

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

HAMPDEN, ss.

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO. 21SP1189

CHICOPEE HOUSING AUTHORITY,)
)
 PLAINTIFF)
)
 v.)
)
 MICHAEL S. BOUTIN,)
)
 DEFENDANT)

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

This for-cause summary process action was before the Court for an in-person trial on August 12, 2021 and August 16, 2021. Plaintiff landlord seeks to recover possession of 100 Debra Drive, PR. 4-F, Chicopee, MA (the “Premises”) from Defendant tenant based on alleged lease violations. Plaintiff appeared through counsel and Defendant appeared and represented himself. Defendant filed an answer asserted numerous defenses and counterclaims. Because Defendant’s tenancy was terminated for cause, conditions-based counterclaims are not statutorily permitted. *See* G.L. c. 239, § 8A;¹ however, the defenses of retaliation and discrimination, both of which can be asserted as a defense and a counterclaim, shall be considered as part of this action.

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

¹ Defendant’s conditions counterclaims shall be severed and transferred to the civil docket with a new civil action number with Mr. Boutin as the plaintiff in that case and Chicopee Housing Authority as the defendant.

Defendant moved into the Premises on June 14, 2013. The Premises are part of the Memorial Apartments complex owned and managed by Plaintiff Chicopee Hosing Authority ("CHA"). The particular building in which the Premises are located has eight units, with two units on each of four floors. Defendant is party to a written lease that, among other things, requires Defendant to act in a manner that does not threaten the health or safety of other residents or Plaintiff's employees or disturb the rights of other residents to the quiet and peaceful enjoyment of the premises.

As specified in the notice to quit, CHA brought this case as a result of Defendant's actions with respect to the other resident of the 4th floor, Ramon Ortiz. Mr. Ortiz has lived across from Defendant in unit 4-E for approximately five years. Although Defendant and Mr. Ortiz did not have issues at the outset, at some point over the past two or three years, Defendant began making numerous complaints about Mr. Ortiz and his visitors, both to management and also to the Chicopee Police Department. Other tenants have not lodged complaints about Mr. Ortiz.

The Court finds that Defendant has legitimate concerns about the actions of Mr. Ortiz and his visitors, including individuals sleeping in common areas outside of Defendant's door and people making excessive noise and smoking when coming and going from the building in which the Premises are located. His complaints that people have in the past knocked on his door in the middle of the night looking for Mr. Ortiz are less credible, however, given that he testified that these incidents began before Mr. Ortiz had moved into the building.

Defendant concedes that he regularly videotapes interactions with Mr. Ortiz and his visitors. He claims he does this because, after he complained to CHA management about Mr. Ortiz, he was told that he needed to have evidence if he wanted management to take action. Defendant took this requirement literally and has been keeping close tabs on the activities of Mr.

Ortiz and his guests. The Court finds that Defendant zealously videotapes Mr. Ortiz because he feels compelled to prove the legitimacy of his complaints, not for the purpose of harassing his neighbor.²

Regardless of his rationale for closely observing the activities of Mr. Ortiz and his visitors, Defendant's behavior has had an adverse effect on Mr. Ortiz's mental health. Mr. Ortiz testified that Defendant's constant surveillance has caused him extreme anxiety. He said that he has lost sleep and suffered emotional harm as a result of being the subject of so many complaints to the police and management. Mr. Ortiz also claims that Defendant has screamed at him in fits of rage and has made offensive comments about his ethnicity and national origin.

In addition to his claims about his neighbor, Defendant asserts that management does not apply rules fairly, and that he is being unfairly targeted for conduct in which others also engage. For example, he testified that management threatens to tow his car when he fails to move it for snow plowing but allows others to leave abandoned vehicles in the parking areas. The Court does not find evidence of unequal treatment or retaliation by management for any of the complaints made by Defendant. Nor does the Court have any reason to believe, as Defendant claims, that others are listening in on him at the Premises through the building's intercom system.

Plaintiff has satisfied its burden of demonstrating that Defendant is in substantial breach of his lease by interfering with Mr. Ortiz's right to the peaceful enjoyment of his home. The Court does not find sufficient evidence to support Defendant's claims that CHA retaliated against him or engaged in discriminatory acts. Because the Court finds that Defendant is operating under the mistaken belief that it is his obligation to document every perceived offense

² At trial, Defendant provided the Court with a flash drive with dozens of video clips and pictures, meticulously labeled and categorized according to each alleged transgression.

by Mr. Ortiz and his visitors, however, the Court is willing to allow Defendant the opportunity to modify his behavior. If he wishes to remain as a tenant of CHA, he must accept a transfer to a unit in a different building or location.³ He must also accept a psychological evaluation by the Court clinic to determine if he would benefit from mental health services related to his ability to live in multifamily housing.

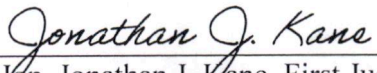
Accordingly, in light of the foregoing, the following order shall enter:

1. Plaintiff is entitled to entry of judgment for possession, but entry of judgment will be deferred until further Court order.
2. Plaintiff shall investigate whether it has another unit available in the same complex to which to transfer Defendant. If another unit is available, Defendant shall accept the transfer.
3. Defendant shall be referred to the Tenancy Preservation Program (“TPP”) for a determination of eligibility. If TPP opens a case with Defendant, it shall coordinate a psychological evaluation of Defendant by the Court Clinic to assess whether Defendant can perform the necessary functions associated with living in multifamily housing, such as adhering to the terms of his lease and interacting appropriately with management and other tenants. TPP shall also support Defendant in the event CHA is able to offer him a transfer to a different unit.
4. Defendant shall cease and desist from:
 - a. interfering with Mr. Ortiz’s right to the peaceful enjoyment of his tenancy including but not limited to videotaping and recording him and his guests; and

³ Mr. Boutin says he feels comfortable in the neighborhood in which Memorial Apartments are located and doesn’t want to move to a different development. Accordingly, the first option should be to transfer Mr. Boutin to another building in the same complex, if one is or soon becomes available.

- b. making complaints about Mr. Ortiz and his visitors to management and to the police except in the case of an urgent threat to Defendant's health or safety.
5. Defendant shall allow access for repairs on 24 hours' advance written notice and shall not obstruct management's efforts to complete said repairs.
6. If Defendant substantially violates any terms of this order, Plaintiff may file and serve a motion for entry of judgment.
7. The parties will return for a status hearing on October 28, 2021 at 9:00 **in person** at the Western Division Housing Court, 37 Elm Street, Springfield, Massachusetts 01103. If at that hearing the Court determines that Defendant has not been making good faith reasonable efforts to comply with this order, Plaintiff may request entry of judgment.

SO ORDERED this 1st day of September 2021.



Hon. Jonathan J. Kane, First Justice

cc: Chief Housing Specialist (TPP referral)
Court Reporter