F.R. § 203.604.¹ In order to satisfy 24 C.F.R. § 203.604, the Bank is required to either have a face-to-face interview with Defendant or make "reasonable effort to arrange" such a meeting prior to foreclosing on the Property. 24 C.F.R. § 203.604(b) & (c)(5). Pursuant to the HUD regulations, a reasonable effort "consist[s] at a minimum of one letter sent to the mortgagor certified by the Postal Service as having been dispatched ... [and] at least one trip to see the mortgagor at the mortgaged property." 24 C.F.R. § 203.604(d). The Court finds that the Bank did both.²

¹ Defendant does not dispute any other aspect of the foreclosure.

² Federal law does not require that the agent visiting the mortgaged property be authorized to negotiate a loan modification. See, e.g., *Donahue v. Fannie Mae*, 980 F.3d 204, 2010 (1st Cir. 2020).

The evidence shows, and the Court finds, that a vendor contracted by the Bank visited the Property on numerous occasions in 2018 and, on September 20, 2018, left a door hanger with an occupant at the Property. On August 23, 2019, the Bank sent Defendant a certified letter inviting Defendant to contact the Bank to discuss "loss mitigation options over the phone or to schedule a face-to-face interview at the loan servicing center nearest you."

Defendant claims that she attempted to arrange a face-to-face meeting but was unable to do so. She could not remember when she called, who she spoke with and what was said. She provided no evidence to support her testimony. The Court finds that, in fact, Defendant called the Bank on September 19, 2019 and entered her account number, which caused the Bank's automated phone system to pull up her account for a customer service agent to view. The call was disconnected prior to Defendant speaking with a Bank representative, however, and Defendant did not speak to anyone on that occasion, nor did she call the Bank again. The Court finds that Defendant was not denied an opportunity to have a face-to-face meeting.

Because Plaintiff satisfied its prima facie case for possession, and because the Court finds Defendant's defense to be without merit, Plaintiff is entitled to possession of the Premises. Accordingly, based on the foregoing findings and rulings, and in light of the governing law, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. After expiration of the 10-day appeal period, Plaintiff may request issuance of the execution (eviction order) by written application.

SO ORDERED,
DATE: 4.20.23


Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

BERKSHIRE, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-4639

HOLY FAMILY HOUSING CORP.,
PLAINTIFF)

v.)

RICHARD GREENE,
DEFENDANT)
_____)

FINDINGS OF FACT, RULINGS OF
LAW AND ORDER FOR JUDGMENT

This matter came before the Court for a bench trial on March 22, 2023. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of a residential dwelling unit located at 611 State Road, Apt. 309, North Adams, Massachusetts (the "Premises") from Defendant.

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

The Premises are located in a 39-unit building for elderly residents managed by Berkshire Housing Services, Inc. On April 4, 2011, Defendant executed a model lease under Section 202 Program of Housing for the Elderly or Handicapped in conjunction with the Section 8 Housing Assistance Payments Program (the "Lease"). According to the Lease, The Lease permits termination by Plaintiff upon 30 days written notice for material noncompliance with the Lease, which includes one or more substantial violations of the Lease or repeated minor violations that "disrupt the livability of the project [or] adversely affect the health or safety of any person...."

On or about October 26, 2022, Plaintiff served Defendant with notice of its intent to terminate the tenancy as of December 1, 2022 due to repeated lease

violations relating to his failure to keep the Premises in a clean and sanitary condition. Defendant received the notice.

The Court finds that keeps an excessive amount of items in the Premises, causing there to be only narrow pathways to walk throughout the unit. Items fill all rooms from floor to ceiling. Although Defendant can make his way from the door to the Premises to his bedroom, bathroom and kitchen, property maintenance staff cannot. First responders also would be unable to access anyone inside the Premises in the case of emergency. The fire load in the Premises is high, and although Defendant has turned off his stove at the breaker to reduce the risk of fire and does not use a toaster or other device to heat food, he cannot completely eliminate the risk of a spark.

Defendant has been provided numerous opportunities reduce the volume of items in the Premises. The Court connected him to the Tenancy Preservation Program ("TPP"), but to date there has been no significant improvement in the condition of the Premises. The Court has also entered orders over the court of the past year requiring Defendant to take specific steps to bring his unit into a safe and sanitary condition, and Defendant has not complied.

The Court finds that the condition of the Premises constitutes a material violation of § 15(b) of the Lease requiring Defendant to keep the Premises in a clean and sanitary condition and to comply with building and housing codes. There can be no question that Defendant has violated the State Sanitary Code provision requiring, "[i]n a multi-unit residence ... [t]he occupant shall maintain free from obstruction all means of egress within their dwelling unit or rooming unit." See 105 C.M.R. § 410.260(D).

Defendant did not file an answer, but denies that the Premises are unsafe. He considers the Premises a “workshop” where he happens to live. He acknowledges that he obsessively collects plastics that are hard to recycle, but claims that he could send these items to a company that accepts hard-to-recycle materials. He also claims that he has rented a storage unit and could move some of his items there. These options have been available to him for many months, and even though he has had the assistance of TPP, he has not taken these basic steps to improve the condition of the Premises.

Accordingly, based on the findings of fact, and in light of the governing law, the Court enters the following order:


1. Judgment for possession shall enter in favor of Plaintiff.
2. In order to allow Defendant one final opportunity to take the necessary steps to significantly reduce the items in the Premises, no execution shall issue until the next Court date.
3. Within 45 days of the date of this order, Defendant shall permanently remove the recyclable plastics and other recyclable items that he is keeping in the Premises, and he shall dispose of or transfer to his storage unit a substantial amount of books, boxes and furniture such that the Premises complies with his Lease and the provision of the State Sanitary Code requiring him to maintain free from obstruction all means of egress within the Premises.¹

¹ Nothing in this order excuses Defendant from continuing to pay for his use and occupation of the Premises in the same amount as his monthly rent obligation.

4. Plaintiff shall schedule an inspection of the Premises on at least twenty-four hours advance written notice on or after a date that is 45 days from the date of this order. Defendant shall not unreasonably deny access for the inspection. Both parties are permitted to take photographs accurately depicting the condition of the Premises.
5. Defendant shall not store any items, including bicycles, in the hallways or other common areas of the building, and he may not sleep in the hallways under any circumstances.
6. The parties shall return for review in front of the undersigned judge on June 13, 2023 at 2:00 p.m. by Zoom. If at this review the Court finds that Defendant has failed to substantially comply with this order, Plaintiff shall be entitled to request a lift on the stay of execution without the need for further notice, pleading or hearing.

SO ORDERED.

DATE: 4.20.23


Jonathan J. Kane, First Justice

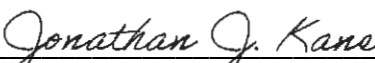
cc: Berkshire County Tenancy Preservation Program
Court Reporter

Court is not convinced that an equitable stay is warranted. Therefore, based on the foregoing, the following order shall enter:

1. Judgment shall enter for Plaintiff for possession and \$2,000.00 in damages, plus court costs.
2. Execution shall issue pursuant to Uniform Summary Process Rule 13.

SO ORDERED.

DATE: 4.20.23



Jonathan J. Kane, First Justice

The Court finds that Plaintiff purchased the Premises on May 26, 2022. The next day, she sent a letter to Defendants, who had been living at the Premises since 2010, requesting that they remove all personal property from the basement and garage and informing them that she would consider any items remaining after June 3, 2022 to be abandoned. She also informed Defendants that they should not allow the laundry machines to be used by anyone not living in the household. On June 13, 2022, Plaintiff notified Defendants that she had replaced the locks on the garage door and provided them with a key.

The Court finds that Plaintiff's conduct does not constitute a breach of quiet enjoyment. She was a new homeowner who moved into the first floor of the house and wished to use the garage and clear out the basement. When Defendants objected, she did not proceed with her plans and at no time did she remove or dispose of any of Defendants' items from the garage or basement. Plaintiff had reason to question whether Defendants were allowing their daughter, who did not live at the Premises, to use the laundry machines. The Court finds that none of Plaintiff's actions were unreasonable under the circumstances and, further, the Court finds that Defendants suffered no harm. Therefore, the Court finds Defendants' counterclaims to be without merit.

Accordingly, Plaintiff is entitled to entry of judgment for possession. In a no fault eviction case, pursuant to G.L. c. 239, §§ 9-11, the Court may grant a stay for a

period not exceeding six months in the aggregate³ provided that Defendants conduct a diligent housing search and pay for their continued use and occupancy of the Premises during the stay. Here, the tenancy ended on July 1, 2022, more than nine months ago, and Defendants do not qualify for a statutory stay.

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

1. Judgment for possession shall enter in favor of Plaintiff.
2. Execution shall issue by written application following the expiration of the ten-day period after judgment is entered on the docket.
3. Because Defendants have resided in the Premises for approximately ten years, and to avoid the likelihood of another hearing when Defendants seek a further equitable stay, the Court will allow Defendants additional time to move as follows:
 - a. The Court will grant an equitable stay on use of the execution through May 31, 2023 on the condition that they pay \$1,800.00 by May 1, 2023, representing \$900.00 for their use and occupancy for April 2023 and May 2023.
 - b. Given the amount time that has passed since Defendants' tenancy was terminated and the granting of an equitable stay within this

³ Defendants concede that the Premises are not occupied by a person sixty years of age or older or anyone who is a "handicapped person" as that term is defined in the statute. Consequently, they are not entitled to the twelve-month stay pursuant to G.L. c. 239, § 9.

order, Defendants will not be entitled to any additional stay on
Plaintiff's use of the execution.

SO ORDERED.

DATE: 4-20-23

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. 22-SP-4468

HONG QIAN,

PLAINTIFF

v.

SERENNA PROULX A/K/A SERENNA JEAN
VASQUEZ,

DEFENDANT

FINDINGS OF FACT, RULINGS
OF LAW AND ORDER FOR JUDGMENT

This no fault summary process case came before the Court on April 13, 2023 for a bench trial. The parties appeared self-represented. Plaintiff seeks to recover possession of a rental unit located at 169 Prospect Street, 2d Fl, Springfield, Massachusetts (the "Premises") from Defendant.

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

Plaintiff owns the Premises. Monthly rent is \$880.00 per month. On or about October 20, 2022, Plaintiff served and Defendant received a legally adequate rental period notice to quit. Defendant does not challenge Plaintiff's prima facie case for possession. She did, however, file an answer with counterclaims.

The primary dispute in this matter is the conditions of the Premises. In order for Defendant to be entitled to an abatement or rent or damages, she must prove to the Court the date she gave Plaintiff notice of the defective conditions. In this case,

Plaintiff was clearly aware of the need for repairs by August 8, 2022, when she filed a complaint with the Housing Court seeking an order for access to make repairs. See 22-CV-0566. In that case, the Court ordered that Plaintiff provide at least 24 hours advance notice for the need to enter to make repairs, that the work be done by professionals with proper licenses and permits, and that Plaintiff not schedule repair work for periods of more than four hours without Defendants' agreement or permission from the Court.

On or about September 15, 2022, the Premises were inspected by the Department of Code Enforcement, Housing Division, for the City of Springfield ("Code Enforcement"). Code Enforcement cited numerous violations of the State Sanitary Code, including broken ceiling plaster and floor in the bathroom, a broken faucet in the tub, water damage to the kitchen ceiling, damaged porches and outside steps, exposed wiring, broken switch plate covers, evidence of mice and excessively hot water. Code Enforcement also found possible cross-metering of gas and electric services.

In her defense against Defendant's counterclaims, Plaintiff asserts that she attempted to make the repairs but was unable to complete them because Defendant refused to allow access and because she could not make the repairs within a four-hour window as set forth in the Court's order in 22-CV-0556. It does not appear that she sought further Court order to gain access or extend the repair window, however. When Code Enforcement returned for re-inspection on January 30, 2023, it determined that the porches, steps, bathroom floor and faucets and the kitchen ceiling were still not repaired.

Implied in every tenancy is a warranty that the leased premises are fit for human occupation. *Jablonski v. Clemons*, 60 Mass. App. Ct. 473, 475 (2004); see *Boston Housing Auth. v. Hemingway*, 363 Mass. 184 (1973). The warranty of habitability typically requires that the physical conditions of the premises conform to the requirements of the State Sanitary Code. See *Davis v. Comerford*, 483 Mass. 164, 173 (2019), citing *Boston Hous. Auth.*, 363 Mass. at 200-201 & n.16. A tenant's obligation to pay the full rent abates when the landlord has notice that the premises failed to comply with the requirements of the warranty of habitability." *Id.*

In this case, the Court finds that the Premises did not conform to the requirements of the State Sanitary Code from early August 2022 through the date of trial. Defendant did not testify in any detail as to the severity of the conditions or how they affected her use and enjoyment of the Premises. Based on a totality of the circumstances, the Court determines that the various conditions of disrepair diminished the value of the Premises by 33%. Defendant, then, is entitled to an abatement of \$290.40 per month for 9 months for a total of \$2,613.60.

The Court further finds that Plaintiff's failure to make repairs violates G.L. c. 186, § 14, which provides that a landlord who "directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant ... shall ... be liable for actual and consequential damages, or three month's rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee" Defendant offered no evidence of actual damages, and so she is entitled to statutory damages in the amount of three months' rent, namely \$2,640.00.¹ Because both the warranty damages and the

¹ Defendant represented herself, so she is not entitled to an award of attorneys' fees.

statutory quiet enjoyment damages arise from the same underlying facts, Defendant is only entitled to one award of damages, the one that offers her the greatest recovery, which in this case is the statutory damages award of \$2,640.00.

The Court finds insufficient evidence to enter a finding as to cross-metering or Plaintiff's liability under G.L. c. 93A. With respect to Defendant's counterclaim of retaliation, the Court finds that Plaintiff did not retaliate against Defendant for her complaints to Code Enforcement. The Court finds that Plaintiff had sent a notice to quit to Defendant months earlier, on April 26, 2022 and filed a summary process case on June 7, 2022. Her case was dismissed by the Court for a defective notice and pleading on September 7, 2022, leading to Plaintiff serving a new notice to quit in October 2022. Based on these facts, the Court finds that the timing of the notice to quit upon which this case is based was not sent in retaliation of Defendant's report to Code Enforcement, but instead was sent to correct the defects in her prior eviction action.

Pursuant to G.L. c. 239, § 8A, any counterclaim upon which Defendant prevails must be offset against the rent owed. If Defendant is owed more than Plaintiff is owed, Defendant defeats Plaintiff's claim for possession. Based on these findings and in light of the governing law, the following order shall enter:

1. Plaintiff is entitled to unpaid rent in the amount of \$5,280.00 for the months of November 2022 through April 2023.
2. Defendant is entitled to statutory damages of \$2,640.00.
3. Pursuant to G.L. c. 239, § 8A, there shall be no recovery of possession if Defendant, within one week after receipt of this order, pays to the Clerk of

the Court, by bank check or money order, the sum of \$2,640.00, plus court costs in the amount of \$182.76 and interest in the amount of \$117.26, for a total of \$ 2,940.02.

4. If timely payment is made to the Clerk, judgment for possession shall enter in favor of Defendant. If timely payment is not made to the Clerk, judgment shall enter for Plaintiff for possession and damages in the amount set forth in item 3 above.
5. Plaintiff shall continue to make the repairs at the Premises cited by Code Enforcement. The terms of the Court's order in 22-CV-0566 shall remain in place and shall govern access to Premises to make the repairs.

SO ORDERED.

DATE: 4.20.23

Jonathan J. Kane
Jonathan J. Kane, First Justice

cc: Court Reporter

R

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3073

B.G. MASSACHUSETTS,

Plaintiff,

v.

STEPHANIE HERNANDEZ-CASTILLO,

Defendant.

ORDER

After hearing on April 13, 2023, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared with Lawyer for the Day Counsel, the following order shall enter:

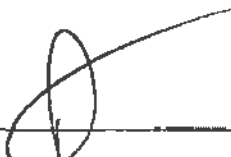
1. The parties stipulate that \$4,100 is outstanding in use and occupancy through the end of April 2023. This is after a payment by RAFT of \$10,000.
2. The landlord's motion is denied without prejudice for the reasons stated on the record.

3. The tenant shall pay her use and occupancy for May 2023 on time and in full.
4. The tenant shall then pay the remaining balance by no later than May 31, 2023.

She anticipates doing so with her tax returns and was instructed that if her tax returns are going to be delayed beyond May 2023, she should seek an agreed upon extension from the landlord and if not file a motion with the court for an extension of time.

5. The landlord shall inspect and make any necessary repairs and, by agreement of the parties, may take photographs of the areas identified by the tenant that she believes are in need of repairs.

So entered this 21st day of April, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

to the reasons for Plaintiff's actions. Plaintiff's demand for "rent/use and occupancy" in the termination notice is not necessarily wrongful on its face, as Plaintiff may have been justified in seeking use and occupancy payments in the absence of an agreement to pay rent, particularly in light of the prior summary process case between these parties. Moreover, the Court needs to take evidence in order to determine whether Plaintiff directly or indirectly interfered with Defendants' quiet enjoyment and whether its conduct caused Defendants actual harm.

Accordingly, Defendants' motion for summary judgment is denied. Because Plaintiff's claim to possession in this case has been dismissed, this matter shall be transferred to the civil docket with Angela and Christopher Guz named as the plaintiffs and Hayastan Industries [sic] named as the defendant. The Clerk's Office shall schedule a case management conference for the purposes of selecting a trial date.

SO ORDERED.

DATE: 4/21/23

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

cc: Court Reporter

Plaintiff asks that the Court read into the Agreement a requirement that Defendant pay rent during the Interim Period. Defendant asks that the Court read into the Agreement a waiver of rent during the Interim Period. The Court will do neither. The Agreement is not ambiguous. The parties agreed to resolve all claims between them *through the date of the Agreement* for consideration (italics added). The absence of provisions regarding rent obligations after the date of the Agreement does not render the Agreement ambiguous, nor does it warrant discarding the Agreement altogether. Plaintiff has a remedy if Defendant has failed and/or continues to fail to pay rent during the Interim Period; namely, it can institute a civil proceeding to collect the unpaid rent. It cannot, however, unilaterally deduct the unpaid rent from the consideration it agreed to pay.

For the foregoing reasons, Plaintiff's motion is denied.

SO ORDERED.

DATE: 4/21/23

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22CV355

ISANDRA CUBA
Plaintiff¹

Vs.

KAREENA WILLIAMS
Defendant²

This matter came before the Court on April 24, 2023, on Plaintiff's Motion to Enforce the Court's Order of April 4, 2023. The Plaintiff appeared self-represented. The Defendant failed to appear. Based on all the credible evidence, stipulations and review of the record, the Court orders as follows.

1. Plaintiff's Motion to Enforce the Court's Order of April 4, 2023 is **ALLOWED**.
2. Defendant shall retain the services of an independent party to test the water quality. The Defendant shall retest the water at the property located at 109 Wellington Street, Springfield, MA (the **Premises**).
3. Defendant shall repair all outstanding violations referenced in the Court's Order of April 4, 2023, incorporated by reference herein, forthwith.
4. All repairs shall be completed by qualified individuals and in a workmanlike manner.
5. Defendant shall provide the Plaintiff with forty-eight (48) hour written notice prior to any inspection or repair.
6. Failure to comply with this Order may result in the Court assessing sanctions, including not limited to assessment of fines, damages and finding of contempt.
7. Court waives legislative fee.
8. Parties shall appear for review of this matter on Monday, May 15, 2023, 9:00 a.m.

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

² As used herein, the term "Defendant" refers to all persons identified in the caption on the line marked "Defendant."

SO ORDERED

April 24, 2023

Sergio E. Carvajal
SERGIO E. CARVAJAL
JUSTICE, HOUSING COURT

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23CV309

ELLA MCFARLANE
Plaintiff¹

Vs.

JOSEPHINE PACQUETTE
Defendant²

ORDER

The Court held an evidentiary hearing on Plaintiff's Motions for Temporary Restraining Order/Preliminary Injunction on April 24, 2023. Plaintiff seeks an order regarding the Defendant, who is the landlord. Plaintiff appeared self-represented. Defendant appeared represented by counsel. After hearing, review of the parties' submissions and the record, the Court orders the following.

1. Plaintiff's Verified Complaint and Application for Restraining Order is **ALLOWED in PART and DENIED in PART**.
2. Plaintiff's request to have the Defendant remove cameras from the common areas is **DENIED**.
3. Plaintiff's request the Defendant refrain from recording audio of Plaintiff, members of her family, her guests/visitors, invitees or licensees is **ALLOWED**.
4. Defendant may retain cameras in the common areas provided none of the cameras record any video into the Plaintiff's residence.
5. Defendant shall refrain from recording audio, from any device, without written permission or consent of the recorded party.
6. Neither party shall interfere with the quiet enjoyment of each, each other's guests, visitors or others lawfully on the premises.

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

² As used herein, the term "Defendant" refers to all persons identified in the caption on the line marked "Defendant."

7. If Defendant fails to comply with said Order, the Court may assess sanctions, including holding the Defendant in contempt and/or assess fines for failure to comply with Court Order.
8. Court waives the legislative fee.

SO ORDERED.

Sergio E. Carvajal

SERGIO E. CARVAJAL
JUSTICE, HOUSING COURT

April 24, 2023

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
NO. 22SP4472

VICTOR MONSERRAT
Plaintiff¹

VS.

REYNA SANABRIA
Defendant²

ORDER

This matter came before the court on April 24, 2023, on Plaintiff's Motion to Enforce Agreement. Plaintiff appeared self-represented. The Defendant did not appear. After hearing, the Court orders as follows.

1. Plaintiff's Motion for Enforcement of Agreement is **DENIED**. Defendant has vacated the premises and possession is moot. Therefore, no further action can be taken in this matter.
2. The present matter is dismissed. Plaintiff stated Defendant vacated the premises and removed her personal belongings from the premises.
3. Plaintiff may file a small claims action for any unpaid rent in the Western Division, of the Housing Court.

SO ORDERED

Sergio E. Carvajal
SERGIO E. CARVAJAL
JUSTICE, HOUSING COURT

April 24, 2023

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

² As used herein, the term "Defendant" refers to all persons identified as in the caption on the line marked "Defendant."

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23CV208

KIMBERLY MORAN, JAQUELINE SPLAINE
Plaintiffs¹

Vs.

ELISSA V. SPLAINE, SERENITY ALLEN
Defendants²

ORDER

The Court held an evidentiary hearing on Plaintiffs' Motions for Temporary Restraining Order/Preliminary Injunction on April 24, 2023. Plaintiffs seek an order regarding the Defendants, who are related and co-owners of the property in dispute. All parties appeared represented by counsel. After hearing, review of the parties' submissions and the record, the Court orders the following.

1. Plaintiff's Verified Complaint and Application for Restraining Order is **DENIED**
2. The Housing Court does not have jurisdiction to address the legal dispute between the parties for the property located at 44 Little Alum Road, Brimfield, MA (the **Premises**). The parties in the present matter are related and are tenants in common regarding the premises.
3. Court does not have jurisdiction to determine the rights of tenants in common. Per G.L. c. 815C §3, the housing court shall have jurisdiction of all civil actions under the provisions of common law and of equity as is concerned directly or indirectly with the health, safety, or welfare, of any occupant of any place used, or intended for use, as a place of human habitation, the possession, condition, or use of any particular housing accommodations or services furnished in connection therewith, and all housing problems, including all contract and tort actions which affect the health, safety and welfare of the occupants or owners thereof.

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

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

4. Given the proprietary interest tied to the possessory interest in the present matter, the Court, as a matter of law, cannot rule on the issues as presented.

SO ORDERED.

Sergio E. Carvajal

SERGIO E. CARVAJAL
JUSTICE, HOUSING COURT

April 24, 2023

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23CV311

NICOLE VARGAS
Plaintiff¹

Vs.

CENTER FOR HUMAN DEVELOPMENT
Defendant²

This matter came before the Court on April 24, 2023, on Plaintiff's Verified Complaint and Application for Temporary Restraining Order. The Plaintiff appeared self-represented, and the Defendant appeared represented by Counsel. Based on all the credible evidence, stipulations and review of the record, the Court orders as follows.

1. Plaintiff's Verified Complaint and Application for Temporary Restraining Order is **ALLOWED**.
2. Defendant shall retain the services of an independent party to test the water quality. The Defendant shall retest the water at the property located at 395 Main Street, Apartment 201, Holyoke, MA (the Premises).
3. Defendant shall retain the services of a licensed exterminator (rodents and insects) and treat the premises for rodent and insect infestation.
4. Defendant shall repair all floors currently in disrepair on the premises, in a workman like manner
5. Failure to comply with this Order may result in the Court assessing sanctions, including not limited to assessment of fines, damages and finding of contempt.
6. Court waives legislative fee.
7. Parties shall appear for review of this matter on Monday, May 15, 2023, 9:00 a.m.

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

² As used herein, the term "Defendant" refers to all persons identified in the caption on the line marked "Defendant."

SO ORDERED

April 24, 2023

Sergio E. Carvajal

SERGIO E. CARVAJAL
JUSTICE, HOUSING COURT

and convincing evidence to be caused by Defendant are the holes in the walls inside her apartment. Defendant concedes that the damage was caused by her son [REDACTED]. Although Plaintiff is entitled to hold Defendant financially responsible for the damage to the walls, the Court does not find Defendant's inability to prevent the son's behavior to be "clear and undoubted disobedience" of a court order, a standard that implies at least some degree of intent to violate the order, or at least some willful disregard of the order.¹

The cause of the damages to the windows is less clear. Although there is reason to believe that Defendant's son caused the broken windows in the common area and used his BB gun to cause damage to other windows, the evidence is not clear and convincing. Plaintiff testified that "everyone knows that [the] son is the cause" of the window damage without providing evidence to support his claim. With respect to the repeated power shut offs at the Property, the master switch is on the exterior of the building and was previously unsecured; it could have been shut off by anyone looking to act maliciously toward Defendant and/or her son.

Based on a totality of the circumstances and the evidence presented, the Court finds no basis to enter a judgment for contempt. Therefore, the contempt complaint is hereby dismissed.

SO ORDERED.
DATE: 4/25/23



Hon. Jonathan J. Kane, First Justice

cc: Court Reporter

¹ The fact that the damage to the walls does not support a finding of contempt does not mean it cannot form the basis of a summary process case.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
Docket No. 22-SP-2513

BLANCHARD REALTY, LLC

Plaintiff,

v.

JERYN MAWSON and KYRON CARTER,

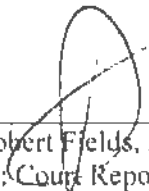
Defendants.

ORDER

After hearing in on March 2, 2023, at which the Plaintiff appeared through counsel and the Defendant, Kyron Carter, appeared self-represented, the following shall enter:

1. The Defendants owe Plaintiff rent arrearages through February 2023 in the amount of \$8,375.00, court costs in the amount of \$140.00 and sheriff's fees in the amount of \$480.46, which Plaintiff hereby waives if Defendants vacate as stated below.
2. The Defendants shall vacate the premises on or before April 30, 2023.
3. As a condition for Defendants remaining at the premises until April 30, 2023, pm, the Defendants shall pay Plaintiff use and occupancy, on or before April 10, 2023, in the amount of \$1,025.00 for the period of March 1, 2023, through March 31, 2023 and an amount of \$1,025.00 for the period of April 1, 2023 through April 30, 2023 (a total of \$2,050.00).
4. Said use and occupancy payments shall be made in the form of cash, money order or bank check at the office of Plaintiff's Counsel (734 Bliss Road, Suite 4 in Longmeadow, MA) but be made payable to the Plaintiff.
5. If Defendants fail to vacate the premises on or before April 30, 2023 and/or fail to make the necessary payments to the Plaintiff as stated herein, Judgment shall enter *nunc pro tunc* for the Plaintiff and the Execution on Judgment For Summary Process shall issue forthwith on May 1, 2023.

So entered this 26 day of April, 2023.



Robert Fields, Associate Justice
cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-4592

NAVJIWAN FULLER,

Plaintiff,

v.

MOLAVEN DUARTE,

Defendant.

ORDER

After hearing on April 25, 2023, on the landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant appeared *pro se*, and also at which a representative from Way Finders, Inc. appeared and reported on the status of a pending RAFT application, the following order shall enter:

1. The landlord's motion alleges that the tenant failed to comply with Paragraphs #3 and #4 of the March 10, 2023, Agreement of the Parties (Agreement). Specifically, that the tenant's assertion therein that she had "initiated a RAFT

application" was false and that she failed to pay her April 2023 use and occupancy.

2. The court finds the tenant credible when she testified that she had "initiated" a RAFT application at the time of the Agreement. The court finds that she likely began a RAFT application but never followed through, likely did not end up correctly submitting anything to Way Finders, Inc. (back in March 2023), and also that such failures may be related to [REDACTED].
3. The tenant is trying to work with her BHN worker to assist her in the RAFT application (which she has now filed and which his pending) but having communication and scheduling problems with BHN.
4. The tenant has included April 2023's use and occupancy (\$500) in her RAFT application.
5. Based on the foregoing, and out of a concern that the tenant's failures to diligently pursue her RAFT application may stem from [REDACTED], the landlord's motion is denied without prejudice *and* this matter is referred to the Tenancy Preservation Program (TPP).
6. TPP is requested to assist the tenant with the pending RAFT application and make an assessment for other resources that may assist the tenant.
7. The tenant shall pay her May 15, 2023, use and occupancy payment on time and in full.
8. This matter shall be scheduled for a review hearing on **May 30, 2023, at 2:00 p.m.**

So entered this 26 day of April, 2023.



Robert Fields, Associate Justice

CC: Jenni Pothier, Chief Housing Specialist (for referral to TPP)
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0322

MAPLE RIDGE VENTURES, LLC,

PLAINTIFF

v.

STEPHANIE LAUREN GAY, DIANNE H. GAY,
AND ADIEL HAIME VELEZ,

DEFENDANTS

ORDER ON PLAINTIFF'S
MOTION FOR INJUNCTIVE
RELIEF

After a hearing on April 26, 2023 on Plaintiff's Motion for Injunctive Relief, at which Plaintiff and appeared through counsel and the Defendants did not appear after due notice, the Court orders the following:

1. Defendants shall restore the electrical service to their unit forthwith;
2. Defendants shall not occupy the unit until the electricity has been restored and proof of electrical service has been provided to Plaintiff;
3. Defendants are prohibited from using any other method to provide electricity to their unit other than the installed electrical wiring (including via extension cords from outside the unit or via the use of any other power generating method or device); and
4. This matter shall be set for further in-person hearing on **May 5, 2023 at 11:00 a.m.** at the Western Division Housing Court in Springfield.

5. The legislative fee for injunctive relief (G.L. c. 262, § 4) is waived.

SO ORDERED.
DATE: 4-26-23

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

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 09-SU-14

JEFFREY A. NEECE,
Plaintiff,
v.
LEN DAWSON,
Defendant.

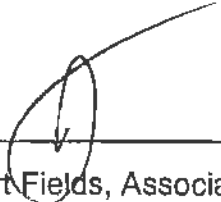
ORDER

After hearing on April 11, 2023, on the plaintiff's motion for enforcement of the underlying agreement of the parties at which only the plaintiff appeared, the following order shall enter:

1. This matter shall be scheduled for hearing at the date and time noted below.
2. The judgment in this matter is increasing at 12% per annum and the defendant is required to pay it.

3. The defendant is instructed to appear at the next hearing and that his failure to appear may result in the issuance of a capias (civil arrest warrant) for his physical apprehension and being brought to the courthouse.
4. This matter shall be scheduled for hearing on the plaintiff's motion on **May 25, 2023, at 9:00 a.m.** at the Springfield Session of the court.

So entered this 26th day of April, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-4133

PHOENIX SOUTH CITY,

Plaintiff,

v.

ESMERELDA CARTAGENA,

Defendant.

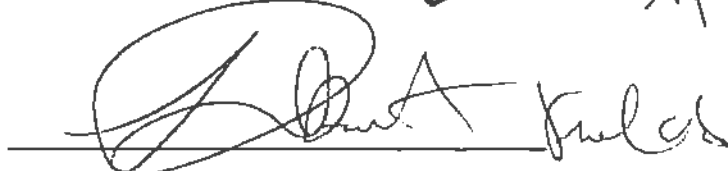
ORDER

After hearing on April 11, 2023, on the landlord's motion for entry of judgment, at which both parties appeared, the following order shall enter:

1. The landlord's motion was based erroneously on an assumption that the agreement of the parties dated January 12, 2023 (Agreement), required the tenant to pay an extra \$200 per month pending her RAFT application.
2. No such term was in the agreement.

3. Though late, the tenant has kept up with her rent pending the RAFT application per the Agreement.
4. Directly after the hearing the tenant was going to meet with a representative from Way Finders, Inc. to pursue her RAFT application.
5. The court shall refer this matter to the Tenancy Preservation Program to assist the tenant with her RAFT application and also to assess her for other services as she suffers from depression.
6. Pending the RAFT application, the tenant shall pay \$20 additional with her rent payments towards the arrearage.

So entered this 26th day of April, 2023.



Robert Fields, Associate Justice

CC: Jenni Pothier, Chief Housing Specialist for referral to TPP
Court Reporter

2. In the interim, and as required, the tenant paid her use and occupancy but failed to pay an additional \$100 towards the arrearage but brought the \$100 with her to court to pay the landlord.
3. The TPP representative reported that the tenant has a pending RAFT application and that she is working with the tenant to follow through with said application.
4. TPP shall also work with the tenant to see if she is in need of additional services.
5. The tenant shall pay her rent for May 2023 in full and timely. The tenant shall also pay an additional \$100 towards arrearage by May 7, 2023.
6. The landlord shall inspect the premises for disrepair (including ceiling work that was begun) and mold and make any and all necessary repairs. TPP offered to take photographs of any needed repairs and share same with the landlord.
7. This matter shall be scheduled for review on **May 25, 2023, at 9:00 a.m.**

So entered this 26 day of April, 2023.



Robert Fields, Associate Justice

CC: TPP

Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP-1684**

**SPRING MEADOW ASSOCIATION OF
RESPONSIBLE TENANTS,**

Plaintiff,

v.

AMARILLIS VASQUEZ,

Defendant.

ORDER

After hearing on April 11, 2023, on the landlord's motion for entry of judgment at which both parties appeared, the following order shall enter:

1. The landlord's motion is based on the fact that the tenant did not pay her use and occupancy (reduced to \$88 since September 2022) for October 2023 through February 2023.
2. The motion is denied due to the fact that the Agreement does not have a term requiring rent to be paid pending RAFT and also due to the tenant having paid

\$528 in March for rent through February 2023 and has paid March and April 2023.

3. The tenant will be placed in a courthouse Zoom room to meet with Way Finders, Inc. to apply for RAFT. The landlord shall update the tenant and Way Finders, Inc. as to the amount of outstanding use and occupancy (landlord reports that court costs have been paid).
4. A review hearing shall be scheduled for **May 9, 2023, at 9:00 a.m.**

So entered this 27th day of April, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-CV-0910

BAY HILL HOLDINGS, LLC,)
)
 PLAINTIFF)
)
 v.)
)
 STEPHEN J. LANE,)
)
 DEFENDANT)

FURTHER ORDER ON PLAINTIFF’S
MOTION FOR INJUNCTIVE RELIEF

This matter came before the Court on April 27, 2023 on Plaintiff’s motion for possession. Plaintiff appeared through counsel. Defendant did not appear after notice.

The Court entered a preliminary injunction on December 22, 2022 ordering Defendant to cease and desist from yelling and banging walls, floors, ceilings and doors in his unit or in the common areas, and from having any verbal or physical altercations or confrontations with other residents at the property. Witnesses were present in Court prepared to testify as to Defendant’s violations of the injunction; however, Defendant (again) failed to appear. Accordingly, the following order shall enter:

1. In order to preserve the rights of other tenants, Plaintiff may take temporary possession of Defendant’s unit as of Friday, May 5, 2023 if, by 3:00 p.m. on May 4, 2023, Defendant has not filed a motion with this Court (and served a copy on Plaintiff’s counsel) to bring this case forward for further hearing.

2. For purposes of this order, taking temporary possession means that Plaintiff may change the locks to prohibit Defendant from re-entering and re-occupying his apartment pending the summary process (eviction) trial on May 23, 2023. Plaintiff may not remove his belongings without further Court order and must reasonably allow Defendant to enter the apartment by appointment if he needs to retrieve necessary personal items.
3. This order must be delivered to Defendant by the end of business on April 28, 2023 and, if in-hand service is not possible, left in a conspicuous location at Defendant's apartment. Service does not need to be made by a constable or sheriff, but if Plaintiff elects not to use a constable or sheriff, it must arrange to have a witness to the service and shall provide an affidavit of service to the Court.
4. The preliminary injunction shall remain in place until further Court order.

SO ORDERED.

DATE: 4.28.23

Jonathan J. Kane
Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, SS:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
NO. 22SP4726

CCM PROPERTIES GROUP LLC

Plaintiff¹

VS.

ALLYSHA PERREIRA

Defendant²

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

This is a summary process action in which the Plaintiff seeks to recover possession of the premises from the Defendant based on for Non-Payment of Rent. The parties appeared for trial on April 28, 2023. Plaintiff appeared represented by counsel. The Defendant appeared self-represented. The Defendant did not file an Answer in response to the Plaintiff's claim for rent and possession. Based upon all stipulations, credible testimony and evidence presented at trial, and the reasonable inferences drawn therefrom, the Court finds as follows:

FINDINGS OF FACT

Plaintiff is the owner/lessor of the property located at 6 Standish Court, Apartment C, Greenfield, MA (the "Premises"). The Defendant has resided on the premises since 2018. The rent is \$1,300.00 per month. The Plaintiff caused to be served upon the Defendants a 14-Day notice to quit for non-payment of rent on November 18, 2022. (See Plaintiff's Exhibit 1). The Plaintiff claims \$7,540.00 in rent owed through April 2023. Plaintiff established a prima facie case for possession.

The Defendant admits she owes the Plaintiff the full rent. The Defendant testified that her boyfriend stole her money repeatedly [REDACTED]. Currently, the Defendant is not employed. The Defendant testified that she is going to apply for rental assistance and

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

² As used herein, the term "Defendant" refers to all persons identified as in the caption on the line marked "Defendant."

seek employment. The Defendant is unable to pay rent prospectively. The Court credits the Defendant's testimony.

Judgment for possession shall enter for Plaintiff and for \$7,540.00 in damages, plus court costs.

ORDER FOR JUDGMENT

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

1. Judgment for possession shall enter for the Plaintiff, for damages in the amount of **\$7,540.00** plus court costs.
2. Execution shall issue ten (10) days after the entry of judgment upon written request.

Sergio E. Carvajal

SERGIO E. CARVAJAL
JUSTICE, HOUSING COURT

April 28, 2023

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP1850

SARAH ANN CASTRO,

Plaintiff,

v.

RUTH KENNEDY,

Defendant.

ORDER

After conducting a Case Management Conference on April 27, 2023, the following order shall enter:

1. The plaintiff's motion to bifurcate is denied for the reasons stated on the record.
2. The defendant's motion *in limine* to exclude testimony and/or evidence regarding [REDACTED] is allowed by assent.
3. The plaintiff's motion *in limine* to preclude evidence of the sale price and/or value of the premises is allowed by assent.

4. The defendant's motion *in limine* to exclude testimony and/or evidence that a reason for the eviction is because the plaintiff desired to move into the premises is denied as it is an alleged defense to the tenant's retaliation claim.
5. The parties shall file by May 10, 2023, the following:
 - a. agreed to questions for the jury *venire*;
 - b. agreed upon description of the case to be read to the jury *venire*;
 - c. proposed jury instructions;
 - d. list of agreed to exhibits (if any).
6. Counsel shall appear on 8:45 a.m. on May 16, 2023, on the first day of the jury trial to prepare for the matter to be called at 9:00 a.m. so as to avoid delay in requesting jurors from the jury pool.
7. As discussed at the conference, if the parties file a stipulation in writing to conduct the trial jury-waived, the obligations of paragraphs 5 and 6 above do not apply.

So entered this 1st day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

1. Judgment shall enter in favor of Plaintiff for possession and \$6,933.98 in damages, plus court costs of \$193.10.
2. Execution shall issue in accordance with Uniform Summary Process Rule 13.

SO ORDERED.

DATE: 5.1.23

Jonathan J. Kane
Jonathan J. Kane, First Justice

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-325

KELLEY ROARK,

Plaintiff,

v.

JESSICA MELROY,

Defendant.

ORDER

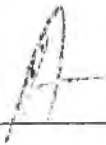
After hearing on April 28, 2023, the following order shall enter:

1. Without admission of any wrongdoing, the tenant shall not smoke, nor allow her guests to smoke, in her third-floor unit. The tenant is not responsible for other *bona fide* tenants on the third floor.
2. Without admission of any wrongdoing and other than in an emergency, the landlord shall provide the tenant with no less than 48-hour notice in advance for

wishing to enter her unit and will not enter her unit without permission---even after notice.

3. As stated by the judge on the record, this matter shall be referred to the City of Springfield Code Enforcement office to determine if the subject premises is being used as an illegal rooming house. The subject premises are located at 855 Belmont Avenue in Springfield, MA.

So entered this 1st day of May, 2023.



Robert Fields, Associate Justice ^(RM)

CC: Amy Martin, Session Clerk (for referral to City Law Department re: Rooming House issue.

Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3429

WILMINGTON SAVINGS FUND SOCIETY,

Plaintiff,

v.

MICHAEL MACHOS and ANNA MARIE
KAHERI,

Defendants.


ORDER

After hearing on April 27, 2023, on the defendants' motion for a stay on the use of the execution, the following order shall enter:

1. After trial on January 26, 2023, the court issued an order entering judgment for possession to the plaintiff, allowing for execution for possession in due course, and stayed use on the execution until after April 1, 2023.
2. The defendant Anna Marie Kaheri is disabled and has a sole income from Social Security benefits. The defendant Michael Machos is presently employed.

3. The defendants are seeking additional time to vacate. The defendants explained that they have resided at the premises for 25 years and that they are on a waiting list with the Chicopee Housing Authority and hopeful that they will be offered accommodations soon.
4. The defendants have offered to pay \$400 use and occupancy for the time they remain there starting in May 2023.
5. The motion for additional time to relocate is allowed and the stay on the use of the execution shall be extended, upon the defendants paying the plaintiff \$400 per month for May and June 2023, paid by the first week of each month.
6. The plaintiff may file a motion if it seeks an order from the court to increase the monthly use and occupancy to more than \$400.
7. The plaintiff may levy on the execution on July 2, 2023, or prior to that date if the defendants fail to pay use and occupancy as noted above, without further leave of court.

So entered this 1st day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-495

DLJ MORTGAGE CAPITAL, INC.,

Plaintiff,

v.

BEVERLY BLAKE, a/k/a BEVERLY THOMAS,

Defendant.

ORDER SETTING
THE APPEAL BOND


After hearing on April 27, 2023, setting the appeal bond at which the plaintiff appeared through counsel and the defendant appeared *pro se*, the following order shall enter:

1. The defendant's motion to waive the appeal bond is denied. Though the plaintiff does not dispute that the defendant meets her burden on the first prong of posing a non-frivolous defense, after review of the affidavit of indigency and accompanying financial information the court finds that the defendant is not

indigent and, therefore, does not meet the second prong pursuant to G.L. c.239, s.5.

2. With the request for waiver of the appeal bond being denied, the court turns to G.L. c.239, s.6. That statute requires the setting of the bond to include, among other costs, use and occupancy from the date of the foreclosure and in monthly installments pending appeal. In this matter, the plaintiff waived its claim for use and occupancy upon the entry of judgment for possession. The manner in which the plaintiff waived its claim for use and occupancy is not viewed by the court as a waiver of use and occupancy as being part of an appeal bond.
3. The defendant proffered at the hearing that her mortgage payments were set at \$975.
4. Accordingly, and pursuant to G.L. c.239, s.5 & 6, the appeal bond shall be set at \$975 per month as use and occupancy as long as the defendant remains in possession pending appeal¹. The first payment of \$975 shall be due on May 31, 2023, and the defendant shall pay \$975 by the last day of each month thereafter. All such payments shall be made paid to the plaintiff through its counsel.

So entered this 2nd day of May, 2023.



Robert Fields, Associate Justice

CC: Laura Fenn, Assistant Clerk Magistrate (Re: Appeal)
Court Reporter

¹ The plaintiff did not dispute the use and occupancy being set at the \$975 amount at this time. The plaintiff also did not request any other costs or amounts listed in G.L. c.239, s.6.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-904

MAPLE COMMONS,

Plaintiff,

v.

LIDMARY RIVERA,

Defendant.

ORDER

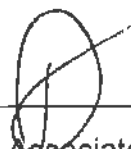
After hearing on April 27, 2023, on the landlord's motion to enforce the agreement, the following order shall enter:

1. The tenant was compliant with the terms of the June 29, 2023, Agreement until she lost her job.
2. Given the recent payment by the tenant on April 19, 2023, of \$1,600 and a payment of \$400 in December 2022 and her agreement to pay her rent timely and then an additional \$1,200 two weeks later, and also given that the tenant

reports that she has a pending RAFT application, the motion is denied without prejudice contingent upon compliance with the terms of this order.

3. The tenant shall pay her rent in full timely beginning in May 2023 plus \$1,200 two week later towards the arrearage of \$4,087 and court costs of \$202.01.
4. The parties shall also cooperate with the requirements of the tenant's RAFT application.
5. This matter shall be dismissed at a \$0 balance.

So entered this 2nd day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-4250

LAWRENCE MICHON,

Plaintiff,

v.

SUZANNE BATEMAN, MICHAEL GUERTIN,
and SARAH MILES,

Defendants.

ORDER

After hearing on April 26, 2023, on the tenants' motion for more time to vacate the premises, the following order shall enter:

1. This is a no-fault eviction action that commenced with a notice to quit that terminated the tenancy as of October 1, 2022. Thereafter the landlord filed this instant summary process action.
2. At the Tier 1 event on January 20, 2023, the parties entered into an Agreement that the tenants would vacate the premises by May 1, 2023. The parties also agreed in Term 3 of the Agreement that if the tenants needed more time beyond May 1, 2023, they could file a motion with the court.

3. The court credits the tenants' testimony that they have been diligently searching for housing and have now added a search for purchasing a home but have yet to secure alternate accommodations. The court also credits their testimony that there are factors that make the move even more difficult due to the age and disabilities of the tenants which require a first-floor three-bedroom unit and a lower rent (due to the income source being from Social Security benefits for all three tenants).
4. The landlord's counsel proffered that it is his client's intention to sell the property and that he desires it vacant to do so.
5. Based on the foregoing, the tenants' request for additional time to vacate is granted contingent upon compliance with this order.
6. Accordingly, the tenants shall maintain a "log" which verifies each and every effort to secure alternate housing (be it rental or for purchase) and the outcome of each such effort. The tenant shall also pay their use and occupancy in full and timely.
7. This matter shall be scheduled for review on **June 14, 2023, at 9:00 a.m.** in the Pittsfield Session. The tenants shall bring their housing search log with them to court and allow the landlord to review same prior to the hearing.

So entered this 2nd day of July, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-928

KIRA ROGERS,

Plaintiff,

v.

RAINELLY MATEO,

Defendant.

ORDER of DISMISSAL

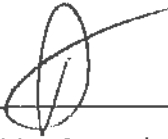
After hearing on April 28, 2023, at which the plaintiff landlord appeared through counsel and the defendant tenant appeared *pro se*, the following order shall enter:

1. As described by the judge at the hearing, the notice to quit served in this matter (NTQ), dated February 9, 2023, is fatally flawed and the matter is dismissed.
2. The NTQ informed the tenant that he owed rent and that even if he paid it, it would be accepted for use and occupancy only. Given the landlord's stipulation

in court that the NTQ was the first given in the last twelve months, the NTQ denied the tenant his statutory right to cure.

3. As such, with the NTQ violating the tenant's right to cure, this matter is dismissed, without prejudice. See, G.L. c.186, s.12.

So entered this 2nd day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO 22 SP 4102

ANTHONY STEWART,)	
)	
PLAINTIFF)	
v)	ORDER FOR ENTRY OF
)	JUDGMENT
BRITTANY HILLMAN,)	
)	
DEFENDANT)	

This summary process case came before the Court for review on April 27, 2023 following a stay under G.L. c. 239, § 9. The statutory stay ends on April 30, 2023 a bench trial on February 23, 2023. Both parties appeared self represented.

Plaintiff did not seek any rent in his complaint but claims that \$2,004.00 is owed through today. Defendant disputes the amount and the Court previously entered an order that the parties would reserve their claims regarding unpaid rent and defenses thereto.¹ The only issue addressed in the prior Court order is possession. Based on the totality of the circumstances, the Court finds no compelling equitable reason to allow a further stay at this time beyond the six month statutory stay.


¹ Plaintiff claimed that Defendant was obligated to make a payment of half of the unpaid rent by today in order to be eligible for a further extension. The Court listened to the recording of the previous hearing and there is no such requirement for such a payment prior to today. The issue is of no import, however, because the Court is not granting a further extension.

already granted Therefore, and consistent with the March 16, 2023 order, the following order shall enter

- 1 Judgment for possession shall enter in favor of Plaintiff on May 1, 2023
- 2 Execution for possession only shall issue no earlier than ten days following the date the judgment enters on the docket
- 3 Either party may seek to recover monetary damages from the other party in a separate civil (or, if actual damages are \$7,000 or less, small claims) action

SO ORDERED

DATE 5-2-23



Jonathan J. Kane, First Justice

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-304

ISANDRA CUBA,

Plaintiff,

v.

KAREENA WILLIAMS and THE SPRINGFIELD
WATER & SEWER COMMISSION,

Defendants.

ORDER

After hearing on April 28, 2023, at which the plaintiff tenant and the defendant Water & Sewer Commission appeared but for which the defendant property owner failed to appear, the following order shall enter:

1. The parties present report that the water has been restored to the premises.
2. The Water & Sewer Commission (Commission) shall not curtail the water service without leave of court.

3. The Commission's request for a civil arrest warrant (*capias*) to issue for the physical apprehension of the defendant property owner is denied without prejudice. Though the court was open to its issuance during the hearing, upon reflection and further review of the file, instead a return review hearing shall be scheduled below.
4. If the defendant property owner, Kareena Williams, fails to appear at the return hearing noted below, the Commission may request the issuance of a *capias* at that time.
5. This matter shall be scheduled for a review hearing on **May 19, 2023, at 9:00 a.m.**

So entered this 3rd day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

QR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-4799

PAULA DE LAURENTIIS,

Plaintiff,

v.

JAMES NESBITT and TIFFANY TAN,

Defendants.

ORDER DISMISSING THE
SUMMARY PROCESS ACTION

After hearing on February 24, 2023, the following order shall enter:

1. **The Defendants' Motion to Dismiss:** The tenants' motion to dismiss argued on several bases including a claim that due to the use by the landlord of two different notices purported to terminate the tenancy. More specifically, the landlord gave notice to the tenants entitled "Massachusetts 30-Day Notice to Quit" (hereinafter, "30-day notice") alleging violations of the lease, and prior to

the expiration of same gave notice to the tenants entitled "Massachusetts 14-Day Notice to Quit" (hereinafter, "14-day notice").

2. It is well settled that notices to quit must be timely, definite, and unequivocal.

Further, the question for the court is not whether a tenant was misled but whether the notice is sufficiently clear, accurate, and certain so that it cannot reasonably be misunderstood. See, *Springfield II Investors v. Marchena*, Hampden Housing Court Docket No. 89-SP-1342 (Abrashkin 1999); *Cambridge St. Realty, LLC v. Stewart*, 481 Mass. 121, 130 (2018).

3. In the instant matter, the 30-day notice to quit is within its four corners equivocal relative to the date the termination becomes effective. The notice states that "within thirty (30) days after service on you of this notice to quit, you are hereby required to quit and vacate the premises..." This notice was emailed to the tenants on November 13, 2022. Thus, thirty days thereafter arguably landed on December 13, 2022¹. The same notice was also served by sheriff to last and usual on November 17, 2022. The termination date for that service of the notice arguably landed on December 17, 2022². The same notice was also hand-delivered by the landlord and handed to the tenant on November 18, 2022. The effective date for that service was December 18, 2022.
4. Thus, there are various dates upon which the termination notice became effective: December 13, 17, and 18, 2022, which in itself equivocates the notices.
5. Additionally, service of a 14-day notice on December 2, 2022, further equivocates the prior 30-day notice as it purports to provide within its four

¹ Depending on the date of actual receipt of notice.

² Depending on the date of actual receipt of notice

corners a statutory "cure" right. That "cure" right, however, was eclipsed by the fact that there is a previously 30-day notice in effect at the time. Thus, the statutory right to cure by paying the outstanding rent is obscured and suggested to not be available because even if the rent was paid the landlord would go forward on its 30-day notice. See, G.L. c.186, s.11;

6. Based on the foregoing, the uncertainty of the dates of exactly when the termination was to be in effect, the equivocation caused by the use of notices to quit for two different reasons, and the eclipsing of the tenants' statutory right to "cure" caused by the use of a 30-day for-cause notice still in effect at the time of the 14-day notice for non-payment of rent, renders the notices ineffective to terminate the tenancy.
7. **Conclusion and Order:** Accordingly, the landlord's claim for possession is dismissed and the summary process matter closed. The tenants' counterclaims shall be transferred to the Civil Docket under a new caption of *James Nesbitt and Tiffany Tan v. Paula De Laurentiis*. The clerks office is requested to schedule a Case Management Conference in that new civil matter.
8. **Additional Matters:** The court ruled from the bench on the landlord's motion for summary judgment, which was denied. The court also ruled from the bench and allowed the landlord's motion for access as follows: Access shall not be unreasonably denied upon the landlord providing the tenants with 48-hour advance notice in writing which describes the date and time and length of time for access (which is limited to the hours of 9:00 a.m. to 5:00 p.m.), the purpose for said access, information about whether the tenants need to do anything in

preparation of the access (and/or anticipated repairs). Additionally, any such repair that requires a licensed person or a permit acquired shall be effectuated in that manner³.

So entered this 3rd day of May, 2023.

A

Robert Fields, Associate Justice *mm*

CC: Court Reporter

³ Given the dismissal of the landlord's claim for possession, the court views the landlord's motion for use and occupancy moot and, as such, denies same without prejudice.

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1616**

<p>FEDERAL NATIONAL MORTGAGE ASSOCIATION,</p> <p style="text-align:right">Plaintiff,</p> <p style="text-align:center">v.</p> <p>MARNIQUE T. RIVERA,</p> <p style="text-align:right">Defendant.</p>	
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**ORDER STAYING THESE
PROCEEDINGS PENDING THE
APPEAL IN BERKSHIRE
SUPERIOR COURT MATTER
1776CV0222**

The court issued an order dated March 7, 2023, regarding the plaintiff's motion to strike the defendant's defenses and counterclaims and gave the parties until April 3, 2023, to file legal memoranda in support of their position of how the fact that the defendant's defenses and counterclaims arising out of the foreclosure are on appeal in the Superior Court effects these proceedings. The defendant filed a pleading in support of its position and the plaintiff did not do so. Based on the hearing of March 1, 2023, and the written submissions filed with the court, the following order shall enter:

1. On the record before the court it appears that the defendant's challenge to, and claims otherwise arising out of, the foreclosure proceedings are the subject of Superior Court litigation currently on appeal (Berkshire County Superior Court No. 1776CV0222).
2. To the extent that such claims are part of the defendant's defense and/or claims in this instant summary process matter, same are considered part of that Superior Court matter and this court will stay these proceedings pending that appeal¹.
3. Accordingly, all deadlines in this summary process action are suspended unless so ordered by this court at a later date.

So entered this 3rd day of May, 2023.



Robert Fields, Associate Justice

CC: Deborah S. Capeless, Clerk of Court for Berkshire Superior Court
Court Reporter

¹ The undersigned judge reviewed the MassCourts file for the related Berkshire County Superior Case (1776CV0222) and the records indicate that the appeal may be somewhat stalled therein due to a pending request for waiver of transcription fees/costs. A copy of this order shall be shared with the Clerks Office of that court so that they are aware of this pending matter in Housing Court.

CK

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-340

TARA HARNOIS and DONALD WHITE,

Plaintiffs,

v.

CAROL and ERROL ESTRIDGE,

Defendants.

ORDER FOR ALTERNATE
ACCOMMODATIONS

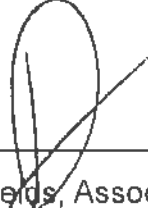
After hearing on May 2, 2023, on the plaintiff tenant's emergency motion for injunctive relief at which all parties appeared, the following order shall enter:

1. The tenant's motion to order the defendant landlords to provide alternate housing accommodations to the tenants is ALLOWED.
2. This order is based on the fact that there is no heating system at the premises located in the basement unit (located at 222 Belchertown Road, Ware, MA) and the tenants' sole source of heat are space heaters, and also because the ceiling

height is lower than allowed under the State Sanitary Code and, also, there appears to be only one means of egress.

3. Though these violations are cited by the Quabbin Health District, the premises have not yet been condemned.
4. The landlords shall pay for hotel or motel accommodations for each night through May 9, 2023. If the accommodations do not have kitchen facilities, the landlords shall also provide a daily food stipend of \$50.
5. The landlords shall provide the tenants with at least 24-hours advance notice by text when they require access to the premises for repairs. Any and all such work must be executed by licensed professionals and any required permits obtained.
6. Any such work shall be performed in a workmanlike manner and the landlord shall ensure that the premises are secured and that the tenants' belongings remain unharmed.
7. This matter shall be scheduled for further hearing on **May 9, 2023, at 2:00 p.m.** The parties were instructed to communicate with the Quabbin Health District to secure their presence for the hearing (by subpoena if necessary).

So entered this 3rd day of May, 2023.



Robert Fields, Associate Justice

CC: Quabbin Health District
Court Reporter

OK

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-248

JOEL ROJAS,

Plaintiff,

v.

VIANCA ALVARADO BURGOS,

Defendant.

ORDER

This matter came before the court for trial on May 2, 2023, at which both parties appeared without counsel. 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, Joel Rojas (hereinafter, "landlord") owns a single-family house located at 186 Suffolk Street in Holyoke, Massachusetts (hereinafter, "premises"). The defendant, Vianca Alvarado Burgos (hereinafter, "tenant") has been residing at the premises since September 2021.

2. The landlord commenced this eviction claiming that he terminated the tenancy for no-fault. The tenant filed an Answer with defenses and counterclaims. The tenant also claims that she never received the termination notice filed by the landlord in this matter. The court shall address below the preliminary issue of service of the termination notice and thereafter each of the other claims asserted in this matter.
3. **Landlord's Claim for Possession and for Use and Occupancy; Service of the Notice to Quit:** The sole means of service of the Notice to Quit was by certified mail dated November 28, 2022. It was mailed on that date by certified mail only (not also by regular mail or hand-delivery) and addressed to the tenant at the subject premises. The landlord did not present any other evidence such as a tracking order (though he had a tracking number on his receipt) or any evidence of any kind that the tenant received the notice. The tenant testified credibly that she never received said notice.
4. The court finds and so rules that the landlord did not meet his burden of proof that the tenant received the November 28, 2022, Notice to Quit. Additionally, there are problems with the notice that make it fatally flawed. First, it appears to give the tenant less than 10 days to "cure" the outstanding rent. Given that the notice was mailed on November 28, 2022, and it gave her until December 9, 2022, to pay the arrears, even if the letter arrived within two days of mailing it would have resulted in giving the tenant only 9 days to "cure". Second, the parties agree that the rent is \$600 per month and the notice seeks \$800 per month. The parties agreed that the landlord desired to raise the rent from \$600

to \$800 but that raise never went into effect as the tenant would not agree to the increase.

5. **Use and Occupancy:** The amount of outstanding use and occupancy at a monthly rate of \$600 for nine months since August 2022 totals **\$5,400**.
6. **The Tenant's Claims: Breach of Quiet Enjoyment:** On two occasions the landlord had the electric utility shut off at the premises. First, in mid-February 2023, the electric utility---which was the responsibility of the landlord---was terminated. The tenant's mother, Micol Burgos, who rents a room in the same premises put the electric utility in her own name because the landlord would not restore the service. Once the landlord found out about this, he had the service terminated again. The tenant was forced to stay in a hotel at her own cost (approximately \$300) with her family and then with her mother filed an action in the court (Case No. 23CV203) seeking an order from the court to have the electric service restored.
7. A landlord is liable for breach of the covenant of quiet enjoyment if the natural and probable consequence of his acts causes a serious interference with the tenancy or substantially impairs the character and value of the premises. G.L. c. 186, s. 14; *Simon v. Solomon*, 385 Mass. 91, 102 (1982). Although a showing of malicious intent is not required, "there must be a showing of at least negligent conduct by a landlord." *Al-Ziab v. Mourgis*, 424 Mass. 847, 851 (1997) . In this instance, I find the landlord's acts and omissions were knowing and inappropriate and rule that the landlord breached the tenant's covenant of quiet enjoyment by having the electric service curtailed in the manner described above and hereby

award the tenant three months' rent in accordance with G.L. c.186, s.14, totaling **\$1,800.**

8. **Warranty of Habitability:** Based on the evidence admitted at trial, the court finds that there were significant breaches of the State Sanitary Code since the inception of the tenancy which included a significant rodent infestation, a lack of a bathroom sink, a dangerously exposed light switch, and various other conditions. The court finds the tenant's testimony credible that all of these conditions existed from the inception of the tenancy, so that the tenant does not have the burden of proving notice to the landlord. *McKenna v. Begin*, 3 Mass.App.Ct. 168 (1975). That said, the court also credits her testimony that she complained to the landlord about them. The tenant then filed a complaint with the City of Holyoke Board of Health on December 8, 2022, and was part of the complaint filed in her mother's name in the Housing Court (23CV203) which alleged many conditions of disrepair. The landlord never repaired any of these conditions which had a predictable and negative effect on the tenant's use and enjoyment of the premises. These conditions of disrepair are violations of the minimum standards of fitness for human habitation as set forth in Article II of the State Sanitary Code, 105 C.M.R. 410.00 et seq. These conditions at the premises constitute a claim based upon breach of the implied warranty of habitability, for which the landlord is strictly liable. *Berman & Sons v. Jefferson*, 379 Mass. 196 (1979). It is usually impossible to fix damages for breach of the implied warranty with mathematical certainty, and the law does not require absolute certainty, but rather permits the courts to use approximate dollar figures

so long as those figures are reasonably grounded in the evidence admitted at trial. *Young v. Patukonis*, 24 Mass.App.Ct. 907 (1987). The measure of damages for breach of the implied warranty of habitability is the difference between the value of the premises as warranted (up to Code), and the value in their actual condition. *Haddad v. Gonzalez*, 410 Mass. 855 (1991).

9. The court finds that the fair rental value of the premises was reduced by 35%, on average, as a result of these conditions which I find existed from the first day of the tenancy and continued to exist until the date of trial and, thus, for the 19 months of the tenancy. Damages, therefore, for breach of the warranty of habitability in the amount of **\$3,990** will be awarded the tenant, representing 35% of the rent (\$210) for 19 months.

10. The Tenant's Remaining Claims: The court finds and so rules that the tenant failed to meet her burden of proof on her claims for Retaliation, Security Deposit, and Chapter 93A.

11. Conclusion and Order: Based on the foregoing, the landlord's claim for possession is dismissed and judgment shall enter for the tenant on her claims of breach of the covenant of quiet enjoyment (\$1,800) and breach of the warranty of habitability (\$3,990) which totals \$5,790. That sum is reduced by the court's finding of \$5,400 of unpaid rent to the landlord, leaving a balance of \$390. Accordingly, judgment shall enter for the tenant for possession and for **\$390** in money damages¹.

¹ Additionally, it appears that the landlord is renting the rooms at these premises separately as five separate tenancies all within a single-family dwelling. As such, the court shall refer this matter to the city of Holyoke legal department for its own determinations relative to this property.

So entered this 3rd day of May, 2023.



Robert Fields, Associate Justice

CC: City of Holyoke Legal Department
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0346

DIANA GARCIA,)
)
 PLAINTIFF)
)
 v.)
)
 DANIAL CARTHON AND ALYCAR)
 INVESTMENTS LLC)
)
 DEFENDANTS)

ORDER FOR ALTERNATIVE
HOUSING

This matter came before the Court on May 4, 2023 on Defendant's emergency request for injunctive relief. Only Plaintiff appeared after notice to Defendant Carthon. The Court hereby orders that Alycar Investments LLC, the lessor, be added to this case as a party Defendant.

Based on Plaintiff's affidavit and testimony at trial, Defendant Alycar Investments LLC contracted to rent an apartment to Plaintiff at 46 Gilman Street, Holyoke, Massachusetts (the "Premises") as of February 1, 2023. The Premises appear to be unfit for human habitation, although no evidence was provided of a condemnation. Defendants have been nonresponsive and Defendants fear receiving a notice to vacate by the Holyoke Code Enforcement Department. Accordingly, the following order shall appear:


1. Defendants shall immediately take steps to remedy any code violations at the Premises.

2. The Court will conduct a further hearing on **May 11, 2023 at 9:00 a.m.**

Defendant Carthon is ordered to appear. Defendant Alycar Investments LLC is ordered to appear through an attorney licensed to practice in Massachusetts.

SO ORDERED.

DATE: 5.5.23



Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0053

DANIEL P. KELLY,

PLAINTIFF

v.

WESTWOOD COURT APARTMENTS, LLC,
AND WESTWOOD COURT VENTURES, LLC

DEFENDANTS

FURTHER ORDER ON PLAINTIFF'S
APPLICATION FOR INJUNCTION

This case came before the Court on May 4, 2023 for a further evidentiary hearing on an application by Plaintiff (the “Tenant”) for a temporary restraining order related to the alleged presence of harmful mold in his apartment located at 1583 Riverdale Street, Apt. 41, West Springfield, Massachusetts (the “Premises”). On April 12, 2023, the Court ordered that Defendant Westwood Court Ventures LLC (the “Landlord”)¹ provide alternative housing accommodations for the Tenant in a local hotel with kitchen facilities until this evidentiary hearing. Both parties appeared through counsel.²

The Court took testimony from the Tenant’s expert witness, Walt Baenziger, a building scientist, and the Landlord’s expert witness John Bachand, an industrial hygienist with Northeast Environmental Labs. The parties agreed that each of these

¹ Plaintiff’s application for injunctive relief is brought only against this entity, which is the current owner of the Premises. Defendant Westwood Court Apartments, LLC is a former owner.

² At the conclusion of the May 4, 2023 hearing, the Court ordered that the alternative housing accommodations continue through the night of May 7, 2023 in order to allow time for the Court to issue this written order.

witnesses, as well as a witness for the Landlord who provided a report but did not testify, Daniel Atkins of Nature's Way, Inc, could testify as experts and that their reports could be admitted into evidence.

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


1. There are elevated moisture levels in the block wall in the basement of the Premises.
2. The ceiling materials in the basement of the Premises indicate a significant presence of a number of fungal types.
3. Several of the fungal species present in the samples taken from the basement of the Premises are known to be pathogenic or toxigenic types.
4. On the various dates that air samples were collected for laboratory analysis, the test results show no significant air quality issues.
5. If the mold present on surfaces in the basement is disturbed, pathogenic or toxigenic fungal species could become airborne.
6. Provided that the mold present in the Premises is not disturbed, the Tenant can reside in the Premises without unreasonable risk to his health.

Based on the foregoing findings of fact, the Court finds that the Tenant has demonstrated a reasonable likelihood of success on the merits with respect to the presence of potentially harmful mold in the basement, but not with respect to harmful air quality in the Premises. In weighing the risk of irreparable harm to the Tenant in light of his likelihood of success on the merits, the Court enters the following order as a preliminary injunction:

1. The Landlord's obligation to provide alternative housing to the Tenant shall end as of May 8, 2023.
2. Within seven (7) days, the Landlord shall retain a qualified mold remediation company to remove the mold in and eliminate the excess moisture issues in the basement. The Landlord shall provide the name of the company to the Tenant's counsel upon retaining the remediation company. Remediation shall be accomplished in accordance with the ANSI/IICRC S520 Standard.
3. To the extent the remediation company requires the Tenant's items to be moved or removed for the remediation to be successful, the Tenant shall reasonably cooperate.
4. The remediation work must commence within twenty-one (21) days and continue diligently until completed.
5. The Landlord shall provide the Tenant with alternative housing in a local hotel with kitchen facilities for the duration of the remediation work and until the remediation company deems it safe to return.
6. Upon completion of the remediation, the Tenant shall request that a case management conference be scheduled to address the remaining issues in this case.

SO ORDERED.

DATE: 5.5.23


Jonathan J. Kane, First Justice

cc: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0349

KIMBERLY MEYER,

PLAINTIFF

v.

ALYCAR INVESTMENTS LLC AND
DANIAL CARTHON,

DEFENDANTS

ORDER FOR ALTERNATIVE
HOUSING AND ISSUANCE OF CAPIAS

This matter came before the Court on May 4, 2023 on Defendant's emergency request for injunctive relief. Only Plaintiff appeared after notice to Defendants.

Based on Plaintiff's affidavit and testimony at trial, Defendant Alycar Investments LLC contracted to rent an apartment to Plaintiff at 122 Sycamore Street, Holyoke, Massachusetts (the "Premises") as of February 1, 2023. The Premises are uninhabitable and Plaintiff never took possession. Defendants paid for Plaintiff to stay in a hotel for a period of time. Defendants are no longer paying for the hotel and Mr. Carthon has ceased all communications with Plaintiff. Accordingly, the following order shall appear:

1. Defendants shall continue to provide alternative housing in the form of a hotel until further Court order. If the hotel does not have cooking facilities, he shall also pay Plaintiff \$50.00 per day as a food stipend.
2. A capias for civil arrest shall issue to compel Defendants to appear at the Western Division Housing Court in Springfield on **May 11, 2023 at 9:00 a.m.**

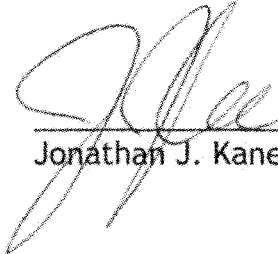
to answer to Plaintiff's request for further orders regarding alternative housing.

3. The Court will conduct a further hearing on May 11, 2023 at 9:00 a.m.

SO ORDERED,

DATE:

5/5/23

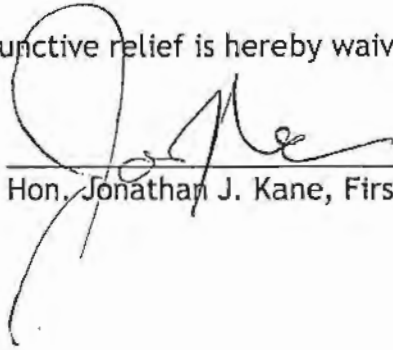


Jonathan J. Kane, First Justice

5 The \$90.00 legislative fee for injunctive relief is hereby waived.

SO ORDERED.

DATE: 5.5.23



Hon. Jonathan J. Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. 22-SP-1688

CARR PROPERTY MANAGEMENT, INC.,

Plaintiff,

v.

LUISA CRUZ,

Defendant.

ORDER

After hearing on May 2, 2023, on the landlord's motion for entry of judgment at which the landlord appeared, the tenant failed to appear, and a representative from the Tenancy Preservation Program (TPP), the following order shall enter:

1. This *for cause* eviction matter was commenced by the landlord for unsanitary conditions in her apartment.
2. On August 20, 2022, the parties entered into an agreement (Agreement) which required the tenant to bring her apartment up to sanitary standards and work with TPP and other resources towards that goal.

3. TPP reported to the court that the tenant has for the past several months stopped working with and/or communicating with TPP.
4. The landlord has met its burden that the tenant has failed to comply with the terms of the Agreement and is allowing unsanitary conditions to persist in her unit.
5. Accordingly, judgment shall enter for the landlord for possession and for court costs. Due to concern that the tenant's behavior stems from [REDACTED], there shall be a stay on the issuance of the execution until further order of the court.
6. This matter shall be scheduled for review and to decide whether or not execution shall issue at the time and date below.
7. In the meantime, the tenant is urged to bring her apartment into sanitary compliance, to work with TPP (which can be reached at 413-358-5857) and cooperate with the landlord's efforts to assist her and to have her unit treated for cockroaches.
8. This matter shall be scheduled for further hearing on **May 23, 2023, at 9:00 a.m.** at the Springfield of the court.

So entered this 8th day of MAY, 2023.

Robert Fields, Associate Justice

CC: Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-4670

YAO AGBEMORDZI,

Plaintiff,

v.

DWAYNE HOLLOMAN and WHITNEY
MOLINA-SANTIAGO,

Defendants.

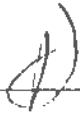
ORDER

After hearing on April 25, 2023, at which the plaintiff appeared through counsel and the defendants appeared *pro se*, the following order shall enter:

1. The landlord's motion to strike the tenants' counterclaims, and as much as they are also defenses to the landlord's claim for possession, is allowed given the particular failures of the tenants to respond to discovery after several opportunities and hearings. Accordingly, the tenants' claims are stricken from this matter but are available to the tenants in another action without prejudice.

2. As such, and without dispute as to the landlord's claim for possession and for \$11,200 in outstanding use and occupancy through April 2023, judgment shall so enter.
3. Based on the foregoing, judgment shall enter for the landlord for possession and for \$11,200 plus court costs.
4. The execution may issue in due course upon the filing *and service* of a Rule 13 Application.

So entered this 9th day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CF

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-640

BANA-VARA, LLC,

Plaintiff,

v.

DIANE MARTINEZ,

Defendant.

**ORDER FOR ENTRY OF
JUDGMENT FOR POSSESSION**

This matter came before the court for trial on May 4, 2023, after which the following order shall enter:

1. As a preliminary matter, the landlord's motion to amend the Account Annexed to include use and occupancy through trial date was allowed unopposed.
2. The Account Annexed is amended to \$5,052.08 through May 4, 2023.
3. The landlord met its burden of proof on its claim for possession (no-fault) and for the monies owed above.

4. The tenant is currently without income and unable to pay her use and occupancy going forward.
5. As such, judgment shall enter for the landlord for possession and for \$5,052.08 plus court costs. The execution shall issue in due course upon the filing *and service* of a Rule 13 Application.
6. The tenant reported that she had a job interview the very next day and was informed that if she is able to pay her use and occupancy going forward and is seeking additional time to relocate, she may file a motion seeking more time.

So entered this 9th day of July, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

CF

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2325

BEACON RESIDENTIAL MANAGEMENT, LP,

Plaintiff,

v.

KEISHLA TORRES,

Defendant.

ORDER STAYING THESE
PROCEEDINGS

After hearing on April 26, 2023, at which time the defendant moved the court to continue this matter due to the pending nature of a related criminal matter, the following order shall enter:

1. **Constitutional Right Against Self-Incrimination:** The defendant tenant seeks a continuance in these proceedings as she presently faces criminal proceedings on charges arising out of the same allegations that form the basis for this instant eviction action.

2. In deciding whether to grant a continuance, "the judge's task is to balance any prejudice to the other civil litigants which might result from granting a stay, against the potential harm to the party claiming the privilege if [s]he is compelled to choose between defending the civil action and protecting [her]self from criminal prosecution." *United States Tr. Co. v. Herriot*, 10 Mass. App. Ct. 313 (1980).
3. There is no question that the incident described in the March 31, 2022, Notice to Quit is extremely serious. Said Notice alleges that [REDACTED]
[REDACTED]
[REDACTED]
4. That said, allowing a continuance in these proceedings will not foreclose the landlord's remedy of pursuing this eviction for this alleged criminal behavior and with the court's strict prohibition of any future such activity pending the disposition of these proceedings, maintains a *status quo* that protects the landlord and the tenants' neighbors.
5. Moreover, the terms of tenant's pretrial conditions of release (after entering non-guilty pleas) include that she must stay away from the alleged victim, report to her probation officer once per week, cooperate in a mental health evaluation and any recommended treatment, and obey all state, local, and federal laws.
6. The harm to the tenant, in a subsidized unit, if these proceedings are not continued is grave and would force her to choose between her 5th

Amendment privilege against self-incrimination and her subsidized housing in which she lives with her family.

7. **Conclusion and Order:** The tenant's motion to continue this eviction matter until after her criminal matter is adjudicated is allowed and this eviction matter shall be stayed and all deadlines suspended, contingent upon the following:
- a. The tenant shall not have any contact with the alleged victim;
 - b. The tenant must comply with the terms of her pretrial release;
 - c. The tenant shall not cause harm or threaten to cause harm to any of her neighbors;
 - d. The tenant's attorney must maintain communication with the tenant's criminal defense counsel and update the landlord's attorney as to the status of the criminal matter.

So entered this 9th day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-516

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

v.

BARBARA WILLIAMS and RONNIE
COLEMAN,

Defendant.

ORDER FOR ENTRY OF
FINAL JUDGMENT

After hearing on May 2, 2023, at which the plaintiff appeared through counsel and the defendants appeared *pro se*, the following order shall enter:

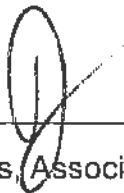
1. **Procedural Background:** The court issued an order for summary judgment for possession to be awarded to the plaintiff on November 10, 2022. Because the plaintiff also has a claim for use and occupancy since the recording of the

foreclosure deed on November 2, 2017, the matter was scheduled for hearing on that portion of the plaintiff's claim.

2. **Discussion:** The plaintiff's witness, a local real estate broker Maximilian Mikunda, offered his opinion that the fair market rental amount for the premises would be \$1,600 per month. Mr. Mikunda has been a licensed real estate broker with an office in Springfield, Massachusetts who "primarily sells bank owned and single-family homes." His opinion as to the fair rental value of the premises was based almost entirely on MLS listings of rental properties in the area that he believes to be comparable to the location and features of the subject premises. Though he stated that he has been involved in 20 to 25 rentals in the area, he did not provide any specifics on those rentals nor how they may have affected (or supported) his opinion of the fair market rent for the subject premises. Mr. Mikunda also testified that he has never been inside the premises.
3. The defendants testified that the subject premises have not been improved at all since 2005, when she first purchased the property, and that various conditions of disrepair exist such as electrical and plumbing issues as well as fence damage from a fallen tree.
4. Given the evidence presented at this hearing, with a sense that Mr. Mikunda has limited experience with rentals in the area and almost entirely formed his opinion from several *comprables* and given the defendants' credible testimony about the condition of the premises, the court finds that the current monthly use and occupancy to be \$1,200.

5. Further, based on Mr. Mikunda's testimony that the current monthly amount applies to the past three years and that prior to and during COVID (years 2018 through 2020) it would be 20% less, \$960 per month.
6. Accordingly, the plaintiff shall be awarded \$70,080 for use and occupancy through May 2, 2023. This sum represents monthly use and occupancy for the period from November 2017 through 2020, of \$960, plus a monthly use and occupancy amount for 2021 through April, 2023 of \$1,200.
7. **Conclusion and Order:** Based on the foregoing, judgment shall enter for the plaintiff for possession plus **\$70,080** use in occupancy plus court costs.
8. **Information Regarding Appeals:** If the defendants wish to appeal this decision, they should be aware that such an appeal is due within ten days of entry of this judgment. The defendants may wish to consult with Community Legal Aid which can be reached at 413-781-7814. They may also wish to reach out to the court's clerks office and/or read the Housing Appeals Guide on the Trial Court's website at Mass.gov: <https://www.mass.gov/guides/housing-appeals-guide>

So entered this 9th day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

cl

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2323

JONATHAN and JUNE GAGNON,

Plaintiffs,

v.

HEATHER BYRNE,

Defendant.

ORDER

After hearing on May 4, 2023, at which the landlords appeared through counsel and the tenant appeared *pro se*, and also at which the Tenancy Preservation Program and Community Legal Aid appeared, the following order shall enter:

1. Given the terms of the court's April 14, 2023, order which provided the tenant until May 24, 2023, to provide the landlord with responses to outstanding discovery, the landlords' motion to strike/dismiss the tenant's counterclaims is denied.

2. Landlord counsel explained to the court that the "May 24, 2023" date was a Scrivener's error by the judge and that it was supposed to state "April 24, 2023" and that he had the tenant served with a corrected version of the order.
3. Service of the correct order, however, was not accomplished until May 1, 2023, when same was left at the subject premises by a sheriff.
4. Community Legal Aid (CLA) has agreed to assist the tenant in completing her discovery responses by May 18, 2023, through an LAR appearance limited to that assistance. The court also referred to CLA the tenant's loss of her MRVP subsidy.
5. The Tenancy Preservation Program has agreed to continue to assist the tenant with her RAFT application as well as other areas it determines the tenant needs assistance and support.
6. This matter shall be scheduled for trial on **May 25, 2023, at 2:00 p.m.**

So entered this 9th day of May, 2023.



Robert Fields, Associate Justice

CC: Gabriel Fonseca, Esq. (Community Legal Aid)
Tenancy Preservation Program
Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 21-SP-2637

MAPLE COMMONS,

Plaintiff,

v.

NORMARIS VELEZ,

Defendant.

ORDER OF DISMISSAL

After hearing on May 4, 2023, at which both parties appeared, the following order shall enter:


1. The landlord's motion for issuance of a new execution is denied in accordance with G.L. c.235, s.23 which states in pertinent part:

Executions for possession of premises rented or leased for dwelling purposes obtained in actions pursuant to chapter two hundred and thirty-nine shall not be issued later than three months following the date of judgment, except that any period during which execution was stayed by order of the court or by an agreement of the parties filed with the court shall be excluded from the computation of the period of limitation. Such executions shall be made

returnable within three months after the date of issuance and shall state the date of issuance and the return date. No sheriff, constable, officer, or other person shall serve or levy upon any such execution for possession later than three months following the date of the issuance of the execution.

2. The judgment in this matter issued on March 8, 2022, and the execution issued on November 29, 2022.
3. Accordingly, the motion is denied and the matter dismissed.

So entered this 9th day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3304

SPRINGFIELD LIBERTY REALTY, LLC,

Plaintiff,

v.

YARITZA BATISTA,

Defendant.

ORDER

After hearing on May 4, 2023, on the tenant's motion for additional time to vacate the premises in this no-fault eviction matter at which a representative from the Tenancy Preservation Program joined, the following order shall enter:

1. The parties entered into an agreement on November 28, 2022, in which the tenant agreed to vacate the premises by April 30, 2023.
2. The tenant is a single mother of a disabled 18-year-old son. She, herself, is also disabled and the income into the household is solely SSI for each the son and the tenant¹.

¹ The tenant also has a 17-year-old daughter in the household.

3. The tenant testified credibly that [REDACTED].
4. This matter shall be referred to the Tenancy Preservation Program (TPP) to assist the tenant with identifying if any agencies she is currently working with, or not yet working with, has housing search resources--- [REDACTED]
[REDACTED]
5. The tenant's motion is allowed and the time for her to vacate the premises is extended, as long as she continues to pay her monthly use and occupancy.
6. The landlord shall schedule an inspection of the premise and effectuate any needed repairs.
7. This matter shall be scheduled for further review on **June 1, 2023, at 9:00 a.m.** for an update from the parties and from TPP. In the meantime, the parties should discuss the possibility of the tenant paying the higher rent that the landlord is currently receiving from other units so that she may avoid having to move at all.

So entered this 9th day of May, 2023.



Robert Fields, Associate Justice

CC: Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-86

BASSAM YACTEEN,

Plaintiff,

v.

NEOMI REYES,

Defendant.

ORDER

After hearing on May 2, 2023, on the landlord's motion for entry of judgment, at which the tenant did not appear, the following order shall enter:

1. Since the Agreement of the Parties filed with the court on March 1, 2023, the tenant has not complied with its terms. More specifically, the tenant has failed to pay her monthly use and occupancy for March, April, or May 2023, other than payment of \$500 in March 2023 and \$420 in April, 2023.

2. The tenant has also failed to provide all the required documents for RAFT and her application is schedule to Time Out on May 8, 2023.
3. There was a referral as part of the Agreement (in March 2023) to the Tenancy Preservation Program, but the TPP representative who joined the hearing did not see any referral having been received.
4. Judgment shall enter for the landlord for possession plus \$5,748.67 in use and occupancy through May 2, 2023, plus court costs. Execution may issue in due course upon filing *and service* of a Rule 13 Application.

So entered this 9th day of May, 2023.



Robert Fields, Associate Justice

CC: TPP

Court Reporter

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22-SP-2539

GARKEN REALTY, LLC,)
 PLAINTIFF)
)
v.)
)
BRENDA HATTEN,)
 DEFENDANT)

FINDINGS OF FACT, RULINGS
OF LAW AND ENTRY OF
JUDGMENT

This no fault summary process case came before the Court on May 9, 2023 for a bench trial. Plaintiff appeared through counsel. Defendant appeared self-represented. Plaintiff seeks to recover possession of 35 Trafton Road, 1st Floor, Springfield, Massachusetts (the "Premises").

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

Plaintiff owns the Premises. Defendant moved in in April 2016. The parties stipulated that Defendant's share of the rent (pursuant to a mobile Section 8 voucher) is \$577.00 and she owes no back rent. Defendant agrees that she received the notice to quit, which terminated her tenancy as of August 1, 2022. Defendant has not vacated, although she is searching for replacement housing. Plaintiff has established its prima facie case for possession.

Defendant filed an answer, pursuant to which she essentially asks for additional time to move. She claims the reason that Plaintiff wants her to leave is that he tried to increase the rent twice within a year and the rent increase was rejected by her

Section 8 administrator. Even if true, this does not constitute a legal defense to Plaintiff's claim for possession. It does, however, factor into the balance of the equities as they relate to entry of a stay.

The Court has discretion in a no fault eviction case to grant a stay on judgment and execution. See G.L. c. 239, § 9. The Court finds that Defendant satisfies the requirements of a stay; however, the statutory stay extends only six months unless the Premises are occupied by a "handicapped person" (as that term is defined in § 9) or an individual sixty years of age or older. In this case, nine months have passed since the tenancy ended and seven months have passed since the first tier Court event. Accordingly, the Court cannot impose a statutory stay.

Given that Defendant is in possession of a mobile Section 8 voucher and could lose it if she is evicted without replacement housing, and given that Plaintiff continues to collect the contract rent of \$1,250.00 each month between the subsidy payment and Defendant's share, the Court shall further extend the stay based on principles of equity. In light of the foregoing, the following order shall enter:

1. Judgment for possession shall enter in favor of Plaintiff.
2. Issuance of the execution is stayed through June 30, 2023 on the condition that Defendant pay her share of the rent for June 2023 in full and on time (the parties agree that she has already paid for May 2023).
3. If Defendant fails to make the June payment or fails to vacate by June 30, 2023, Plaintiff may schedule a motion to issue the execution.

SO ORDERED.
DATE: 5/10/23


Jonathan J. Kane, First Justice

CP

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0360

HOLYOKE HOUSING AUTHORITY,)
)
 PLAINTIFF)
)
 v.)
)
 GLADYS SUERO, BRENDA LYS FIGUEROA,)
 AND DAYANAIRA FIGUEROA,)
)
 DEFENDANTS)

ORDER FOR NO CONTACT

This matter came before the Court on May 9, 2023 on Plaintiff’s request for an emergency order. Plaintiff appeared through counsel. Defendants appeared and represented themselves. Defendant Suero resides at 23 North Summer Street, Apt. 3C, Holyoke, Massachusetts (“Apt. 3C”) and the other two defendants reside in Apt. 2C in the same building. Plaintiff has been receiving complaints from each household about the conduct of the other. Plaintiff has initiated summary process actions against each household. In the interim, the following order shall enter with the assent of all parties:

- 1 For purposes of this order, “no contact” prohibits all physical, verbal and electronic contact, including social media postings, text messages, emails and all other forms of communication.
- 2 The occupants of Apt. 3C and their guests (a) shall have no contact with the occupants of 2C or their guests, (b) shall not act in a manner that disturbs the peaceful enjoyment of or threatens the health or safety of

the occupants of Apt. 2C or their guests, and (c) shall not act in a manner which threatens the health or safety of other tenants residing at the property, lawful visitors to the property or employees of Plaintiff.

3 The occupants of Apt. 2C and their guests (a) shall have no contact with the occupants of 3C or their guests, (b) shall not act in a manner that disturbs the peaceful enjoyment of or threatens the health or safety of the occupants of Apt. 3C or their guests, and (c) shall not act in a manner which threatens the health or safety of other tenants residing at the property, lawful visitors to the property or employees of Plaintiff.

4 The \$90.00 legislative fee for injunctive relief is hereby waived.

SO ORDERED.

DATE: 5/10/23

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

cc: Court Reporter

AR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-456

NAVIAH ESSEX, LLC.,

Plaintiff,

v.

GILBERTO and STEPHANIE CRUZ,

Defendants.

ORDER

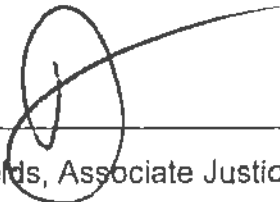
After hearing on May 10, 2023, on the plaintiff's motion to substitute the plaintiff at which only the plaintiff's counsel appeared, the following order shall enter:

1. The motion is denied without prejudice due to the lack of a written binding assignment between Naviah Essex, LLC (plaintiff) and the purported new owners seeking substitution (Walnut Pine, LLC).
2. Additionally, no action shall be taken by the court on the defendants' failure to appear for the Tier 1 event this same morning, as the named plaintiff no

longer owns the premises. See, *Anhar Bakth v. Angel Ayala and Carolyn Santiago*, Western Division Housing Court No. 19-SP4399 (Fields, 2019).

3. A Case Management Conference shall be scheduled with the Clerks Office for a date after June 5, 2023, to allow for the plaintiff to secure a copy of the necessary assignment and re-mark its motion for substitution.

So entered this 12th day of May, 2023.



Robert Fields, Associate Justice

CC: Michael Doherty, Clerk Magistrate
Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2806

SPRING MEADOW,

Plaintiff,

v.

TRISTA LOZADA,

Defendant.

ORDER

After hearing on May 11, 2023, on the tenant's motion to stop a physical eviction scheduled for May 30, 2023, the following order shall enter:

1. This tenancy involves a project-based subsidy and the tenant reports that she has \$0 income, and the rent should have but was not reduced accordingly.
2. The tenant also shared that she has a RAFT application pending and that she is seeking to apply for funds from Catholic Charities. The tenant is also seeking public assistance through the Department of Transitional Assistance (DTA).

3. The tenant also shared that she suffers from [REDACTED] and the court is concerned that there may be a nexus between the tenant's [REDACTED] and this instant eviction.
4. A representative from the Tenancy Preservation Program (TPP) joined the hearing and a referral to TPP was made by the court and TPP and the tenant were going to meet in person directly after the hearing.
5. TPP is asked, in addition to their regular assessments, to assist the tenant immediately with her RAFT and Catholic Charities applications and with efforts to have her rent recalculated based on her loss of income.
6. TPP is also urged to refer the tenant to Community Legal Aid.
7. The tenant's motion to stop the physical eviction is continued to **May 25, 2023, at 2:00 p.m.** This continuance is designed to provide the tenant and TPP and any other resource that becomes involved to see if enough resources and corrective actions can be engaged and for same to be reported to the court prior to the currently scheduled physical eviction.

So entered this 12th day of May, 2023.



Robert Fields, Associate Justice

CC: Tenancy Preservation Program
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT OF THE COMMONWEALTH

Hampden, ss

Housing Court Department
Civil Action No 23-CV-371

WICKED DEALS, LLC
Plaintiff

v

CHRISTINA FIGUEROA and EZELL GONZALEZ
Defendants

ORDER

After hearing on May 12, 2023, at which the Plaintiff appeared with counsel and the Defendants appeared by Zoom Conference, the following Order shall issue on the Plaintiff's Complaint for Civil Restraining Order

- 1 The Defendants are prohibited from allowing or authorizing anyone to occupy the property located at 105-107 Parallel Street, Springfield, Massachusetts (the "Property") without the express written consent of the Plaintiff,
- 2 The Defendants are prohibited from granting or providing possessory rights to the Property (e.g. entering into a rental agreement) to anyone without the express written consent of the Plaintiff,
- 3 The Defendants are ordered to provide access to the interior and exterior of the Property, upon 24 hour advance notice, to the Plaintiff's agent(s) to perform a safety inspection and allow the Plaintiff to change the locks to the Property, providing the Defendant with a new key(s),
- 4 The Defendants are ordered to not interfere with the Plaintiff's entry on the property or inspection, and
- 5 The Defendants are ordered to provide reasonable access to the Property, upon 24 hour advance notice, to the Plaintiff to perform any necessary repairs or to show the property to agent, prospective buyers and/or interested parties

Date May 12, 2023



Hon Jonathan J Kane, First Justice

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 23-CV-0349

KIMBERLY MEYER,

PLAINTIFF

v.

ALYCAR INVESTMENTS LLC AND
DANIAL CARTHON,

DEFENDANTS

ORDER FOR CONTINUED
ALTERNATIVE HOUSING

This matter came before the Court on May 11, 2023 for further hearing on Defendant's emergency request for injunctive relief. Plaintiff appeared self-represented. Defendants appeared through counsel.

Defendant Carthon provided alternative housing in a hotel through approximately April 27, 2023, but became ill and the payment for the hotel ceased. He appeared today and agreed that he would resume the provision of alternative housing. The following order shall enter:

1. Defendants shall continue to provide alternative housing in the form of a hotel until the earlier of (a) the date that Defendants are able to provide the housing contemplated under the lease and (b) the date Plaintiff voluntarily surrenders possession by an agreement with Defendants.
2. Plaintiff and her family members shall not interfere with Defendants' efforts to renovate the premises.

3. This order does not address any claims for damages that any party may have against another party.
4. The parties may schedule a further hearing after adequate notice to the other side if necessary to address the subject matter of this order.

SO ORDERED.

DATE: 5.15.23

Jonathan J. Kane
Jonathan J. Kane, First Justice

cf

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-368

JESSENIA REYES,

Plaintiff,

v.

KATHLEEN and ELIAS POULOPOULOS,

Defendants.

ORDER

After hearing on May 11, 2023, on the plaintiff tenant's complaint and motion for injunctive relief regarding repairs needed in her home, the following order shall enter:

1. The defendant landlord (hereinafter, "landlord") shall repair all conditions cited by the Palmer Board of Health forthwith. Any such work that requires a license and/or a permit shall be effectuated in that manner.

2. The Town of Palmer (hereinafter, "Town") shall make a determination if there is cross-metering or if there needs to be a third electric meter service for common areas.
3. The landlord shall provide access to the Town for the basement and attic.
4. If the Town is unable to make a determination regarding cross-metering and/or whether a third electric meter is required for common area lighting, either party may bring a motion in the court to address that issue.
5. The landlord shall investigate in good faith complaints that the tenant may lodge against her downstairs' neighbor relative to noise and shall take appropriate steps to address them.
6. The landlord shall ensure that his contract regarding trash pick-up is frequent enough to handle the amount of garbage for the units it serves.

So entered this 17th day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter
Palmer Board of Health

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-844

SAVANNAH RICHARDSON,

Plaintiff,

v.

BRANDON NAVOM,

Defendant.

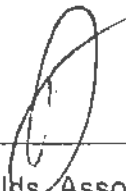
ORDER

After hearing on May 17, 2023, in this matter, which was scheduled for a review of the receivership as well as at the Receiver's motion to approve a rehabilitation plan, at which the plaintiff tenant appeared with LAR counsel (Stephen Pagnotta) and the defendant property owner appeared *pro se* and at which the Receiver appeared with counsel and the City Health Department appeared (without counsel), the following order shall enter:

1. The defendant property owner's objection to the motion because he is not yet in receipt of it is honored and the matter shall be continued to next week, May 24, 2023, at 9:00 a.m. for review and for hearing on the Receiver's motion for approval of a rehabilitation plan.

2. The City shall reinspect the premises to determine if the condemnation shall be reinstated. The City shall coordinate that inspection with the Receiver and the plaintiff tenant (through her LAR counsel) and notify the defendant property owner who may be present for the inspection.
3. LAR counsel has agreed to remain in appearance through the next hearing.
4. If the subject premises is condemned by the City, the defendant property owner shall provide emergency alternate housing for the plaintiff tenant and her family in a hotel or motel with cooking facilities. If said accommodations do not have cooking facilities, the defendant property owner shall provide her with a daily food stipend of \$100.
5. If the premises are condemned by the City and the defendant property owner fails to provide alternate housing for the plaintiff tenant as noted above, the Receiver shall provide said housing and shall add the costs of same to its priority lien.
6. This matter shall be scheduled for the Receiver's motion for approval of a rehabilitation plan and for review on **May 24, 2023, at 9:00 a.m.** in the Pittsfield Session of the court.

So entered this 17th day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter
City of Pittsfield Health Department

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO 23 SP 0895

ORANGE STREET PROPERTIES, LLC,)
)
 PLAINTIFF)
)
 v)
)
 LUANNE ROSS,)
)
 DEFENDANT)

FINDINGS OF FACT, RULINGS
OF LAW AND ORDER

This no fault summary process case came before the Court on May 16, 2023 for a bench trial. Plaintiff appeared through counsel. Defendant appeared self represented. Plaintiff seeks to recover possession of 74 Orange Street, Apt 1, Westfield, Massachusetts (the "Premises")

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

The parties stipulated to Plaintiff's prima facie case for possession. Defendant did not file an answer. She seeks time to move, but her relocation efforts have been complicated by the loss of her rental voucher, which she asserts occurred in connection with her disabilities. Although Plaintiff is entitled to a judgment for possession, entry of the judgment shall be stayed on the following terms:

- 1 Defendant shall be referred to Tenancy Preservation Program (TPP). TPP is requested to attempt to connect Defendant to appropriate resources that

might assist her in recovering her rental voucher and locating replacement housing

- 2 Defendant shall document her efforts to find new housing, as well as her work with TPP and any other agency or service with which she is connected related to her housing search
- 3 Within fourteen (14) days of receipt of this order, Plaintiff shall ensure that the doors leading to the Premises have their hinges on the interior side
- 4 Defendant shall pay June use and occupancy (rent) in full and on time
- 5 The parties shall appear in person on June 20, 2023 at 2 00 p m for further proceedings related to this matter

SO ORDERED

DATE 5/18/23

Jonathan J Kane
Jonathan J Kane, First Justice

MR

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 22CV0852

_____)
TOWN OF CHESTER,)
))
PLAINTIFF)
))
v.))
))
ALBERT G. HOLLAND AND)
U.S. BANK TRUST NATIONAL ASSOCIATION,)
NOT IN ITS INDIVIDUAL CAPACITY BUT)
SOLELY AS OWNER TRUSTEE FOR RCF2)
ACQUISITION TRUST,¹)
))
DEFENDANTS)
_____)

INTERIM ORDER

This code enforcement matter came before the Court on May 17, 2023 on Plaintiff's renewed motion to appoint a receiver. The property in question is located at 1 Crane Road, Chester, Massachusetts (the "Property"). Defendant Holland is the owner of record and appeared self-represented. Defendant U.S. Bank Trust National Association, not in its individual capacity but solely as Owner Trustee for RCF2 Acquisition Trust (the "Bank") is the mortgagee and appeared through counsel.

Plaintiff seeks the appointment of a receiver to correct the State Sanitary Code violations at the Property after Mr. Holland failed to remove a collapsed garage, junk vehicles, debris and bulk litter from the exterior of the Property after being given the

¹ The Court shall amend the caption to reflect the correct name of the Defendant, which is currently listed as U.S. Bank Trust NA.

opportunity to do so. Mr. Holland asserts that he is prepared to correct the violations himself and opposes the appointment of a receiver.

The Bank does not oppose the appointment of a receiver for the limited purpose of correcting the outstanding code violations. The Bank represents that it was informed that Plaintiff will not issue necessary permits unless outstanding taxes and fines of approximately \$57,000.00 are paid, but Plaintiff could not provide an accounting of the charges at the hearing today. A proposed receiver, Witman Properties, Inc., ("Witman") appeared and is prepared to correct the violations, although a representative of Witman has not yet inspected the Property to gain a full understanding of the scope of work.

Based on the foregoing, Plaintiff's motion for the appointment of a receiver his continued to **June 1, 2023 at 11:00 a.m.** in-person in the Springfield session. The following interim order shall enter:

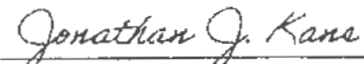
1. Mr. Holland shall prepare a proposed correction plan for addressing the outstanding violations, including a detailed scope, cost and timeline of the work to be performed. The plan shall be served upon all parties (or their counsel) and filed with the Court at least 24 hours before the next Court date.
2. Witman shall inspect the Property on May 19, 2023 at approximately 11:00 a.m., and Mr. Holland shall permit access without obstruction. Witman shall prepare a proposed correction plan for addressing the outstanding violations, including a detailed scope, cost and timeline of the work to be

performed. The plan shall be served upon all parties (or their counsel) and filed with the Court at least 24 hours before the next Court date.²

3. If Plaintiff seeks to amend its complaint to add one or more abutting properties, it must serve and file a motion at least three days' in advance of the next Court hearing.
4. At the next Court hearing, Plaintiff shall provide a breakdown of the taxes, fines and any other fees assessed to the Property.
5. Any party or the proposed receiver may provide photographs of the current condition of the Property to the Court at the next hearing, which shall be held on June 1, 2023 at 11:00 a.m.

SO ORDERED.

DATE: 5/18/23


Jonathan J. Kane, First Justice

cc: Court Reporter

² As condition of giving Mr. Holland the opportunity to present his own plan to correct the violations without appointment of a receiver, Mr. Holland shall pay for Witman's reasonable time for the site visit and preparation of a correction plan. If Witman is appointed as the receiver, in lieu of payment by Mr. Holland, Witman may include its reasonable time for the inspection and preparation of a plan in the lien.

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-4620**

BEACON RESIDENTIAL MANAGEMENT, LLP,

Plaintiff,

v.

IRMA SANTOS and ANTONIO PEREZ,

Defendants.

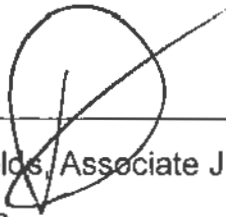
ORDER

After hearings on May 11 and 18, 2023, the following order shall enter:

1. A referral was made to the Tenancy Preservation Program, with the judge completing the referral form himself on the record.
2. TPP will assist the tenant with her pending RAFT application, particularly with her hardship documentation. The current RAFT application is scheduled to "time out" on May 26, 2023, so time is of the essence.

3. Pending RAFT paying the balance to \$0 (upon which the matter shall be dismissed), the tenant shall pay her monthly use and occupancy plus an additional \$109.
4. The landlord's motion is denied without prejudice and the matter shall be dismissed upon a \$0 rental balance.

So entered this 19th day of May, 2023.



Robert Fields, Associate Justice

CC: TPP

Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-1034

D. HOME IMPROVEMENT TRUST,

Plaintiff,

v.

DAWN BLACKBURN,

Defendant.

ORDER OF DISMISSAL

This matter came before the court for trial on May 18, 2023, at which the plaintiff appeared through counsel and the defendant appeared with Lawyer for the Day Counsel. As a preliminary matter, the defendant motioned the court for dismissal based on the flawed summons and complaint. The plaintiff was offered the opportunity to have the matter scheduled for another day so as to have additional time to respond to the newly filed motion to dismiss and declined. After hearing, the following order shall enter:

1. In this non-payment of rent eviction action, the plaintiff landlord also sought *late fees* on its summons and complaint. There is no lease between the parties and no legal basis asserted at the hearing for making a claim for *late fees*, nor was *late fees* sought in the notice to quit.
2. The question posed to the court by the defendant tenant's motion is whether asserting a claim for *late fees* in this instant action is a basis for dismissal of the action and for the reasons stated on the record by the judge, the court rules that it does.
3. First off, a landlord cannot bring a claim for *late fees* in a non-payment of rent matter in summary process, and is limited to rent, use, and occupancy. See, *Patti v. White*, Boston Housing Court, No. 11-SP-2116 (Pierce, C.J., December 27, 2011); *Deep v. Tremblay*, Western Div. Hsg. Ct. No. 10-SP-4716 (Fields, J. April 15, 2011 (upheld without addressing specific issue, 81 Mass. App. Ct. 1131 (2012, Rule 1:28); Also, G.L. c.239, ss.2-3.
4. Second, this landlord has no legal basis for a claim for *late fees*---in any process---as there is no contractual obligation between the parties for *late fees*.
5. Third, the notice to quit for non-payment of rent does not mention *late fees* at all--let alone base the eviction upon reasons including *late fees*---and thus states in the summons and complaint a basis that is not in the notice to quit. See, *Tuttle v. Bean*, 13 Met. 275 (1847); *Stycharski v. Spillane*, 320 Mass. 382 (1946) (A landlord is assigned the grounds for termination stated in the notice to quit).
6. The court finds that asserting a claim for *late fees*, with no legal basis for same and in a non-payment of rent summary process matter and without asserting it in

the notice to quit, results in an equivocal summons and complaint--and fatally flawed due to its misleading and potentially deceptive effect on a receiving tenant. See, *Learldi v. Brown*, 394 Mass 151 (1985) and Rule 2 of the Uniform Summary Process Rules (which requires a "properly completed form of Summary Process Complaint and Summons). See also, *Schulze v. Collazo*, Western Div. Hsg. Ct. No. 01-SP-1115 (Fein 2001) regarding a tenant's legitimate interest in knowing the status of her tenancy and what action she may take, if any, to preserve the tenancy."

7. In this instant matter, and for the foregoing reasons, a tenant receiving a summons with a claim for *late fees*, upon which there is no legal basis, and which might have the effect of coercing a tenant to not even appear to defend the eviction if the *late fees* made it seemingly impossible to do so, results in making the summons fatally flawed and the matter is dismissed.

So entered this 22nd day of May, 2023.



Robert Fields, Associate Justice

CC: James T. Brown, Lawyer for the Day
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-4578

SIVAKUMAR JAGADEESAN,

Plaintiff,

v.

BROOKE and GARY LAFLAMME,

Defendants.

ORDER

After hearing on May 18, 2023, at which the landlord appeared through counsel and the defendants appeared with Lawyer for the Day Program, the following order shall enter:

1. The tenants reported that they are eligible for RAFT funds totaling \$7,800. Such anticipated payment shall leave a balance of outstanding rent, use, and occupancy of \$5,400 through May 2023, plus court costs.

2. Given that the RAFT funds shall only be available if there is a repayment plan for the outstanding balance, the court shall impose a repayment plan as follows:
 - a. Starting in June 2023, the tenants shall pay rent, use, occupancy on time and in full plus \$225 towards the arrearage at the same time for each month going forward;
 - b. Upon the balance reaching \$0, the matter shall be dismissed.
3. If the tenants fail to comply with the payment terms above, the landlord may send a letter with accompanying affidavit to the Clerks Office, with a copy sent to the tenants, and a judgment shall enter *nunc pro tunc* to the date noted below and execution shall issue without need for a hearing.
4. If RAFT does not pay \$7,800 as anticipated, judgment and execution may issue but only after a motion and hearing for same.
5. Again, once the balance is \$0, the case is dismissed.

So entered this 22nd day of May, 2023.



Robert Fields, Associate Justice

CC: Clerks Office
Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3604

JARVIS HEIHTS APARTMENTS, LP,

Plaintiff,

v.

GUILMARY CONCEPCION-SANTIAGO and
LUIS G. NIEVES,

Defendants.

ORDER

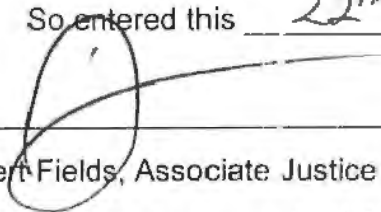
After hearings on May 11 and 18, 2023, at which the landlord appeared through counsel and the tenant was represented by Lawyer of the Day Counsel, and at which a representative from the Tenancy Preservation Program (TPP) joined, the following order shall enter:

1. For the reasons stated on the record, the landlord's motion shall be continued to the next hearing described below.
2. The tenant is a participant in the Section 8 Voucher program and is living in a three-bedroom unit but with only a two-bedroom voucher. This problem, wherein the tenant is being held responsible for the difference between the smaller and

the larger unit, is exacerbated by the fact that she and her adult disabled son have not income. Thus, instead of the full benefit of the rental voucher which would likely reduce her rent to \$0 when she has no income, the tenant is accruing a rental balance of more than \$500 per month due to her being in a three-bedroom unit.

3. Based on the representation that the tenant has [REDACTED], the court shall appoint a Guardian Ad Litem to investigate and assist TPP and the tenant with her Section 8 voucher and with increasing income into her household.
4. TPP has agreed to assist in that regard, as well as with seeking RAFT and other rental arrearage funds.
5. The Clerks Office is requested to identify and appoint a Guardian Ad Litem.
6. Community Legal Aid has agreed to meet further with the tenant to determine if it can offer her representation in this matter or any other related matter and return on the date noted below to report on whether it will be assisting the tenant any further.
7. This matter shall be scheduled for review and the landlord's motion on **June 22, 2023, at 9:00 a.m.**

So entered this 22nd day of May, 2023.


Robert Fields, Associate Justice

CC: Kara Cunha, Esq., Assistant Clerk Magistrate

Court Reporter

TPP

Gordon Shaw, Esq., Community Legal Aid, Lawyer for the Day

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2045

SC HAMILTON APARTMENTS, LLC,

Plaintiff,

v.

SARAH LABOY, et al.,

Defendants.

ORDER

After hearing on May 18, 2023, on the plaintiff landlord's motion for entry of judgment at which the landlord appeared through counsel and the tenant, Sarah Laboy, appeared *pro se* and for which the Tenancy Preservation Program joined the hearing, the following order shall enter:

1. The motion is denied, without prejudice.
2. The tenant owes \$4,794.41 in use and occupancy plus \$238.54 in costs.

3. The tenant currently has a pending RAFT application and a referral has been made for the Tenancy Preservation Program (TPP) who has agreed to help the tenant with her RAFT application. The tenant shall cooperate with TPP efforts to assist her and the parties shall cooperate with the requirements of the RAFT program.
4. Even if the anticipated RAFT grant is paid, there will be a balance outstanding thereafter.
5. The tenant shall be responsible for paying her monthly rent in full and timely each month continuing in June 2023. If RAFT makes an award payment, the tenant shall pay \$100 extra per month (in addition to their rent) beginning with September 2023).
6. If RAFT does not make an award or if the tenant fails to make any payment described above, the landlord may mark up anew motion for judgment to enter.

So entered this 22nd day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-4324

PHOENIX SOUTH CITY,	
	Plaintiff,
v.	
TARAH KRAINSKI,	
	Defendant.

ORDER

After hearing on May 18, 2023, on the tenant's motion to stop a physical eviction at which the landlord appeared through counsel and the tenant appeared with Lawyer for the Day (LFD) counsel and a representative from the Tenancy Preservation Program (TPP) was present, the following order shall enter:

1. Based on the information shared at the hearing, the court is concerned that the tenant lost her Section 8 subsidy and failed to take the necessary steps to appeal

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-402

JOEL ANDREWS,

Plaintiff,

v.

KEMPTON POLLARD,

Defendant.

ORDER

After hearing on May 19, 2023, on the plaintiff tenant's motion for injunctive relief at which both parties appeared without counsel, the following order shall enter:

1. The defendant landlord shall immediately restore electric and gas utilities.
2. Going forward, the landlord shall not curtail utility services at the subject premises as long as the tenant occupies the premises.
3. It was explained to the landlord that he has remedy at law should the tenant fail to pay towards utilities, but curtailing their service is not an option.

So entered this 24th day of May, 2023.

Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-CV-402

JOEL ANDREWS,

Plaintiff,

v.

KEMPTON POLLARD,

Defendant.

ORDER

After hearing on May 22, 2023, on the plaintiff tenant's motion for injunctive relief at which both parties appeared without counsel, the following order shall enter:

1. The parties reported that the gas and electric utilities had been restored.
2. The City Code Enforcement Department has recently inspected the premises and indicated a likelihood of condemnation.
3. If the City condemns the premises, the landlord shall provide hotel accommodations at the Holiday Inn on State Street in Springfield until the

condemnation is lifted or until further order of the court, whichever should occur sooner.

4. This matter shall be scheduled for review on **May 30, 2023, at 9:00 a.m.** live and in-person at the Springfield Session of the court.

So entered this 24th day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-661

KENNETH FRANKLIN,

Plaintiff,

v.

LADAWN OWENS,

Defendant.

ORDER

After hearing on May 11, 2023, at which the landlord appeared *pro se* and the tenant appeared with Lawyer for the Day/LAR counsel, the following order shall enter:

1. The motion to consolidate the Small Claim matter, *LaDawn Owens v. Kenneth Franklin*, Case No. 22-SC-120, into this instant Summary Process action (23-SP-661) is allowed. Additionally, the default entered against Mr. Franklin in the Small Claims matter is vacated and that matter shall be taken off the list for June 21, 2023.

2. The tenant has until May 19, 2023, to file and serve an Answer and Discover Demand. LAR counsel, David DeBartolo, agreed to continue to work with the tenant to produce the Answer and Discovery Demand.
3. The landlord shall have until May 26, 2023, to respond.
4. The landlord may also propound discovery by filing and serving a discovery demand by no later than May 26, 2023.
5. If the landlord so propounds, the tenant shall have until June 8, 2023, to respond.
6. A trial shall be scheduled for June 16, 2023, at 9:00 a.m.¹

So entered this 24th day of May, 2023.



Robert Fields, Associate Justice

CC: Michael Doherty, Clerk Magistrate
Court Reporter

¹ NOTE: The landlord indicated that he may choose to file a Jury Demand upon his receipt of the tenant's Answer. If such a demand is filed, the Clerks Office is asked to take the matter off the list for June 16, 2023, and schedule a Case Management Conference.

1/18

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-4642

RILEY HUYNH,

Plaintiff,

v.

WOODROW HUBBARD,

Defendant.

ORDER


After hearing on May 11, 2023, on review of this matter at which both parties appeared, the following order shall enter:

1. The tenant shall continue to diligently search for alternate housing accommodations and maintain a written log of such efforts which records each and every location that was identified with an address and contact information and the outcome of his inquiry.
2. The tenant is responsible for \$400 per month for use and occupancy. As long as any utility remains in the tenant's name, he shall pay the landlord the difference

between the utility bill and \$400, if any. For example, if the utility bills total \$160, the tenant must pay the landlord \$240.

3. A referral was made to the Tenancy Preservation Program (TPP). A representative from TPP joined the hearing and began to work with the tenant and has agreed to open the case and assist the tenant with accessing resources to help him relocate.
4. The landlord shall provide a letter to TPP that confirms that the tenant lives at the subject premises, that the landlord purchased the premises, and that he requires the tenant to relocate.
5. This matter shall be scheduled for further hearing on **June 29, 2023, at 10:00 a.m.** The tenant shall come prepared to share his "housing log" with the court and the landlord at that time.

So entered this 24th day of May, 2023.



Robert Fields, Associate Justice

CC: Tenancy Preservation Program
Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-CV-793

ALYSSA MAJOR and MICHAEL TRUJILLO,

Plaintiffs,

v.

MARY E. CAVALLINI,

Defendant.

ORDER

After hearing on May 23, 2023, the following order shall enter:

1. The plaintiffs' attorney's motion to withdraw as counsel is allowed without opposition. Attorney Marshall T. Moriarty is withdrawn from representation in this matter and the plaintiffs shall proceed without counsel until new counsel files an appearance, if ever.

2. The parties agree that the preliminary injunction currently in place in this matter shall remain in full force and effect unless amended or suspended with leave of court.
3. The undersigned judge will seek interdepartmental transfer of this matter to the Hampden Superior Court pursuant to G.L. c.211B, s.10, due to jurisdictional considerations.

So entered this 21th day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2021

PHOENIX SOUTH CITY, LLC,

Plaintiff,

v.

JAMIE DUFAULT,

Defendant.

ORDER

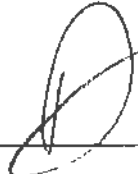
After hearing on May 23, 2023, on the landlord's motion for entry of judgment at which the landlord appeared through counsel, the tenant appeared without counsel, and a representative from the Tenancy Preservation Program (TPP) was present for the hearing, the following order shall enter:

1. Though the RAFT funds applied for as part of the last agreement of the parties were paid out, and though said funds covered all outstanding rent and occupancy

through April 2023, the funds did not arrive with the landlord until after April 1, 2023, and use and occupancy for that month became due without payment.

2. May 2023 use and occupancy are also now outstanding. Thus, the outstanding balance of use and occupancy is \$256 (2 months @\$128).
3. The tenant credibly testified that her "new" rental subsidy (which was converted from a project-based subsidy to a voucher) began in April 2023, and she was under the assumption that Way Finders, Inc. (the administrator of her subsidy) was going to pay for April 2023.
4. By agreement of the parties, the tenant shall pay her rent in full and on time in June 2023 and also pay an additional \$128 (totaling \$256). The tenant shall also pay her use and occupancy plus an additional \$128 in full and on time in July 2023. Based on this agreement, the motion is denied.
5. If the tenant makes these payments and brings the balance to \$0, this matter shall be dismissed.
6. If the tenant fails to make the payment described above, the landlord may file a new motion for entry of judgment.

So entered this 24th day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Franklin, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-2213

JASON RAYMOND,

Plaintiff,

v.

**CALEB OSHLANDER and BRAEDEN
HAGELIN,**

Defendants.

ORDER

After hearing on May 12, 2023, on the landlord's motion to issue a new execution at which only the landlord appeared (through counsel), the following order shall enter:

1. The execution for possession expired on April 11, 2023. Without any agreement or court order staying or otherwise tolling the three-month period after the

execution issued, the court is without authority to issue a new execution after the original expired. See, G.L.c. 235, s.23.¹

2. The landlord asserts that the delay in levying on the execution was due to a person moving onto the premises after the commencement of this summary process action and that the landlord commenced a new, separate, summary process action against that person. In that case (22-SP-4779), the parties entered into an agreement on March 21, 2023, for a date by which the tenant will move out.
3. Such events, however, did not toll the three-month time period after the judgment and execution issued. That said, the landlord was not without remedy and could have come to court between March 21 and April 11, 2023, and either requested, by motion, the issuance of a new execution in this instant matter or a stay on its use which would have tolled the expiration on its use until a later date so it could be used simultaneously with the anticipated execution in the related matter.
4. Having not tolled the three-month period for which the execution was valid for possession, the landlord's motion is denied. See various Housing Court Department decisions including: *Winn Management Company v. Brenda Clark*, Eastern Division Hsg. Ct. No. 17-SP-3816 (2018, J. Theophilis) which cites *Lewey v. Chelsea Division of District Court*, SJC Case No. 88-309; *Robert*

¹ G.L. c.235, s.23, 2nd Paragraph states: Executions for possession of premises rented or leased for dwelling purposes obtained in actions pursuant to chapter two hundred and thirty-nine shall not be issued later than three months following the date of judgment, except that any period during which execution was stayed by order of the court or by an agreement of the parties filed with the court shall be excluded from the computation of the period limitation. Such executions shall be made returnable within three months after the date of issuance and shall state the date of the issuance and the return date. No sheriff, constable, officer, or other person shall serve or levy upon any such execution for possession later than three months following the date of the issuance of the execution.

Louison v. Marie Clarsaintal, Boston Div. Housing Court No. 09-SP-4710 (2010, CJ Pierce); *Deutsche Bank NA v. Jairo Castro and Jacob Castro*, Boston Div. Housing Court No. 06-SP-488 (2006, FJ Winik) (The Court is without statutory authority to issue a new execution at this late date [after the expiration of the execution and without a timely motion to extend its use]).

So entered this 24th day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

Hampden, ss:

**HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-867**

BEACON RESIDENTIAL MANAGEMENT, LP,

Plaintiff,

v.

LORRAINE COMBS and SASHA JONES,

Defendants.

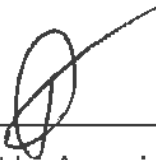
ORDER

After hearing on May 16, 2023, on the tenants' motion to vacate the default judgment at which the landlord appeared through counsel and the tenant appeared with Lawyer for the Day Counsel (Paul Schack), the following order shall enter:

1. The motion to vacate the default is allowed. The court is satisfied that there is sufficient reason for missing the April 26, 2023, Tier 1 event and that she has colorable claims regarding her rent and the landlord's receipt of RAFT funds. As such, the default judgment shall be vacated.

2. The parties agree that \$10,000 was paid to the landlord on the tenant's behalf by RAFT. The tenant may wish to be heard on a motion to dismiss, arguing that the matter should be dismissed and will meet with Community Legal Aid to see if they can assist her in that regard.
3. This matter shall be scheduled for a Case Management Conference with the judge on **May 25, 2023, at 9:00 a.m.**

So entered this 25th day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 18-CV-1060

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
HOUSING DIVISION,

Plaintiff

v.

COBB REALTY TRUST (owner),
SISTERHOOD ON THE MOVE, INC. (indispensable party),
TOORAK REPO SELLER I TRUST (mortgagee),
TRIUMPH CAPITAL PARTNERS, LLC (mortgagee),
VICTORIA CAPITAL TRUST (mortgagee), and
CHERYL BONNER (tenant)

Defendants

Re: 63 Mulberry Street, Springfield, Massachusetts (the "Premises")

ORDER

(Hampden County Registry of Deeds Book/Page #22675/428)

After a hearing on Monday, May 22, 2023, for which a representative of the Plaintiff appeared, Attorney Michael Swain appeared on behalf of Defendant VICTORIA CAPITAL TRUST, Defendant CHERYL BONNER appeared, and Defendants COBB REALTY TRUST, SISTERHOOD ON THE MOVE, INC., TOORAK REPO SELLER I TRUST, and TRIUMPH CAPITAL PARTNERS, LLC did not appear, the Court finds that the conditions at the Premises pose a significant risk to the health, safety, or welfare of neighboring residents and the general public. The Court concludes that, in order to protect neighboring residents and the general public, the two storage trailers currently parked on the subject property must be removed and the carriage house at the rear of the subject property must be demolished. In light of the foregoing, the following order shall enter:

1. Defendant CHERYL BONNER shall remove the storage trailers from the Premises, FORTHWITH, and in any event no later than Wednesday, May 31, 2023 at 9:00 a.m.
2. If Defendant CHERYL BONNER fails to remove the storage trailers from the Premises by Wednesday, May 31, 2023 at 9:00 a.m., then Defendant VICTORIA CAPITAL TRUST shall remove the storage trailers and store them at a public storage facility. Defendant VICTORIA CAPITAL TRUST shall provide Defendant BONNER

with the location of the storage facility prior to the trailers being removed from the Premises, and it shall pay the storage fees until further Court order.

3. Defendant VICTORIA CAPITAL TRUST shall demolish the carriage house located at rear of the Premises, remove all debris associate with said demolition, complete all work associated with the demolition of the carriage house, and obtain and close all required demolition permits for the demolition of the carriage house FORTHWITH and in any event no later than Wednesday, June 28, 2023 at 9:00 a.m. All work is to be done in a workmanlike manner with permits obtain, supervised, inspected, and closed as required by law. Prior to demolition, Defendant VICTORIA CAPITAL TRUST shall move Defendant BONNER'S personal belongings from the carriage house to the main house, provided the property can be moved safely.
4. Defendant VICTORIA CAPITAL TRUST shall be enjoined from performing any work at the Premises without first obtaining the proper permits.
5. At the next review date, Defendant CHERYL BONNER and Defendant VICTORIA CAPITAL TRUST shall provide this court with an update on the pending litigation in Superior and/or Land Court regarding title to the Premises. She shall provide the Court with a printout of the docket(s) showing the current status of the litigation.
6. The parties shall appear in court for a review of this matter on Friday, August 18, 2023 at 11:00 a.m. Failure of the Defendant to appear on said date may result in the issuance of a capias for their arrest or the filing of a complaint for contempt.

SO ENTERED.

DATE: May 25, 2023



Jonathan J. Kane, First Justice
Western Division Housing Court

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 23-SP-213

JUAN POLANCO,

Plaintiff,

v.

GLEN SULLIVAN,

Defendant.

ORDER

After hearing on May 16, 2023, at which both parties appeared, the following order shall enter:

1. **Defendant-tenant's Motion to Compel:** The tenant stated that though the landlord has responded to discovery, he believes that better and more thorough responses should be forthcoming. The court finds, however, that the motion pleading filed by the tenant is insufficient and requires that the motion only be heard after a filing of a new pleading which shall include for each interrogatory and/or request for document: restatement of the request, restatement of the response, and argument as to why the response is insufficient. Said motion to

compel, in this format, is due no later than June 12, 2023, and the landlord's responses are due no later than June 23, 2023. A hearing shall be scheduled on said motion on June 27, 2023, at 9:00 a.m.

2. **Plaintiff-landlord's Motion for Use and Occupancy:** In accordance with the standards established in *Davis v. Comerford*, 483 Mass. 164 (2019) and pursuant to the equitable powers of the court, the landlord's motion for use and occupancy is denied. At the hearing, the landlord relied on its pleading which states only that the "landlord is suffering a financial hardship from the[] nonpayment of rent..." without any more detail. The tenant credibly testified that his sole income is \$400 per month from the state's EA-EDC (general relief) program.
3. Whereas the tenant has asserted various claims against the landlord including breaches of warranty of habitability and quiet enjoyment (which may affect the fair market rent of the premises), and with no other specific or compelling facts percolated by the landlord regarding his financial situation, the court finds that the landlord did not meet his burden of proof on this claim and the motion is denied, without prejudice.

So entered this 25th day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

CR

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-1616

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

v.

MARNIQUE T. RIVERA,

Defendant.

ORDER

After hearing on May 23, 2023, at which the plaintiff appeared through counsel and the defendant appeared without counsel, the following order shall enter:

1. The plaintiff's motion for reconsideration of the court's stay order pending the outcome of the appeal in the Berkshire Superior Court Case No. 1776CV222 is denied.
2. The court is not moved from its position that these Summary Process proceedings should be stayed pending that appeal, given that the subject matter

of that case is a challenge to the plaintiff's foreclosure and if the result of that appeal is that the foreclosure is voided, the plaintiff in this action will not have standing to maintain these proceedings.

3. Though the plaintiff may move this court at a later date to dismiss claims based on *res judicata*, it must first wait until the appeal in the Superior Court matter is adjudicated.
4. Though the plaintiff also filed a motion for use and occupancy, it did not go forward due to its witness having to leave. The plaintiff may mark said motion with coordination with the Clerks Office at a later time.

So entered this 26th day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter

2

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT
WESTERN DIVISION
CASE NO. 22-SP-3651

MOUNT OLIVE PROPERTIES, LLC,

Plaintiff,

v.

JANELL HAYNES,

Defendant.

ORDER

After hearing on May 25, 2023, on motions filed by both parties and at which the landlord appeared through counsel and the tenant appeared with Lawyer for the Day counsel, the following order shall enter:

1. The landlord's motion is to enforce the January 12, 2023, Agreement of the Parties (Agreement) is denied. More specifically, enter judgment for possession because the tenants agreed to an April 15, 2023, vacate date in this no-fault eviction.

2. The tenant's motion seeks additional time to vacate the premises due to their inability to secure alternate housing.
3. The tenant credibly explained that she has had three bouts with COVID and has now been diagnosed with "long COVID." This condition, and the fact that several of her family members who lived with her at the time she entered into the Agreement were not contributing towards the rent, resulted in her agreeing to a move-out date without fully considering that she may need more than 90 days to find a new home.
4. The tenant testified credibly that she has been diligently searching for alternate housing since she entered into the Agreement but has been unable to secure such housing. She also testified that she is hearing from some of these places that they reached out to her landlord---who agreed to provide a neutral reference in the Agreement---but received no response to their calls from said landlord.
5. The tenant shall pay \$1,000 for May 2023 use and occupancy today or tomorrow at the office of landlord's counsel (and will be provided a receipt for same).
6. The tenant shall pay her use and occupancy for June and July 2023 by the 15th of each month. The landlord may file a motion if it is seeking an amendment in the payment order—should it require use and occupancy to be paid by the first of each month---thereafter.
7. The tenant shall maintain a "housing search log" which documents each and every place that she finds, investigates, contacts, etc. and what happened with each such inquiry thereafter. She shall be prepared to share same with the landlord and the court at the next hearing scheduled below.

8. The landlord shall forthwith provide a written neutral reference to the tenant. The landlord shall also promptly return any calls it receives from prospective landlords on behalf of the tenant and provide a neutral reference at that time.
9. This matter shall be scheduled for review and to determine if any further extension of time shall be granted on **July 13, 2023, at 9:00 a.m.**

So entered this 26th day of May, 2023.



Robert Fields, Associate Justice

CC: Court Reporter