

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 DEFENDANT DANNY ABOULEKHIER'S MOTION TO DISMISS FOR
SUBJECT MATTER JURISDICTION AND RULE 60(b)(4) MOTION**

Since the filing of this summary process eviction action on December 23, 2024, the Defendant, Danny Abouelkhier, has filed a “cascade” of motions. During Court proceedings, he has emphatically testified that he is not a tenant of the subject residential premises, he is not party to any lease with the Plaintiff, and he has not paid any rent to the Plaintiff. The Defendant Abouelkhier takes the position that he occupies the premises as a “guest” of an unauthorized occupant with no right to possession, however, he refuses to vacate the premises or pay the Plaintiff any monies towards his use and occupancy. With over 200 docket entries in this case, the Defendant Abouelkhier continues to file several motions resulting in a delay of these proceedings.¹ This tactic not only strains this Court’s resources, but it is also contrary to judicial economy, and is against the legislative and public policy designed to secure the “just, speedy and

¹ Counsel for the Co-Defendant has submitted a copy of the Norfolk County Superior Court docket in the case captioned “*Dany Abouelkhier, et al. vs Marina Bay Residences, LLC et al.*” Norfolk County Superior Court Docket No. 2582CV00364 that contains the following findings of the Court (Connolly J.) dated November 19, 2025: “....As a result of the cascade of papers from the non-parties, the parties, and frankly the court, have dedicated resources that could be put to more productive use than addressing the frivolous, repetitive and non-meritorious submissions from the non-parties. It has become a hinderance, and frequent distraction to the court’s ability to deliver a high quality of justice with all deliberate speed in these cases. The Court finds that the contents, volume, and timing of Dany Abouelkier and Sandra Fernandez’s filings lack any meritorious legal or factual substance. Even after being denied by this Court and the Massachusetts Court of Appeals, any relief that would offer them the right to participate as parties in either civil actions nos. 2182CV01044 or 238CV0389 ,Dany Abouelkier and Sandra Fernandez have engaged in a campaign of harassment by their attempts to paper these case to a slow, grinding halt. Their attempted filings are like sand in the gears that threaten to bring justice in these matters to a halt....”

inexpensive” resolution of summary process cases. See, Uniform Summary Process Rule 1.² This tactic also causes the Plaintiff financial harm as the unpaid rent balance continues to grow well in excess of \$80,000.00.

Although judgment has not entered in this case, this matter is before the Court pursuant to the Defendant Aboulekhier’s most recent motion pursuant to MRCP 60(b)(4) seeking relief from a Court Order that he alleges is based upon a “judgment that is void.”

PROCEDURAL HISTORY³

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 Aboulekhier (“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 and accompanying Notice to Quit allege that the Defendants failed to vacate the premises after being served with a notice terminating their tenancy for

² Summary process proceedings, which move faster than most other types of civil actions, “are governed by a distinct set of rules: the Uniform Summary Process Rules.” *Bank of Am., N.A. v. Rosa*, 466 Mass. 613, 624 (2013). These rules cover the basic procedural steps in summary process actions. *Adjarkey v. Cent. Div. of the Hous. Court Department*, 481 Mass. 830, 835-836 (2019); *Rule 1 & commentary of the Uniform Summary Process Rules (1980)*. A judge presiding over a summary process case must construe and apply the Uniform Summary Process Rules in a manner that will “secure the just, speedy, and inexpensive” resolution of the case. *USPR 1*. A judge’s inherent authority includes the power “to do what is necessary to achieve the orderly and expeditious disposition of cases” (quotation and citation omitted). *Morse v. Ortiz-Vazquez*, 99 Mass. App. Ct. 474 (2021) citing to *CMJ Mgt. Co. v. Wilkerson*, 91 Mass. App. Ct. 276 (2017).

³ 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 striking the Defendant Danny Aboulekhier’s jury demand pursuant to the *Davis v. Comeford* standard. On February 25, 2026, the Defendant Danny Aboulekhier filed a Notice of Appeal from the Court’s February 17th Order.

violating their lease agreement – to wit: allowing an unauthorized individual known as Sandra Frommer (“SF”) 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.
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.

7. The Court also denied SF's motion to intervene in this case finding that she is not a tenant or authorized occupant of the Plaintiff.
8. On April 15, 2026, after hearing, the Court found and ruled that the Defendants are not parties to any lease with the Plaintiff relative to the premises, the Defendants do not have any tenancy with the Plaintiff relative to the premises, the Defendants do not have a superior right to possession of the premises, and the Defendants do not reside at the premises with the authority and/or consent of the Plaintiff ("April 15, 2026 Order").
9. On April 27, 2026, DA filed a notice of appeal from the Court's April 15, 2026 Order.
10. On April 17, 2026, DA filed the instant motion for relief from the Court's April 15, 2026 Order under MRCP 60(b)(4) and a motion to dismiss this case on the grounds that the Housing Court does not have jurisdiction over this case.
11. The Court finds and rules without hearing as follows:

DISCUSSION

A motion under Rule 60 seeking relief from a judgment or order is addressed to the trial judge's judicial discretion. *Farmers Co-operative Elevator Association v. Strand*, 382 F. 2d. 224 (8th Cir. 1967). Rule 60(b) affords a "party or his legal representative" a means of obtaining substantial relief from a "**final** judgment, order or proceeding." *John Simmons Co., v. Grier Brothers Col*, 258 U.S. 83, 12 S. Ct. 196 (1922) (*emphasis added*). "Rule 60(b) provides for extraordinary relief and may be invoked only upon a showing of exceptional circumstances." *Brown v. Penn, R.R.*, 282 F. 2d 522 (3rd Cir. 1960), *cert. denied* 365 U.S. 818 (1961).

Relief will be granted only if the party seeking relief demonstrates that the mistake, misunderstanding, or neglect was excusable. *See, Petition of Pui Lan Yee*, 20 F.R. D. 399 (N.D. Cal. 1957); *Kahle v. Amtorg Trading Corp.*, 13 F. R. D. 107 (D.N.M. 1952). The party seeking

the relief bears the burden of justifying failure to avoid the mistake or inadvertence. The reasons must be substantial. *See, e.g., Standard Newspaper, Inc. v. King*, 375 F. 2d 115 (2nd Cir. 1967); *Ohliger v. U.S.*, 308 F.2d. 667 (2nd Cir. 1962).

In this case, although no final judgment has entered, DA asserts that pursuant to MRCP 60(b)(4), he should be entitled to relief from the Court's April 15, 2026 Order because said Order is based upon a "judgment that is void." As grounds for his assertion, DA argues (a) this Court lacks subject matter jurisdiction requiring dismissal and (b) the Plaintiff brought this case for breach of lease but the evidence demonstrates he is not a lessee so the case should be dismissed.

Jurisdiction of the Housing Court

The question of whether a Court has subject matter jurisdiction can be raised at any stage of the litigation. *Bergeron v. Bergeron*, 287 Mass 524 (1934); *Dennis v. Dennis*, 337 Mass. 1, 4 (1958). Although the Housing Court has concurrent jurisdiction with the Superior Court, Massachusetts General Laws Chapter 185C, Section 3 limits the Housing Court's concurrent jurisdiction to "...jurisdiction under the provisions of common law and of equity and any other general or special law, ordinance, by-law, rule or regulation 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 and the possession [thereof]." G.L. c. 185C, § 3, first par.

Here, in this summary process (eviction) action, the Plaintiff, as owner/lessor of the premises, is seeking to recover possession of the premises against the Defendants. Therefore, this Court finds and rules that it has jurisdiction over this summary process action. G.L. c. 239, sec. 1. Accordingly, DA's motion to dismiss on jurisdictional grounds is denied.

The Court's April 15, 2026 Order

On April 6, 2026, this matter was before the Court for summary process bench trial with counsel for the Plaintiff, Plaintiff's representative, counsel for MK, MK and DA, without counsel present. Prior to the trial, the Court held a hearing on the Plaintiff's motion seeking an order finding that MK and DA are not tenants at the premises, are not parties to any lease with the Plaintiff, and they do not reside at the premises as tenants of the Plaintiff.

After hearing, on April 15, 2026, the Court found and ruled that based upon the undisputed testimony of the parties and affidavits Defendants submitted to the Court in response to the Plaintiff's motion, the Defendants are not parties to any lease with the Plaintiff relative to the premises, the Defendants do not have any tenancy with the Plaintiff, the Defendants do not have a superior right to possession of the premises, and the Defendants do not reside at the premises with the authority and/or consent of the Plaintiff. See, *this Court's April 15, 2026 Order*. Based upon the foregoing, the Court further found and ruled that Plaintiff's claim for possession in this summary process action arising out of a claim that the Defendants are tenants under a lease is moot, and accordingly transferred the Plaintiff's claim for unpaid use and occupancy, DA's remaining defenses and counterclaims against the Plaintiff, and DA's cross-claims against the Co-Defendant, MK, to the civil docket. *Id.*

In exercising the Court's discretion under Rule 60, the Court finds that DA fails to demonstrate he is entitled to relief from a judgment or order. The Court finds that DA's motion fails to demonstrate exceptional circumstances, or that a mistake, misunderstanding, or neglect was excusable. Furthermore, DA's motion does not provide substantial reasons to warrant relief from the Court's April 15, 2026 Order. The April 15, 2026 Order was a direct result of DA's own testimony and detailed affidavits attesting that (a) he is not a tenant of the Plaintiff, (b) he is not a

party to any lease with the Plaintiff and (c) he resides at the premises as a guest of SF, who the Court previously found to be an unauthorized occupant. Furthermore, DA's counterclaims against the Plaintiff and his cross-claims against the co-defendant, MK, have been preserved as they were transferred to the civil docket.

This summary process case was filed by the Plaintiff seeking possession of the premises based upon a claim that the Defendants are tenants who breached their lease by allowing an unauthorized individual to reside at the premises. The Court's April 15, 2026 Order found that the Defendants are not parties to any lease with the Plaintiff, the Defendants do not have any tenancy with the Plaintiff, the Defendants do not have a superior right to possession of the premises, and the Defendants do not reside at the premises with the authority and/or consent of the Plaintiff. See, *this Court's April 15, 2026 Order*. The Court's April 15, 2026 Order finding no lease/tenancy between the parties warrants a without prejudice dismissal of this summary process action for possession pursuant to USPR 2(d) because the summons and complaint alleges breach of lease. For the same reasons, dismissal without prejudice would also be warranted because the Notice to Quit alleging breach of lease is legally insufficient. *Cambridge Street Realty, LLC v. Melinda Stewart*, 481 Mass. 121 (2018) No such motion is before the Court, however, the Court is nonetheless hesitant to dismiss this underlying summary process case based on the legal sufficiency of the summons and complaint and Notice to Quit while DA's appeals from the Court's April 15, 2026 Order and February 17, 2026 Order are currently pending before the Appeals Court. Even if the Court were to dismiss for said reasons, such a dismissal would be without prejudice on procedural grounds and not a "final judgment" invoking the relief contemplated under MRCP 60(b)(4).

ORDER

For the foregoing reasons:

1. DA's motion to dismiss on jurisdictional grounds is DENIED.
2. DA's motion for relief under MRCP 60(b)(4) is DENIED.

SO ORDERED.

Sherring, FJ

May 5, 2026

NEIL SHERRING, FIRST JUSTICE

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