

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS:

HOUSING COURT DEPARTMENT
METRO-SOUTH DIVISION
DOCKET NO. 24H82SP03575

LENOX FARMS LIMITED PARTNERSHIP,
Plaintiff

VS.

MOHAMED KASSEM AND DANNY ABOULEKHIER,
Defendants

ORDER ON DANNY ABOULEKHIER'S MOTION FOR RELIEF FROM JUDGMENT

PROCEDURAL HISTORY¹

1. On December 23, 2024, the Plaintiff, Lenox Farms Limited Partnership ("Plaintiff"), commenced this summary process (eviction) action against the Defendants, Mohamed Kassem ("MK") and Danny Aboulekhir ("DA") (collectively referred to as the "Defendants"), seeking possession of the subject residential premises located at 550 Liberty Street, apartment 905, in Braintree, MA 02184 ("premises" or "apartment 905") and money damages for use and occupancy.
2. The Complaint alleges that the Defendants failed to vacate the premises after being served with a notice terminating their tenancy for violating their lease agreement – to wit:

¹ For a more detailed procedural history of this case, see this Court's February 17, 2026 Order allowing Plaintiff's motion to enforce the Court's December 4, 2026 use and occupancy order and strike the Defendant Danny Aboulekhir's jury demand pursuant to the *Davis v. Comfort* standard. On February 25, 2026, the Defendant Danny Aboulekhir filed a Notice of Appeal from the Court's February 17th Order.

allowing an unauthorized individual known as Sandra Frommer (“SF”)² to reside at the premises. The Complaint also seeks unpaid use and occupancy after the Complaint was filed.

3. MK filed an Answer alleging that he never entered into a tenancy with the Plaintiff for the premises, he never signed a lease and never agreed to a tenancy. MK’s Answer does not seek a jury trial. Furthermore, he asserts that he never occupied or even entered the premises in any capacity and that he never received a notice to quit.
4. DA filed an Answer asserting the following defenses and counterclaims against the Plaintiff: (1) procedural defects; (2) breach of the implied warranty of habitability; (3) retaliatory eviction; (4) bad faith conduct; (5) violation of G.L. c. 93A; (6) harassment and emotional distress; and (7) constructive eviction.
5. DA’s Answer asserts the following cross-claims against MK: (1) fraud and misrepresentation (MK knowingly misrepresented his role in the lease, falsely claimed he had no involvement and authorized SF to occupy the premises and forwarded the lease to her); (2) breach of lease (forcing DA to cover lease obligations) and seeking reimbursement for all rent payments since October; (3) violation of G.L. c. 93A (deliberate refusal to fulfill lease obligations and misrepresentations); (4) tortious interference with contractual relations; (5) bad faith and malicious conduct; (6) unjust enrichments; (7) intentional infliction of emotional distress; and (8) civil conspiracy with Plaintiff.

² SF filed a motion to intervene in this action, Plaintiff opposed SF’s motion asserting that she is not a tenant or authorized occupant of the premises, and after hearing on July 18, 2025, the Court denied SF’s motion finding that SF failed to provide any evidence of a tenancy with the Plaintiff including the lack of a signed lease, evidence of rent payment and/or written communications from the Plaintiff demonstrating a tenancy agreement or authority to reside at the premises.

6. On June 9, 2025, pursuant to G.L. c. 239, sec. 8A, the Court allowed Plaintiff's motion to strike DA's conditions-based counterclaims and related defenses (without prejudice) as no opposition was filed by DA ("June 9, 2025 Order of Dismissal").
7. On October 29, 2025, during a hearing in this matter, DA testified that he never signed a lease, he was not planning to pay any rent, and any rent he paid he paid on behalf of SF on not for himself. During the hearing, DA testified that he is not a tenant and he never considered himself a tenant. Furthermore, DA testified that he is staying with SF as her "guest."³
8. Following a *Davis v. Comeford* use and occupancy hearing, on December 4, 2025, the Court allowed Plaintiff's motion seeking use and occupancy pending disposition by jury ("December 4, 2025 U&O Order").
9. The Court's December 4, 2025 U&O Order required Defendants to pay Plaintiff use and occupancy at the rate of \$4,552.00 per month, which the Court found to be the fair use and occupancy value of the premises, and Plaintiff was to hold said payments in escrow.
10. The Court's December 4, 2025 U&O Order also states that if the Defendants fail to pay any of the required use and occupancy payments, then the Plaintiff may move for sanctions including the striking of DA's jury demand.⁴
11. On February 12, 2026, the Court held a hearing on Plaintiff's motion seeking to strike DA's jury demand based on his failure to comply with the Court's December 4, 2025 U&O Order.

³ Following DA's October 29, 2025 testimony, Plaintiff commenced a civil action against DA seeking, among other things, injunctive relief, alleging that he occupies the premises without any tenancy with the Plaintiff and without the consent or authority of the Plaintiff.

⁴ MK did not seek a jury demand.

12. On February 17, 2026, the Court allowed Plaintiff's motion to enforce this Court's December 4th use and occupancy order and strike the DA's jury demand ("February 17, 2026 Order").
13. This matter was before the Court on April 6, 2026 for hearing on DA's motion for relief from judgment from the Court's June 9, 2025 Order of dismissal and February 17, 2026 Order with counsel for the Plaintiff, Plaintiff's representative, counsel for MK, MK and DA, without counsel present.
14. As of the date of this order, DA has filed approximately 55 motions in this case.
15. After hearing, the Court finds and rules as follows:

Rule 60(b), Mass. R. Civ. P., provides as follows:

(b) Mistake; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of review, of error, of audita querela, and petitions to vacate judgment are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

With respect to DA's argument that an opposition to Plaintiff's motion to strike his condition-based defenses and counterclaims, even if the Court considered his opposition that he filed, the result would be the same.

Massachusetts General Laws Chapter 239, Section 8A, entitled “Rent withholding; grounds; amount claimed; presumptions and burden of proof; procedures” provides, in relevant part, that:

“In any action under this chapter to recover possession of any premises rented or leased for dwelling purposes, **brought pursuant to a notice to quit for nonpayment of rent, or where the tenancy has been terminated without fault of the tenant or occupant, the tenant or occupant 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, for a breach of any material provision of the rental agreement, or for a violation of any other law.** The amounts which the tenant or occupant may claim hereunder shall include, but shall not be limited to, the difference between the agreed upon rent and the fair value of the use and occupation of the premises, and any amounts reasonably spent by the tenant or occupant pursuant to section one hundred and twenty-seven L of chapter one hundred and eleven and such other damages as may be authorized by any law having as its objective the regulation of residential premises....”

Rule 5 of the Uniform Summary Process Rules states that “Counterclaims shall be permitted in accordance with the provisions of G.L. c. 239, §8A.”

DA’s only conditions-based claim against the Plaintiff is breach of the implied warranty of habitability. Pursuant to Section 8A, DA’s claim for breach of warranty of habitability should have been dismissed without prejudice. *See, Spence v. O’Brien*, 15 Mass. App. 489, 446 (1983); *Fafard v. Lincoln Pharmacy of Milford*, 439 Mass. 512 (2003); *Barkan Management Company v. Sheehan*, 2002 Mass. App. 134 (2002) (holding that tenants did not have a right, in Landlord’s summary process action, to bring counterclaims where termination of tenants’ lease was based on their refusal to accommodate landlord’s requests for inspection of the premises, and right to bring counterclaims was statutorily limited to instances in which termination was not based on fault or was for non-payment of rent).

The Court appropriately preserved DA’s remaining defenses and counterclaims including procedural defects, retaliatory eviction, bad faith conduct, violation of G.L. c. 93A, harassment and emotional distress, and constructive eviction. *See, Camelot Court Limited Partnership v.*

Borukhov, Housing Court, Eastern Division, Docket Number 18-SP-5549, (Theophilis, J.) (January 28, 2019) (plaintiff's motion to dismiss counterclaims under chapter 239, §8A denied where defendant's counterclaims based on discrimination and unfair and deceptive business practices were found to be directly related to the termination which defendant claimed was improper and the underlying basis for the termination); *Parfumi v. Halgas and Spink, Housing Court, Western Division, Docket Number 06-SP-0844, (Abrashkin, F.J.) (March 24, 2006)* (tenant may raise by affirmative defense that the case has been brought for a legally prohibited reason, such unlawful discrimination or unlawful reprisal for protected tenant activities); *Boston Housing Authority v. Sylvera, Eastern Division Housing Court, Docket Number 05-SP-0787, (Pierce, C.J.) (March 22, 2006)* ("...it is the practice of this Court in cause evictions, pursuant to G.L. c. 239, §8A, to strike defenses, on an appropriate motion, relating to conditions of the property, while allowing defenses that bear directly on the factual allegations of the cause, procedural defenses [such as the validity of the notice of termination], pleas for discrimination/reasonable accommodation, which enjoy a level of stand-alone legislative endorsement apart from traditional, conditions-based defenses").

With respect to the Court's February 17, 2026 Order, said Order sets forth in detail the facts and law supporting the following Court Order:

The Court's December 4th use and occupancy order is clear and unequivocal in notifying DA that if the Defendants fail to make any one (1) of the required \$4,552.00 monthly payments for the use and occupancy of the premises as set forth in its December 4th use and occupancy Order, then upon motion with written notice to the Defendants, the Plaintiff may move for sanctions, which may include the striking of Defendant, Danny Aboulekhier's jury demand. There is no dispute and DA acknowledges that DA has failed to make any of the required \$4,552.00 use and occupancy payments pursuant to the Court's Order. Accordingly and for the foregoing reasons, the Plaintiff's Motion is **ALLOWED**.

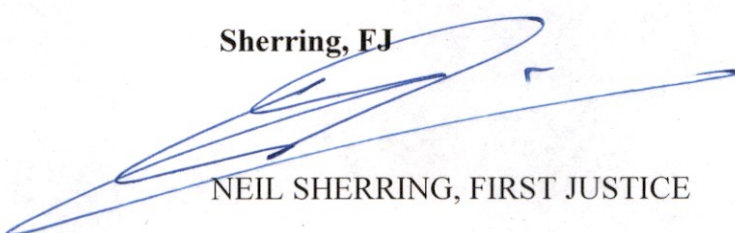
See, February 17, 2026 Order.

Based upon the foregoing reasons, the Court finds and rules that DA has failed to demonstrate, to the satisfaction of this Court, that he is entitled to relief under Rule 60 due to (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. Therefore, DA's motion is DENIED.

SO ORDERED.

Sherring, EJ

April 17, 2026



NEIL SHERRING, FIRST JUSTICE

cc. Lisa Gouveia, Esq.
Grant B. Hecht, Esq.
Danny Aboulekhier