

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

HOUSING COURT DEPARTMENT
CITY OF BOSTON DIVISION
SUMMARY PROCESS
NO.

Plaintiff

VS.

Defendant

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

This is a summary process action in which the plaintiff is seeking to recover possession of a residential apartment from the defendant. The plaintiff alleges that the defendant created and has maintained a fire hazard in her apartment in violation of her lease. The defendant has not denied the allegations.

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

The plaintiff, ****a non-profit corporation that owns and manages a 242 unit residential development (“**ouse”) at ***road, in the **** section of Boston. ** House provides subsidized housing for elderly residents. The age of the average resident is 83 years. The defendant, ***, has resided at *** Road, Unit #***, since 1992. Her share of the subsidized rent is \$***.00 per month. Unit #*** is a studio apartment (containing a main room, small kitchen and bathroom) located on the seventh floor. [Defendant] is 81 years old and lives alone.¹ A written lease (Exhibit 1) governs her subsidized tenancy.

¹ *** has family that lives in the Greater Boston area.

Under Section 31.b of the lease, [Landlord] may terminate [Tenant's] tenancy only for "the Tenant's serious or repeated violation of the terms and conditions of or material non-compliance with the terms of this Agreement." The lease defines "material non-compliance" to include "creation of physical hazards."

*** is the Resident Services Administrator for [Landlord]. She works closely with the residents at ** House. I credit Ms. **'s testimony in its entirety. Ms. ** inspected [Tenant's] apartment in May 200*. She observed that [Tenant's] unit was cluttered with cardboard boxes, plastic crates, books and papers. There were so many boxes in the unit that [Tenant] could barely walk from the door to the window. Boxes were stacked from the floor to the ceiling, effectively blocking the automatic sprinkler system. The entrance to the unit was partially blocked. The condition of [Tenant's] unit created a serious fire hazard that endangered not only [Tenant], but the other 241 elderly residents of ** House as well. [Tenant] uses oxygen. The oxygen tanks are kept in her apartment. This exacerbates the fire hazard risk to [Tenant] and the other elderly residents of ** House.² [Landlord] requested that [Tenant] remove many of the boxes from the unit. [Tenant] ignored that request. [Landlord] conducted three (3) additional inspections during 200*. She did not observe any significant change in the condition of [Tenant's] apartment. [Tenant] has repeatedly refused to accept social service assistance offered by [Landlord].

There is no evidence that [Landlord] suffers from any disability that would limit her ability to understand or otherwise appreciate the fire hazard she has created.³

On December 24, 200*, [Landlord served [Tenant] with a notice to quit (Exhibit 2) that complied with the termination provisions set forth in Section 31.b of the lease. The notice alleges that the defendant violated Sections 20, 21 and 25 of the occupancy agreement.⁴ Specifically, the notice alleges that "you are in material non-compliance

² A number of other residents use oxygen.

³ [Tenant] is represented by counsel. She has not requested a reasonable accommodation.

⁴ Section 20 obligates the tenant to maintain proper sanitary conditions on the premises and to live in a peaceful way with due regard to the safety of other tenants. Section 21 obligates the tenant not to store articles in her unit that may create a hazard. Section 25 obligates the tenant to keep the unit clean and to use the premises in a safe manner.

with your lease in that the condition of your apartment has been determined to be a fire hazard.”

On January 31, 200*, the Boston Fire Department served [Tenant] with an Abatement Order (Exhibit 3). The Fire Department ordered [Tenant] to forthwith remove from her unit “all excessive combustibles creating a fire hazard and hindering egress. Combustibles not to be packed within (18”) of sprinklers. Combustibles not to be packed around smoke detectors hindering its operation.”

As of the trial date (February 27, 200*), [Tenant] had not complied with the Fire Department abatement order or the numerous requests from [Landlord] that she remove the clutter from her unit.

I find that [Tenant’s] failure to remove from her apartment the excessive number of boxes, crates, books and papers, has created a significant fire hazard. Her inexplicable refusal to comply with the reasonable requests made by [Landlord] has placed at risk the other elderly residents of ** House. I rule that [Tenant’s] conduct constitutes material non-compliance with Sections 20, 21 and 25 of her lease.

For these reasons, [Landlord] has established its case to recover possession of the premises from [Tenant].

Execution for possession shall issue on **March 21, 200***. However, I shall afford [Tenant] one last opportunity to preserve her tenancy. To do so, she must remove from her unit a sufficient number of boxes, crates, books and papers to eliminate the fire hazard she has created. This means that she may keep only those books that are stored on bookshelves and only those papers that are stored in a desk or in metal file cabinets. She must remove from her unit all other boxes, crates, papers and books.⁵ She must not obstruct or block access to the windows or door in her unit. She must also agree to cooperate with [Landlord] and accept the social service assistance offered to her.

If [Tenant] complies with the conditions set forth above by March 21, 200*, she may file a motion with the Court requesting relief from judgment. The Court will grant

⁵ She may store them in a storage facility or at the homes of her family members.

such relief only if [Tenant] agrees to comply with any conditions that the Court determines to be reasonable and necessary to insure the continued safety of the residents of ** House.⁶

ORDER FOR JUDGMENT

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

1. Judgment enters for the plaintiff for possession.
2. Execution shall issue on **March 21, 200***.

JEFFREY M. WINIK
ASSOCIATE JUSTICE

March , 200*

cc:

⁶ These may include - by way of example - regular unit inspections by [Landlord], [Tenant's] ongoing cooperation with social service providers and her agreement not to bring additional boxes, crates, books and papers into her apartment. The Court will also consider other suggestions from [Landlord] and [Tenant].