

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOUSING COURT DEPARTMENT
WESTERN DIVISION
DOCKET NO: 21 SP 0632

STEPHEN BOSCO,)
)
Plaintiff,)
)
v.)
)
KIMBERLY HENDERSON, EDUARDO)
REYES AND DESTINY MELENDEZ)
)
Defendant.)
)

KIMBERLY HENDERSON’S ANSWER AND COUNTERCLAIMS

1. The Defendant, Kimberly Henderson (“the Tenant” or “Defendant”), admits occupying the premises at 463 Appleton Street, Apt. 25, Holyoke, MA 01040 (“the Property”).
2. Defendant denies that she occupies the premises unlawfully or against the right of the Plaintiff (“the Landlord”).
3. Defendant denies that she owes the amount of money demanded by the Landlord.

FIRST DEFENSE: CONDITION OF THE PREMISES

4. This summary process action seeks to evict the tenant for “non-payment of rent.”
5. Substandard conditions have existed during the course of the Landlord’s ownership of the property, including but not limited to the conditions described below:
 - a. Mice and cockroach infestation;
 - b. Inadequate heat and hot water;
 - c. Drug paraphernalia in common areas;
 - d. Unsecured building (homeless people sleeping in common areas);
 - e. Defective electrical service;
 - f. Water damaged ceilings;
 - g. Holes and cracks in walls;
 - h. Broken windows;
 - i. Missing window screens;

- j. Rotten bathroom floor;
- k. Broken kitchen cabinets;
- l. Damaged boards on exterior porch; and
- m. Windows and doors are not weathertight.

9. The Tenant is not legally obligated to pay rent or use and occupancy because of the conditions of disrepair in or around the premises, which may endanger or materially impair her health, safety, and well-being.

10. Neither the Tenant nor anyone in her household caused these problems, and all necessary repairs can be made without the Tenant leaving the premises.

11. The Landlord knew or should have known about these conditions; however, he did not properly repair them in a timely manner. The current conditions of disrepair include, but are not necessarily limited to, some or all of the conditions listed above.

12. Therefore under M.G.L. c. 239, § 8A and the common law of implied warranty of habitability, the Landlord may not evict the Tenant.

SECOND DEFENSE: COUNTERCLAIMS AGAINST LANDLORD

13. The Tenant has claims against the Plaintiff arising out of the tenancy, including:

- a. Breach of warranty;
- b. Interference with the quiet enjoyment of the premises;
- c. Unfair and deceptive business practices;
- d. Failure to furnish utilities; and
- e. Violation of the security deposit statute.

14. Pursuant to M.G.L. c. 239, § 8A, the Landlord cannot evict the Tenant, because the amount due to the Landlord is less than the amount due to the Tenant.

THIRD DEFENSE: NO RIGHT TO SEEK RENT FROM BEFORE PLAINTIFF'S PURCHASE

15. The Landlord allegedly bought the property in which the Tenant lives on or about March 30, 2020;

16. The Tenant owed no rent to the Landlord prior to April 1, 2020, and the previous landlord waived all rent through that period, in addition to almost \$2000 waived by the previous landlord in an earlier eviction case.

17. The purchase of any debt owed by the Tenant to the Landlord is a debt like any other, and does not constitute "rent" owed to the Landlord.

18. The Landlord may not seek any rent prior to the date of purchase from the Tenant in an eviction action under G.L. c. 239, and any claim for this amount must be rejected and dismissed.

19. Further by seeking these monies, the Tenant is prevented from defending her case under G.L. c. 239 because the claims she has for the period from the earlier landlord run against only the earlier landlord, and she cannot lawfully defend against the rent from the previous landlord under G.L. c. 239.

20. By seeking almost \$10,000 from the Tenant in this case by an eviction procedure, the Landlord is violating G.L. c. 186 and so any claim for rent from prior to April 1, 2020, and this action itself, must be dismissed.

COUNTERCLAIMS

21. The Tenant asserts by way of counterclaim against the Landlord pursuant to M.G.L. c. 239, § 8A, Rule 5 of the Uniform Summary Process Rules and Mass. R. Civ. P. 13(b) the following counterclaims as an affirmative defense to the Plaintiff's claims for possession, and a set off to any rent claimed, and for her own damages.

FIRST COUNTERCLAIM: BREACH OF WARRANTY

22. The Landlord has expressly or impliedly warranted to provide and keep the premises in good repair, in compliance with all applicable laws and regulations, and in all other respects fit for habitation. Substandard conditions have existed during the course of the Tenant's tenancy, including but not limited to those mentioned in the FIRST DEFENSE: CONDITION OF THE PREMISES.

23. As a result of the Landlord's breach of warranties, the Tenant suffered damages in the amount of the difference between the fair market value of the premises in good repair and in compliance with all applicable laws and regulations and the value of the premises in disrepair and any damages to the Tenant which are the consequences of the Plaintiff's breach of warranties.

SECOND COUNTERCLAIM: INTERFERENCE WITH THE QUIET ENJOYMENT OF THE PREMISES

24. The Landlord directly or indirectly interfered with the Tenant's quiet enjoyment of the premises by failing to provide and maintain the premises in compliance with applicable law, as described above.

25. Additionally, the Tenant has been subjected to unsafe conditions in the building where her unit is located due to the homeless people sleeping inside the building and the drug paraphernalia found in common areas.

26. By failing to take any effectual action to correct conditions in need of repair and the

unsafe conditions in the common areas of the building, the landlord has interfered with the Tenant's quiet enjoyment of the premises in violation of G.L. c. 186, § 14 and the holding of *Doe v. New Bedford Housing Authority*.

27. Additionally, by seeking rent from the Tenant which has been waived by a former landlord, the plaintiff has interfered with the quiet enjoyment of the premises by intimidating the Tenant into believing that she owes more rent than she does, and cannot cure under c. 239 or c. 186, in violation of the holding in *Homesavers Council of Greenfield Gardens, Inc. v. Sanchez*.

28. As a result, the Defendant claims the greater of actual damages or three months' rent for each listed violation of G.L. c. 186, § 14, including emotional distress and loss of property, the costs of this action and reasonable attorney's fees.

THIRD COUNTERCLAIM: UNFAIR AND DECEPTIVE BUSINESS PRACTICES

29. The Landlord is in the trade or business of owning and/or renting residential housing and has, throughout the Tenant's occupancy and tenancy, engaged in unfair and deceptive practices within the meaning of G.L. c. 93A and the Attorney General's regulations published to enforce this law. These unfair and deceptive practices listed below have included but are not necessarily limited to the actions and failures to act set out above in the Answer and in all the Counterclaims stated above:

a. The Landlord rented a dwelling unit which at the inception of the tenancy contained violations of law endangering and materially impairing the health, safety, and well-being of the Tenant, in violation of 940 C.M.R. 3.17(1)(a);

b. The Landlord failed to comply with the State Sanitary Code and other laws applicable to the condition of residential premises within a reasonable time after notice of violations of such code or laws, in violation of 940 C.M.R. § 3.17(1)(i);

c. The Plaintiffs failed to comply with the law regarding handling and accounting for the security deposit in violation of M.G.L. c. 186, § 15B and 940 C.M.R. 3.17(4).

d. The Landlord failed to provide services and/or supplies after the making of a representation or agreement that such services and/or supplies would be provided, in violation of 940 C.M.R. § 3.17(1)(f);

e. The Landlord willfully violated G.L. 186, § 14 by interfering with the Tenant's quiet enjoyment of the residential premises, in violation of 940 C.M.R. § 3.17(6)(f).

f. The Landlord failed to make necessary repairs to the premises within a reasonable time after receiving notice of conditions of disrepair, in violation of 940 C.M.R. § 3.17(1)(e).

g. The Landlord breached the implied warranty of habitability in violation of 940 C.M.R. 3.08(2);

h. The Landlord sought rent from the Tenant which was not owed and/or was waived, and still sought this eviction for those sums of money.

30. All of the Plaintiffs' unfair and deceptive practices were willful and knowing within the meaning of M.G.L. c. 93A. Therefore, the Tenant claims three, but not less than two, times all damages awarded or that could be awarded, plus the cost of this action and reasonable attorney's fees under M.G.L. c. 93A.

FOURTH COUNTERCLAIM: FAILURE TO FURNISH
UTILITIES UNDER G.L. c. 186, § 14

31. The Landlord has provided insufficient heat in Tenant's home since the inception of the tenancy.

32. The Landlord has also repeatedly failed to provide hot water in the Tenant's home, forcing her and her family to take cold showers several times a month during the winter months.

33. The Landlord has failed to provide adequate utility service to the

34. Therefore, the Landlord is liable to the Tenant for actual damages or three month's rent, whichever is greater, for the above violations of his right to the provision of utility services, plus the costs of this action, and reasonable attorney's fees.

FIFTH COUNTERCLAIM: VIOLATION OF SECURITY DEPOSIT STATUTE

35. The Defendant paid a security deposit to the Plaintiff.

36. The Plaintiff has failed to provide Tenant with a receipt showing the amount of the security deposit and the name and location of the bank, and the account number in which the security deposit was deposited and must immediately return the security deposit in accordance with M.G.L. c. 185, § 15B(3)(a).

37. The Plaintiff has failed to account for or pay the Tenant the interest on the security deposit in accordance with M.G.L. c. 185, § 15B(3)(b).

38. The Plaintiff's violations of the Security Deposit Law entitle the Tenant to damages, reasonable attorney's fees, and costs and the Tenant requests the immediate return of her deposit as well as multiple damages.

WHEREFORE, the Defendant respectfully requests that the court:

1. Enter judgement for possession of the leased premises for the Defendant;

2. Order the Plaintiff to repair any defective or substandard conditions that are found to exist in the Defendant's apartment at the time of trial;
3. Award the Defendant such damages and multiple or statutory damages on her counterclaims as they prove at trial;
4. Award the Defendant her costs and reasonable attorney's fees;
5. Order such relief as the Court deems just and proper.

KIMBERLY HENDERSON
By her attorney

/s/ Joel Feldman
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I hereby certify that a
true copy of the above
document was served upon
the plaintiff's counsel by email

7/9/21

/s/Joel Feldman

Dated: 7/9/21