COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

WORCESTER, SS

HOUSING COURT DEPARTMENT
CENTRAL DIVISION-WORCESTER SESSION
DOCKET NO.: 23H85SP004570

MARK CEPPI
Plaintiff

v.

SEAN SULLIVAN
STACIE KRAUSE
Defendant

SUMMARY PROCESS
FINDINGS OF FACT & RULINGS OF LAW

On March 1, 2024, a bench trial occurred on the above summary process eviction action. Both parties appeared with counsel. Based on the evidence presented, the reasonable inferences drawn therefrom, and in light of the applicable law, this Court finds and rules as follows:

FINDINGS OF FACT & RULINGS OF LAW

The plaintiff brought this eviction action to recapture possession of the residential rental unit Lot 14, at 17 Washington Street, Auburn, Massachusetts, which the defendants occupy. The plaintiff is the owner and lessor of the premises and the parties had a tenancy relationship created in writing under a lease. The plaintiff, by his counsel, served a written notice dated August 28, 2023, informing the defendants of the plaintiff's attempt to terminate the tenancy under a no-fault basis and demanded the defendants vacate by no later than September 30, 2024. When the defendants did not vacate, the plaintiff served an eviction complaint with no account annexed. The defendants filed an answer and raised counterclaims but did not demand a jury trial.

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At trial, the plaintiff attested to the parties' tenancy relationship, his termination of the tenancy, and the defendants' failure to vacate the premises. As the reason for the tenancy termination, the plaintiff testified that he wished to sell the premises and needed the unit vacant. The defendants did not dispute the plaintiff's prima facie showing but did raise counterclaims and defense in opposition to the plaintiff's claim for possession.

Security Deposit

On June 12, 2019, the defendants paid the plaintiff a security deposit of $1000. This was supported by both the testimony of defendant Sullivan and a copy of a money order and a receipt. Both parties testified that the security deposit had not been returned. Both parties also testified that no statement of conditions was provided to the defendant. There was no evidence that the plaintiff provided the defendants with an account number on the security deposit receipt or any other document showing which bank the funds were deposited. The bank statement for the security deposit showed the account was not opened until July 23, 2019, which was more than thirty days after the security deposit was accepted.

At the inception of the tenancy, the landlord must provide the tenant with a statement of conditions. G.L. c. 186 §l 5B(c) Further, a landlord has thirty days following the receipt of a security deposit to place the funds into a separate interest-bearing bank account and give the tenant a receipt with the account number and bank name. Supra at (3)(a). Failure to comply with the required handling of the security deposit entitles the tenant to its immediate return. Not returning the deposit upon demand shall entitle the tenant to three times the security deposit's value plus interest. Supra at § 15B(7). See *Karaa v. Kuk Yim*, 86 Mass. App. Ct. 714, 722, 20 N.E.3d 943,951 (2014) In this instance the defendant is entitled to three times the amount of the

security deposit, plus interest, $3002.47, ($3000 plus $2.47 in interest (Exhibit 5, interested calculated as interest for three months at the rate of .1%, on $1002.44).

Last Month's Rent

Tenants are entitled to interest when they give last month's rent to their landlord as well as a receipt containing certain information about how and what the last month's rent is to be used for. G.L. c. 186 §15B(2)(a). A landlord shall "[a]t the end of each year of tenancy, such lessor shall give or send to the tenant from whom rent in advance was collected a statement which shall indicate the amount payable by such lessor to the tenant. The lessor shall at the same time give or send to such tenant the interest which is due or shall notify the tenant that he may deduct the interest from the next rental payment of such tenant." G.L. c. 186 §15B(2)(a) (emphasis added). Further, a landlord must "give to such tenant or prospective tenant at the time of such advance payment a receipt indicating the amount of such rent, the date on which it was received, its intended application as rent for the last month of the tenancy, the name of the person receiving it and, in the case of an agent, the name of the lessor for whom the rent is received, and a description of the rented or leased premises." G.L. c. 186 §15B(2)(a).

The defendant provided testimony and evidence that he paid the plaintiff the last month's rent. The money order was signed by the plaintiff and he affirmed receipt thereof at trial. The plaintiff offered no evidence that he provided the defendants with a receipt for the funds, the amount of annual interest earned on the deposit, that he paid interest on the funds, or that he informed them that they could deduct the interest for the last month's rent from their rent. Because no receipt was given and no indication of any interest was paid, the Court should find that G.L. c. 186 §15B(2)(a) was violated entitling the defendants to 5% interest on the last

month's rent. As such, the defendants are entitled to damages of $261 ($1300 x 5% x 3 years and 8 months) for the violation.

Warranty of Habitability

The defendants testified that at the inception of the tenancy, there were paint cans throughout the trailer, that remain in the unit to this day, that there was paint on the floor, that the door was damaged, and the trailer was dirty. See Exhibit K. The defendants testified that the plaintiff was present at the walk-through of the unit. The defendants further testified they had to clean up the paint and the cans and clean the floors, and that they were offered $300 for the removal of the items and for cleaning the trailer, but never received any payment.

The defendant Sullivan testified he called the Board of Health in July 2022 because of repair issues concerning the trailer and that the Board of Health came to the trailer, inspected the unit, and found several violations. This took place after multiple conversations with Plaintiff concerning the conditions. Although the plaintiff testified he had not received the notice, the defendant Sullivan testified he gave the Board of Health report to the plaintiff at his office. Mr. Sullivan testified that he sat down with the plaintiff and that he agreed to fix the kitchen sink which leaked. Likewise, in a text message dated February 14, 2023, at 4:44:29, the defendant Sullivan reminded the plaintiff that he had given him the board of health report the previous summer. See Exhibits filed by Mark Ceppi, pg. 6. The board of health July report cited the following conditions: a. The door leading to the porch handle broke, b. The kitchen faucet has a constant drip, c. the back exit door- bottom of the door is hollow, and should have a sweep on it, d. the handle of the dryer is broken, e. there was some mouse activity, f. the front door was not tight fitting, g. the vent over the stove had no cover, h. the skirting had a missing panel, 1. the trim in the back of the trailer missing exposing sharp metal edges of skirting, j. there were

additional open spaces next to the back door entrance, all to be repaired or replaced, k. the back porch in covered roof shows exposed wood, l. the top stair on the back out porch is loose and split, and m. there were other loose stairs.

The defendant Sullivan then testified that because the other repairs were not made, he called the Auburn Board of Health in February 2023 and the Board of Health came out again and cited the landlord for violations of the state sanitary code. The defendant Sullivan testified that he walked the inspector, Jordan Brusco through the unit and showed her the defects. As a result of the inspection, the Board of Health cited the plaintiff for the following: a. the skirting around the dwelling was not adequately secured. b. the stairs to the 2nd (back) egress was not structurally sound c. the 2nd (back) egress was not weathertight. d. the bottom paneling to the door was physically separated & coming apart, e. the tub/shower was not properly sealed, as the caulking was in poor condition or missing in places around the faucet, handle f. the hallway open hole not properly secured exposing metal paneling and wiring, g. the kitchen had evidence of mice activity h. there was a hole in the ground, not weather or rodent proof and i. exposed wiring was not properly capped. The plaintiff affirmed receipt of the Board of Health report. Included in the report were some of the prior conditions previously cited by the Board of Health.

The Board of Health returned for a third inspection on March 13, 2023, to assess the progress of the repairs. The inspector issued a third report with the following outstanding repairs a. the bathroom sink hole to drainpipes was observed to be duct taped over with cardboard and had to be sealed properly, b. in the kitchen the exposed wire next to the hot water tank had not been capped, c. no work was done to ventilation over stove range, and d. no service report from pest control was available. The report also stated that the Board of Health was making a referral to the Auburn Fire Department because of the oil tank. The Court did not credit the plaintiff's

claim that he was unreasonably denied access to the premises to complete the repairs but acknowledges that the Board of Health eventually found that the unit was restored to compliance.

The Auburn Fire Department came to the unit to check the oil tank and cited the plaintiff for numerous violations, which the plaintiff had notice thereof. The defendants had safety concerns regarding the oil tank and spilled oil on the floor. The plaintiff testified that he hired a contractor to try to resolve the violations, but that the violations had never been cleared by the Fire Department.

In the rental of any premises for dwelling purposes, there is an implied warranty of habitability that the premises are fit for human habitation. The warranty of habitability, insofar as the State Sanitary Code or other regulations, cannot be waived. Boston Housing Authority v. Hemingway, 363 Mass. 184, 196-97, 198, 199 (1973). Berman & Sons, Inc. v. Jefferson, 379 Mass. 196, 198-99, 201-02 (1979). The tenant's obligation to pay rent abates as soon as the landlord has knowledge or notice that the premises fail to comply with the requirements of the warranty of habitability. Berman & Sons, Inc. v. Jefferson, 379 Mass. 196, 198-99, 201-02(1979). In the rent abatement context, liability for breach of warranty of habitability, sounding in contract, exists even where the landlord is not at fault and has no reasonable opportunity to repair. Berman & Sons, Inc. v. Jefferson, 379 Mass. 196, 396 N.E.2d 981 (1979). Simon v. Solomon, 385 Mass. 91, 96,431 N.E.2d 556, 561-62 (1982).

The Court finds that the conditions in the trailer at the start of the tenancy for which Defendants were to be paid to remedy, but were not paid for entitles Defendants to $300. The conditions, cited by the board of health in July 2022 lasting to March 2023 decreased the value of the property by 25%. (25% of 1300 x 8 months= $2600). While the remaining

conditions cited by the March 2023 report to April 2023 decreased the value by 10% (10% of 1300 x 2 months= $260). Further, the violation based on the condition of the oil tank dated May 16, 2023, which has not yet been remedied, entitles Defendants to 10% of each month since the violation was cited. (10% of$1300 x 10 months= $1300). The total of the warranty of habitability claims is thus valued at $4460.

Quiet Enjoyment

The defendants testified that when they first moved in they had problems concerning their heat because they did not have a thermostat and could not turn on the heat until October 2019. This represents 6 weeks when no heat was provided during the heating season. See 105 CMR 410.180. The defendant Sullivan testified that the plaintiff offered space heaters. This testimony was unrebutted. In addition to the board of health reports, Defendant Sullivan testified that in December 2022, he called the plaintiff concerning the hot water heater because it not working. When it was replaced, the defendant Sullivan testified sparks flew out over a foot or so from the floor and caused the insulation to burn. See Exhibit D.

The texts between the defendant Sullivan and the plaintiff show the parties were in contact about the hot water heater on December 15, 2022. The defendant Sullivan told the plaintiff that the hot water tank was dead, leaking, and a fire hazard. He further explained it was leaking into the electric system. The plaintiff told the defendant to shut off the system, which he did. The defendant Sullivan testified that he was concerned about his health and safety because of the electrical system, resulting in sparks after the tank was replaced.

An implied covenant exists between the parties that requires the landlord to ensure the tenant's right to use and occupy the premises without any serious interference that does not diminish the character and value of the premises. G.L. c. 186, § 14. The statute does not

require that the landlord's conduct be intentional. See *Simon v. Solomon*, 385 Mass. 91 (1982), but rather only that the landlord's conduct "seriously 'impair[s] the value of the leased premises.'" *Lowery v. Robinson*, 13 Mass. App. Ct. 982,982 (1982). A violation of the covenant shall cause the landlord to be liable for actual and consequential damages or three months' rent, whichever is greater, plus costs and attorney's fees. Supra § 14.

Damages for this breach of quiet enjoyment are three months' rent ($3,900.00), plus attorney's fees. Since this claim is based upon the same conditions illustrated above in Breach of the Warranty of Habitability, the defendants are entitled to whichever claim for damages is greater. In this case, it is the Breach of Warranty of Habitability of $4,460 as opposed to the breach of quiet enjoyment which is $3,900.00. Therefore the defendants are entitled to the higher of the two claims.

Retaliation

Under G. L. c. 186, § 18 "reporting to the board of health ... a violation or suspected violation of any health or building code or of any other municipal by-law or ordinance, or state or federal law or regulation which has as its objective the regulation of residential premises" is a protected activity which is a defense to an eviction. G. L. c. 186, § 18. This activity is also protected under G.L. c. 239, § 2A. Likewise, a tenant engages in protected activity under G. L. c. 186, § 18. by reporting said violations or suspected violations of law in writing to the landlord. G. L. c. 186, § 18. This activity is also protected under G.L. c. 239, § 2A. Under both statutes, if the tenant receives a notice to quit within six months of the tenant undertaking a protected activity, the tenant is entitled to a presumption that such notice is a reprisal against them for engaging in the protected activity. G. L. c. 186, § 18; G.L. c. 239, § 2A. The landlord may rebut that presumption only by clear and convincing

evidence that the "action was not reprisal" and "[landlord] had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, regardless of tenants engaging in [the protected activities}." G. L. c. 186, § 18; G.L. c. 239, § 2A.

At the trial, the plaintiff testified he was going to sell the unit and had been trying to do so since July 2022. The plaintiff did show texts that he was working with a realtor in July 2023 to sell. The Court credits the plaintiff's evidence that they intended to sell the premises and that is why they proceeded with evicting the defendants. This is clear and convincing evidence the plaintiff did not retaliate against the defendants for contacting the Board of Health. The defendant's claim for retaliation fails.

G.L. c. 239 § 8A

This statute provides that where a tenancy has been terminated for or without fault of the tenant, the tenant "shall be entitled to raise, by defense or counterclaim, any claim against the plaintiff relating to or arising out of such property, rental, tenancy or occupancy for breach of warranty, ...or for a violation of any other law." G.L. c. 239, §. 8A, para. 1. Where the defense or counterclaim is based upon the condition of the premises, the tenant is entitled to a defense to possession only if: (1) material conditions of disrepair existed in the rented premises; (2) the plaintiff knew or should have known of the conditions before the tenant was in arrears in her rent; (3) the plaintiff does not show that the tenant caused the conditions; and (4) the plaintiff does not show that the conditions cannot be remedied unless the premises are vacated. G.L. c. 239, §. 8A, para. 2.1

The Plaintiff is not entitled to recover possession of the premises if the Court finds that the amount of rent due the Plaintiff equals or is less than the amount due the tenant on her

counterclaims and defenses. G.L. c. 239 §8A.; See *Lawrence v. Osuagwu*, 57 Mass. App. Ct. 60, 63 (2003); see also *Meikle v. Nurse*, 474 Mass. 207, 214 (2016). Where a tenant prevails on a defense or counterclaim and is awarded damages in an amount less than the amount owed to the plaintiff, the statute provides that "no judgment shall enter until after the expiration of the time for such payment and the tenant has failed to make such payment." Meikle at 214 (2016) citing G.L. c. 239 §8A paragraph 5.

In this instance, the defendants were never behind on their rent and there is sufficient evidence to find by a preponderance that the plaintiff had knowledge of the conditions, the conditions were not caused by the defendants, and the repairs could occur without having to vacate the defendants. Therefore, based on the above, the defendants are entitled to raise as a defense to the plaintiff's possessory claim, an § 8A defense.

Consumer Protection

The Courts have found that a violation of the Attorney General's promulgated regulations (940 Code Mass. Regs. § 3.17) or a substantial and material breach of the implied warranty of habitability, can serve as cause to also find a violation of the state's consumer protection statute, G.l. c. 93A. *Baker v. Equity Residential Management, LLC* , 390 F.Supp.3d 246, 258-259 (2019). However, damages under 93A do not allow for duplicative damages but may permit damages to be multiplied or provide a basis to award attorney's fees. *South Boston Elderly Residence, Inc. v Moynahan*, 91 Mass.App.Ct. 455, 470 (2017). A Court may award up to three but no less than two times the actual damages if it is found that the landlord acted or engaged in an unfair and deceptive practice that was willful or knowing. *Cruz Management Co., v. Thomas*, 417 Mass. 782, 790 (1994). Based on the facts presented at trial, this Court finds there were sufficient facts to find a violation of 93A based on a substantial and material breach of the implied warranty of

habitability but insufficient evidence to determine that the plaintiff acted willfully concerning repairs of the conditions and the defendants' claim for multiple damages is denied.

ORDER

Based on the above findings and after applying the law, this Court Orders the following

1. The defendants are entitled to possession of the premises.
2. The defendants are entitled to damages on their claims as follows:
    A. For the security deposit claims: $3027.47
    B. For the last month's rent claims: $261.00
    C. For the warranty of habitability claims: $4460.00
3. The clerk's office shall schedule a hearing so the Court can determine reasonable attorney's fees, and issue a final entry of judgment.

SO ORDERED
/s/ Alex Mitchell-Munevar
Associate Justice
Date: 5/28/2024