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24-P-961
25-P-341

Appeals Court

AIF DARTMOUTH, LLC vs. LISA HANSON (and a companion case¹).

No. 24-P-961.

Bristol. May 5, 2026. - September 14, 2026.

Present: Henry, Brennan, & Allen, JJ.

Summary Process, Appeal. Practice, Civil, Summary process, Attorney's fees, Special verdict, Instructions to jury, Waiver. Landlord and Tenant, Repairs, Habitability, Quiet enjoyment, Tenancy at will, Security deposit, Attorney's fees. Damages, Attorney's fees, Emotional distress. Consumer Protection Act, Attorney's fees, Unfair or deceptive act. Regulation. Evidence, Expert opinion.

Summary process. Complaint filed in the Southeast Division of the Housing Court Department on September 18, 2023.

Motions for attorney's fees and sanctions were heard by Donna Salvidio, J.

Summary process. Complaint filed in the Southeast Division of the Housing Court Department on February 12, 2024.

The case was tried before Joseph L. Michaud, J., and a motion to alter or amend the judgment was considered by him.

¹ The companion case is between the same parties.

Ami Clifford for the defendant.
Richard J. Manning, Jr., for the plaintiff.

BRENNAN, J. These appeals stem from two residential summary process actions involving the same parties. The plaintiff, AIF Dartmouth, LLC (landlord), filed a complaint in the Housing Court (initial action) seeking possession of an apartment (premises) from the defendant, Lisa Hanson (tenant). The landlord voluntarily dismissed its complaint after the tenant asserted that her daughter was also a tenant of the apartment. The landlord then refiled the action (subsequent action) and included the tenant's daughter as a codefendant.² The tenant appeals from orders in the initial action denying her request for attorney's fees and awarding sanctions against her. She also appeals from the final judgment in the subsequent action, which incorporated the jury's verdict and the judge's order for damages under G. L. c. 93A. The landlord cross-appeals from the denial of its motion to alter or amend the final judgment pursuant to Mass. R. Civ. P. 59 (e), 365 Mass. 827 (1974). We vacate so much of the final judgment that awarded "no damages" on the tenant's c. 93A claim related to

² Ultimately, the parties and the tenant's daughter entered into a stipulation to dismiss her from the subsequent action, with prejudice.

certain violations of the sanitary code, and we remand that portion of the case for further consideration. In all other respects, the final judgment and orders are affirmed.

Background. In August 2019, the tenant entered into a lease agreement with the landlord for rental of the premises through August 2020. She provided the landlord with a security deposit prior to her tenancy. Within fifteen days after her tenancy began, the tenant reported a list of issues with the conditions of the premises, including damaged or missing window screens and a defective lock on her patio door. In September 2020, she sent the landlord a letter of complaint following up on these unrepaired issues.

The parties executed lease renewals in 2020 and 2021, with the last lease covering September 2021 through August 2022. The landlord gave the tenant a form to sign for a renewal covering September 2022 through August 2023, which the tenant signed and returned to the landlord. However, the landlord did not return to the tenant a mutually signed copy of the lease.³ The tenant nevertheless began paying rent for the 2022-2023 rental period, and the landlord accepted payment.

³ In January 2024, during litigation, the landlord produced a countersigned lease renewal rider dated July 7, 2022. At trial, the landlord's property manager testified that the rider was not returned to the tenant because it had been misfiled.

In June 2023, the landlord provided written notice to the tenant that it did not intend to renew her lease. In September 2023, the landlord served the tenant with a notice to quit. The tenant did not vacate the premises, and the landlord filed the initial action. After a series of contentious pretrial hearings, during which a judge struck the tenant's counterclaims and jury demand as not timely filed and the tenant claimed that the landlord had failed to name all necessary parties, the same judge allowed the landlord's motion for a voluntary dismissal without prejudice in January 2024.

On February 12, 2024, the landlord refiled the summary process action, adding the tenant's daughter and alleging that all occupants were tenants at sufferance. The tenant asserted counterclaims for retaliation, discrimination, breach of the implied warranty of habitability, violations of the security deposit law, interference with quiet enjoyment, and violations of the consumer protection law, G. L. c. 93A. A different judge (trial judge) presided over this subsequent action. After trial, a jury found in favor of the tenant, with a specific finding that her tenancy was at will and not governed by a lease. The jury awarded \$7,068 to the tenant for breach of the warranty of habitability and \$4,950 for interference with quiet enjoyment. The jury found no liability for the landlord on the remaining claims for retaliation and violation of the security

deposit statute.⁴ Judgment for possession and damages entered in favor of the tenant. After an evidentiary hearing on the c. 93A claims, the trial judge found that the landlord failed to give the tenant an executed copy of the rental agreement, in violation of 940 Code Mass. Regs. § 3.17(3)(c) (1993), but found no other c. 93A violations. The trial judge awarded the tenant attorney's fees of \$8,800 and costs of \$550.94 for interference with quiet enjoyment, and \$75 in damages and \$4,000 in attorney's fees for the violation of c. 93A.

Discussion. 1. Attorney's fees for initial action. The tenant argues she was entitled to payment by the landlord of her attorney's fees incurred in defending the initial summary process action because the order of dismissal was tantamount to a successful defense. We disagree.

The tenant first moved for attorney's fees on February 2, 2024. She argued that the judge had improperly granted the landlord a voluntary dismissal under subsection (a) (1) of Mass. R. Civ. P. 41, 365 Mass. 803 (1974) (rule 41), instead of subsection (a) (2), and that the tenant had a right to seek attorney's fees for a successful defense. See G. L. c. 186, § 20 (lease with attorney's fees provision for landlord who successfully brings summary process action has implied

⁴ The trial judge granted the landlord's motion for a directed verdict on the discrimination claim.

reciprocal provision granting fees to tenant after successful defense). Although neither the landlord's motion nor the judge's order referred to rule 41 (a) (1), a docket entry incorrectly reflected dismissal under this subsection of the rule.⁵ On February 22, 2024, after a lengthy hearing, the judge corrected the docket to reflect dismissal under subsection (a) (2) and denied the motion for fees. The tenant did not file a notice of appeal from this postjudgment order until May 6, 2024, well past the statutory period. See Mass. R. A. P. 4 (a), as appearing in 496 Mass. 1601 (2025). Accordingly, we lack jurisdiction over her appeal from this order. See Wells Fargo Bank, N.A. v. Sutton, 103 Mass. App. Ct. 148, 152-153 (2023).

On March 5, 2024, the tenant filed a second motion for attorney's fees (March motion). The March motion presented the same legal argument and requested the same amount of fees as the motion denied in February. The judge denied the March motion on the basis that it was substantively duplicative of the motion fully argued in February. We conclude that the judge acted within her discretion by declining to consider the fee argument

⁵ The tenant filed an answer to the complaint but did not stipulate to the dismissal, and therefore the dismissal could not have been pursuant to rule 41 (a) (1). Because the tenant's counterclaims had been deemed waived, she had no right to object to the court's discretionary dismissal, without prejudice, under rule 41 (a) (2).

made in the March motion. See Audubon Hill S. Condominium Ass'n v. Community Ass'n Underwriters of Am., Inc., 82 Mass. App. Ct. 461, 470 (2012) (after denial of motion, judge need not entertain second motion on same grounds). Because the judge did not reach the merits of the March motion, the tenant's appeal from it did not revive the arguments the judge had rejected in February. See Littles v. Commissioner of Correction, 444 Mass. 871, 875 (2005) ("renewing" motion on which right to appeal has expired does not revive appellate rights).

After trial in the subsequent action, the tenant submitted a motion for attorney's fees that included billing for actions taken on her behalf during the initial action and requested reimbursement to her daughter for legal expenses incurred relative to the daughter's motion to be dismissed from the subsequent action. The trial judge denied the request seeing no "reasonable nexus or basis to assess any fees and costs against the [landlord] for the actions related to the first matter . . . that was voluntarily dismissed." The trial judge also declined to order reimbursement to the daughter for her attorney's fees in the subsequent action reasoning that dismissal of the first action was because of the tenant's misrepresentations. Other than a passing reference in her brief, the tenant offers no factual or legal basis to support her claim that the judge's

conclusions were in error. Therefore, the argument is waived.⁶ See Mass. R. A. P. 16 (a) (9) (A), as appearing in 481 Mass. 1628 (2019).

2. Attorney sanctions for duplicative motion in initial action. We also disagree with the tenant's claim that the judge who presided over the initial action abused her discretion by imposing sanctions on the tenant's attorney. A judge may impose sanctions on an attorney who fails to show "a subjective good faith belief that a pleading or motion has factual and legal support." Worcester v. AME Realty Corp., 77 Mass. App. Ct. 64, 69 (2010). See Mass. R. Civ. P. 11 (a), as appearing in 488 Mass. 1403 (2021) (rule 11). We review the imposition of sanctions under rule 11 (a) for an abuse of discretion. See Millennium Equity Holdings, LLC v. Mahlowitz, 456 Mass. 627, 651 (2010). As discussed above, the judge found the substance of the tenant's March motion to be entirely duplicative of the portion of her February motion that requested fees, and which the same judge previously denied. We disagree with the tenant's

⁶ Although the tenant makes no such argument on appeal, our dissenting colleague concludes that the judge erroneously found that the tenant misrepresented her daughter's status in the initial action. Even if the issue were properly before us, we discern no error nor do we see any indication that the judge's finding regarding the tenant's lack of forthrightness improperly impacted any other issue in the case, including his calculation of reasonable attorney's fees for the subsequent action.

assertions that the judge did not make specific findings to support sanctions. The judge determined that the March motion "was not asserted in good faith and counsel's violation of [r]ule 11 was willful." We thus discern no abuse of discretion in the imposition of sanctions against the tenant's attorney.

3. Landlord's breach of warranty of habitability required judge to find a violation of G. L. c. 93A. The tenant contends that because the trial judge found the landlord violated 940 Code Mass. Regs. § 3.17(1)(e) (1993) by failing to repair window screens and a patio door promptly, he was required to find that the landlord had violated c. 93A. We agree.

The Attorney General may promulgate regulations designating certain acts as unfair or deceptive conduct under c. 93A. These regulations have the force of law. Purity Supreme, Inc. v. Attorney Gen., 380 Mass. 762, 775 (1980). Title 940 Code Mass. Regs. § 3.17(1) provides that "[i]t shall be an unfair or deceptive act or practice for an owner to" violate any of the enumerated subsections. Subsection 3.17(1)(e) deems the failure to make repairs within a reasonable time after a tenant gives notice of a defect to be an unfair or deceptive practice.

In September 2019, the tenant reported several defects, including damaged screens in all five of her unit's windows and a defective lock on her patio door, on the mandatory statement of conditions form she returned to the landlord within fifteen

days of her initial tenancy. See G. L. c. 186, § 15B (2) (c). One year later, in September 2020, she followed up on these issues in a letter of complaint to the landlord. Two of the screens had been replaced in May 2020; however, three windows were still without screens. At trial, the landlord's property manager testified that, as he understood board of health regulations, screens were not required in windows from late fall through early spring. He described difficulties locating a replacement frame for one of the windows because of its unusual shape and explained that a new "supply house" had to be located because the window manufacturer was no longer in business. The landlord offered in evidence e-mail message exchanges with the tenant in which the landlord apologized for not timely addressing her complaints and attributed delays, in part, to global supply chain issues caused by the COVID-19 pandemic. The landlord repaired the patio door in October 2022 and finished replacing the screens in May of 2022 or 2023.

In his ruling and order on the tenant's motion for damages under c. 93A, the trial judge found that "the [landlord] did violate 940 [Code Mass. Regs. §] 3.17(1)(e) by failing to promptly repair the [window screens and patio door]," but also that "material extenuating circumstances existed to excuse the prompt repair of same." He credited the landlord's explanation that "they made every attempt to get the materials necessary to

make [the] repairs," and also credited statements that the impact on supply chains of the COVID-19 pandemic delayed the landlord's response to the tenant's concerns. On the record in this case, we discern no clear error in the judge's findings. See Corrado v. Hedrick, 65 Mass. App. Ct. 477, 484 (2006) (findings of judge who saw and heard witnesses and was free to make credibility determinations not disturbed absent clear error). However, 940 Code Mass. Regs. § 3.17(1)(e) contains unambiguous language that "[i]t shall be an unfair or deceptive act or practice" for a landlord to violate that regulation. Therefore, based on his finding that the landlord violated 940 Code Mass. Regs. § 3.17(1)(e), the judge did not have discretion to conclude that the acts "[did] not constitute an unfair and deceptive practice in violation of G. L. c. 93A." See Anketell v. Office of Consumer Affairs & Business Regulation, 101 Mass. App. Ct. 628, 636-637 (2022) (construing similar language in G. L. c. 142A to mean that violation of statute is per se violation of c. 93A); Layes v. RHP Props., Inc., 95 Mass. App. Ct. 804, 811 (2019) (similar language in G. L. c. 140, § 32L [7], makes violation of act's provisions per se violation of c. 93A).

The landlord's argument that c. 93A damages would be duplicative of the damages awarded by the jury is unavailing. While the claim before the jury for breach of the warranty of

habitability shared a factual basis with the claim for violation of c. 93A -- missing screens and a damaged lock -- c. 93A provides for damages beyond those awarded by the jury here. See McGrath v. Mishara, 386 Mass. 74, 86 (1982) (where landlord violates both c. 93A and other statute, tenant entitled to damages under statute awarding greater amount). At a minimum, even if there are no additional actual damages, c. 93A requires the trial judge to determine and award attorney's fees and costs. See G. L. c. 93A, § 9 (4).

4. Jury instructions. a. Retaliation. The tenant next argues that the trial judge erroneously failed to include on the special verdict form, as a protected activity giving rise to a presumption of retaliation, the reporting of a violation of G. L. c. 186, § 14 (utilities, services, and quiet enjoyment). We disagree.

At the charge conference, the trial judge separated the review of the jury instructions from that of the special verdict slip by hearing all objections to the former and then moving on to the latter. When reviewing the jury instructions for retaliation, the tenant objected to the lack of inclusion of language on reporting violations of G. L. c. 186, § 14. The trial judge inserted the tenant's requested language and properly instructed the jury that the landlord would be liable for taking action "against any tenant of residential premises

for the tenant's acts of . . . [r]eporting or proceeding against violations of Chapter 186 Section 14." Later, when reviewing the retaliation claim on the special verdict slip, the tenant stated, "I think we already addressed the reprisal and retaliation," and raised no objection to that section of the verdict slip. By failing to object to the verdict slip, the tenant waived this issue. See Fecteau Benefits Group, Inc. v. Knox, 72 Mass. App. Ct. 204, 208 n.12 (2008) (objection to verdict form waived if not raised below).

Even if the issue were preserved, the tenant separately sought (and received) damages for her underlying interference with quiet enjoyment claim. The maximum potential damages for retaliation and interference with quiet enjoyment are identical: the greater of three months' rent or actual damages, plus costs and attorney's fees. See G. L. c. 186, §§ 14, 18. Thus, by removing quiet enjoyment from the portion of the verdict slip on damages for retaliation, the trial judge avoided duplicate damages for the same underlying harm, and we discern no prejudice. See Simon v. Solomon, 385 Mass. 91, 109 (1982).

b. Security deposit. The tenant also contends that the trial judge erred by failing to instruct the jury on all elements of the security deposit statute, G. L. c. 186, § 15B, and that the landlord's failure to pay annual interest on the

deposit was a per se violation of c. 93A. On this record, we disagree.

At trial, it was undisputed that the landlord did not pay interest for three years, contrary to law, see G. L. c. 186, § 15B, but then in February 2023 (seven months before the tenancy ended), paid out all interest due (\$0.43) without any request by the tenant. We conclude that the judge adequately instructed the jury on the security deposit statute, and the verdict slip mirrored his instructions. A violation of the provision requiring a landlord to pay interest annually only entitles a tenant to deduct any interest due from the next rent payment, not to damages equivalent to the entire deposit.⁷ See G. L. c. 186, § 15B (3) (b). Because the landlord returned all overdue interest during the tenancy, it was not error for the judge to leave this instruction off the verdict slip.

Although failure to pay annual interest on a security deposit is defined as "an unfair or deceptive practice" by 940 Code Mass. Regs. § 3.17(4)(c) (1993) and the evidence at trial established that the landlord violated this regulation, the

⁷ A landlord may be liable for three times the amount of interest together with costs and attorney's fees where the landlord does not return the interest within thirty days of the termination of the tenancy. See G. L. c. 186, § 15B (2) (a), (7). This increased-damages provision did not apply here, because the landlord returned the interest during the tenancy.

trial judge denied the c. 93A claim on the failure to pay interest annually because he chose "not to disturb the findings of the jury concerning the security deposit." We agree with the tenant that this was error because the jury did not make findings on the landlord's failure to pay annual interest. Nevertheless, we discern no prejudice where the tenant failed to prove any injury based on the landlord's return of all overdue interest during the tenancy. See Tyler v. Michaels Stores, Inc., 464 Mass. 492, 501-503 & n.17 (2013) (even per se violation of c. 93A must cause separate, identifiable harm to give rise to claim for damages).⁸

5. Emotional distress damages. The tenant further contends that the trial judge erroneously required expert testimony to substantiate her claim for damages caused by emotional distress, at both the jury trial and at the hearing to determine c. 93A damages. The tenant requested emotional distress damages primarily in connection with the landlord's

⁸ The tenant's argument that the judge erred in asking the jury on the special verdict form whether the landlord gave the jury the correct account number in which the landlord placed the security deposit fails for the same reason: the tenant did not show an actual loss from this possible breach of the statute. Tyler, 464 Mass. at 503. The jury did find that the landlord placed the security deposit in a separate, interest-bearing account, in a bank located in Massachusetts, and provided the tenant with the bank's name and location along with the amount and "correct account number of the deposit."

failure to return the signed lease and then pursuing "groundless" summary process actions against her. We are not persuaded that the trial judge erred at either stage of the proceedings.

a. Jury trial. The tenant claims the trial judge improperly prevented her from testifying to her emotional distress without a medical expert. At trial, the tenant testified multiple times about her subjective feelings in reaction to the eviction process. She testified that she was "nauseated, upset, [and] very stressed" when she was notified her lease would not be renewed, and again was "very stressed and overwhelmed" when she got a notice to move out of the apartment. The trial judge sustained the landlord's objection only when the direct question called for "health impacts" allegedly caused by the landlord's actions. The judge acknowledged that there is "going to be some stress" associated with an illegal eviction action, but sustained the objection where the tenant had no medical documentation or expert testimony to prove that the tenant experienced something more. See Rodriguez v. Cambridge Hous. Auth., 443 Mass. 697, 701 (2005) (expert medical testimony required to substantiate physical harm caused by emotional distress). The judge also articulated concerns about the relevance and repetitiveness of the direct examination, which had consumed several hours at that point and already covered

emotional distress. We discern no abuse of discretion in the trial judge's sustaining the landlord's objection to additional testimony on the subject, or in sustaining objections to the tenant testifying to health impacts of such distress. See Evans v. Lorillard Tobacco Co., 465 Mass. 411, 458 (2013).

b. General Laws c. 93A hearing. The trial judge also permitted the tenant to testify to her emotional distress at the c. 93A hearing, despite his concerns that the testimony would be duplicative of her testimony at trial. The tenant testified at length that she experienced anxiety, chest pains, loss of appetite, panic attacks, and insomnia; that she went to the emergency room multiple times; and that she believed the anxiety prolonged her recovery from surgery. The trial judge acknowledged this testimony but found it to be insufficient to establish that the landlord's actions caused the tenant's medical issues.⁹ The trial judge also noted that the tenant had not presented any medical documentation to support a direct relation between the actions of the landlord and her claimed emotional distress. Based on the judge's factual findings, we

⁹ We note that a judge may award a tenant emotional distress damages for breach of quiet enjoyment in the absence of bodily harm. Homesavers Council of Greenfield Gardens, Inc. v. Sanchez, 70 Mass. App. Ct. 453, 458-459 (2007) (affirming award of emotional distress damages to tenant, in absence of bodily injury, for anxiety caused by breach of quiet enjoyment).

discern no clear error in his conclusions that the tenant was entitled to nominal damages and reasonable attorney's fees for the landlord's failure to return the signed lease, and no damages for the landlord pursuing summary process actions against the tenant. See Youghal, LLC v. Entwistle, 484 Mass. 1019, 1023 (2020) (court may reject claim of error that "depends on a view of the facts different from those found by the judge, after trial").

6. Trial attorney's fees. a. Fees pursuant to the lease. The tenant asserts that she was entitled to attorney's fees for the jury trial under G. L. c. 186, § 20, because she successfully defended against a summary process action. We disagree.

The tenant's original lease and all subsequent renewals contained a provision for attorney's fees. Ordinarily, terms of a lease carry over to a tenancy at will so long as the parties do not agree to modify them. See Wit v. Commercial Hotel Co., 253 Mass. 564, 570 (1925) (commercial tenant that fails to extend lease becomes tenant at will but is still bound by other terms of lease). See also Walker Ice Co. v. American Steel & Wire Co., 185 Mass. 463, 467 (1904) (upon termination of written lease, relationship of landlord and tenant continued as tenancy at will, with same rights and privileges specified by lease except as mutually modified by parties). Here, however, the

tenant took the position at trial that her tenancy from September 2022 through August 2023 was not governed by a lease and that she was a tenant at will. The jury agreed and found on a special verdict slip that the tenant's occupancy of the premises during this period was not governed by the terms of a lease. Based on the tenant's position at trial and the jury's determination that no lease applied to the relevant time period, the judge found that the tenant "cannot have it both ways in first claiming that the tenancy was not subject to the terms of a lease and after prevailing on that claim then asserting that the terms of that very same lease now apply to the attorney's fee provision." We discern no error in the judge's application of judicial estoppel to deny the tenant's posttrial motion for fees pursuant to G. L. c. 186, § 20. See Otis v. Arbella Mut. Ins. Co., 443 Mass. 634, 639-641 (2005) (principles of judicial estoppel preclude party from asserting position in one legal proceeding that is contrary to position it previously asserted and prevailed on in another proceeding).¹⁰

b. Calculation of fees. The tenant was awarded a portion of attorney's fees for the interference with quiet enjoyment and

¹⁰ Because the tenant did not argue at trial that the terms of the earlier written leases continued into her tenancy at will, the argument is waived on appeal. See Luppold v. Hanlon, 495 Mass. 148, 166 (2025).

violation of c. 93A related to the failure to return the lease. She disputes the method the trial judge used to calculate the fee award.

We review a judge's award of attorney's fees for abuse of discretion, with deference to the trial judge's "superior ability to calibrate such awards to the nuances of the case" (citation omitted). LaChance v. Commissioner of Correction, 475 Mass. 757, 772 (2016). "This determination should ordinarily begin with the lodestar calculation, based on the number of hours that are reasonably expended and adequately documented, multiplied by a reasonable hourly rate." Id.

Here, the trial judge applied the lodestar method and made detailed findings to calculate attorney's fees. First, he made findings about a reasonable rate for the location of the premises and type of case, based on comparisons to other attorneys and his own experiences as a judge. Next, the trial judge assessed a reasonable number of hours to spend on the quiet enjoyment and c. 93A claims. Because the tenant's counsel provided a total number of hours but did not delineate the time spent on each claim, the trial judge was required to estimate the time spent on the tenant's successful claims. Based on these estimates, the judge calculated an award of \$12,800, which was substantially lower than the \$84,209.44 in fees sought by the tenant. On this record, we discern no abuse discretion in

the judge's calculation of attorney's fees that were tailored to his detailed findings.

7. Landlord's cross appeal from order denying motion to alter or amend. The landlord argues that the trial judge abused his discretion by denying the landlord's motion to overturn the jury's findings of violation of the warranty of habitability and interference with quiet enjoyment, or to reduce the damages (remittitur). We disagree.

We apply a "highly deferential" standard in assessing the evidence supporting a jury's award of damages and will overturn such an award only if it is "clearly excessive in relation to what the plaintiff's evidence ha[d] demonstrated damages to be." Spinosa v. Tufts, 98 Mass. App. Ct. 1, 10 (2020), quoting Ayash v. Dana-Farber Cancer Inst., 443 Mass. 367, 404, cert. denied sub nom. Globe Newspaper Co. v. Ayash, 546 U.S. 927 (2005). We review the denial of a motion for remittitur for abuse of discretion. See Reckis v. Johnson & Johnson, 471 Mass. 272, 299 (2015), cert. denied, 577 U.S. 1113 (2016).

The landlord does not dispute that the tenant presented evidence of defective conditions. However, the landlord contends that the jury must have ignored the landlord's evidence that failure to promptly replace or repair window screens resulted in part from supply chain issues caused by the COVID-19 pandemic, which subsequently was credited by the trial judge at

the c. 93A hearing. The landlord further argues that the jury's finding of a breach of warranty of habitability was against the weight of the evidence and must have been "based on some other improper consideration." This argument misapprehends the applicable law for the judge and our standard of review. Put simply, the fact that the jury could have credited the tenant's evidence or weighed the evidence related to the COVID-19 pandemic differently from the judge is insufficient to overturn a verdict or require remittitur. See Spinosa, 98 Mass. App. Ct. at 10.

8. Appellate attorney's fees. Under G. L. c. 93A and G. L. c. 186, § 14, the tenant is entitled to receive appellate attorney's fees for her successful appeal from the judgment on her c. 93A and quiet enjoyment claims. See Fontaine v. Philip Morris USA Inc., 497 Mass. 436, 463 n.23 (2026); Yorke Mgt. v. Castro, 406 Mass. 17, 19 (1989). The parties may file applications and oppositions in accordance with Mass. R. A. P. 25 (b), as appearing in 498 Mass. 1601 (2026).

The landlord requests appellate attorney's fees, pursuant to G. L. c. 186, § 20, for the appeals in both the initial and subsequent actions. However, the landlord was not the prevailing party in either action. Moreover, as previously discussed, the jury found there was no lease, and the landlord relied on this finding to argue the tenant is not entitled to

attorney's fees. Accordingly, the landlord's request for attorney's fees is denied.

Conclusion. We vacate so much of the final judgment that denied the tenant's claim for damages under c. 93A based on certain sanitary code violations, and we remand that portion of the case for further proceedings consistent with this opinion. The final judgment is otherwise affirmed. The orders denying the landlord's motion to alter or amend the final judgment, denying the tenant's motion for attorney's fees, and allowing the landlord's motion for sanctions are also affirmed.

So ordered.

HENRY, J. (concurring in part and dissenting in part). I respectfully dissent from the majority on four issues.

First, I think it is not clear whether the trial judge denied the tenant emotional distress damages solely because she did not offer medical records or expert testimony. Although such evidence can be offered, it is not required and its absence is not a reason to deny emotional distress damages entirely. I would include the issue of emotional distress damages in the remand on the G. L. c. 93A claim so that the judge may clarify the basis for awarding \$0 for emotional distress.

Second, the judge's finding crediting the landlord's claim that its repair of screens and the patio slider door was delayed because of the impact of the COVID-19 pandemic on the supply chains was clearly erroneous to the extent the judge was addressing the months of delay before COVID-19 swept the planet. Any delay in August, September, October, November, and December 2019, and possibly up to March 2020 was not caused by COVID-19, which the judge should consider on remand in determining whether the landlord's failure to remedy the lack of screens was willful or intentional.

Third, because we are remanding, presumably to the trial judge, I would address the judge's erroneous finding that the tenant misrepresented that her daughter was a tenant of the apartment. I also would note that the judge did not address

conduct by the landlord that overcomplicated this case such that the trial had to be held in the alternative, i.e., depending on whether the fact finder found the tenant was a tenant at sufferance or a tenant at will.

Fourth, I would hold that the attorney's fees provision of the lease applies regardless of the jury determination that the tenant's occupancy of the premises between September 1, 2022, and August 31, 2023, was not governed by the terms of a lease.

1. Emotional distress damages. In ruling on the tenant's request for emotional distress damages in her claims pursuant to G. L. c. 93A, the judge wrote:

"I find that the [tenant] failed to present sufficient evidence on any actual damages that she suffered as a direct result of the [landlord's] failure to promptly repair the deficiencies. While she claims that she suffered from emotional distress, anxiety and other assorted woes she did not present any medical documentation that directly tied these claimed maladies [sic]."

He repeats this same belief later, writing:

"[The tenant] claims that the [landlord's] pursuit of two groundless summary process actions resulted in her visiting the hospital, therapy, medication, a reduction in leisure activities, and fearing to have her family come to visit.

"As stated earlier the [tenant] provided little more than her testimony concerning the direct relation between the actions of the [landlord] and her alleged damages. There was no medical documentation or testimony from any medical expert that attributed her emotional distress et al to the actions (or lack thereof) of the [landlord].

"As such I find no basis to award damages under this claim."

As the majority acknowledges, ante at note 9, a judge may award a tenant emotional distress damages for breach of quiet enjoyment in the absence of evidence of bodily harm. See Homesavers Council of Greenfield Gardens, Inc. v. Sanchez, 70 Mass. App. Ct. 453, 458-459 (2007) (Homesavers). In Homesavers, we wrote, "[i]t takes little imagination to understand that a woman with children living in a subsidized apartment might find anxiety-provoking a threat to put her on the street for failure to pay an unreasonable, erroneously determined rent well beyond her limited financial capacity." Id. at 458. Accordingly, we affirmed the judge's findings that the tenant experienced severe emotional distress when she received the notice to quit and that the landlord's actions were willful. Id. at 458-459.

Here, the tenant reported to the landlord at the outset of the tenancy that every screen in the apartment save one needed repair and she could not lock her second-floor balcony slider door. In response, several screens were removed for months or years and the landlord suggested she put a wooden dowel in the slider. When the patio door was replaced in October 2022, the landlord did not provide a screen and objected to the tenant procuring one and deducting it from her rent. From this evidence, it "takes little imagination" to find that this woman tenant suffered at least some compensable anxiety for the landlord's inaction. Homesavers, 70 Mass. App. Ct. at 458.

First, the fact that the sliding patio door would not lock posed a safety risk: both the risk of an intruder, even on the second floor, and the risk that a grandchild could access the balcony unsupervised and get injured. Second, given the conditions of the screens, she could not let in fresh air without also letting in bugs.

Similarly, it "takes little imagination" to find that this tenant suffered some compensable anxiety over the landlord's failure to provide a countersigned lease and pursuit of two unsuccessful summary process actions. Homesavers, 70 Mass. App. Ct. at 458. See Rental Prop. Mgt. Servs. v. Hatcher, 479 Mass. 542, 554 (2018) ("a summary process complaint brought by a plaintiff without standing is a groundless claim, and we have long recognized the harms often associated with having to defend against groundless claims, including the time and expense of defending a suit, emotional distress, and harm to reputation"). The landlord's failure to timely return the signed lease renewal rider was not insignificant. The tenant had to argue the case in the alternative -- was she a tenant at will or a tenant at sufferance -- exponentially increasing the complexity of the litigation and the tenant's potential liability. Under the lease, if the landlord succeeded in the dispute, the tenant was liable for use and occupancy payments equal to at least 150 percent of the lease rent, plus attorney's fees, including the

extra fees to litigate the rider issue. The majority quotes a remark the judge made during trial that "there 'is going to be some stress' associated with an illegal eviction action." Ante at . The remark is accurate. Yet in his written orders, the judge did not award the tenant any damages for that stress. That was error.

2. Chapter 93A and willfulness. We are remanding the c. 93A claim related to the sanitary code violations for a determination of damages and attorney's fees, but not whether the landlord's delay in replacing the tenant's screens was willful and knowing. The judge credited the landlord's claims that its delay of months and in some cases years to fix the window screens and slider door screen was due to factors beyond its control, namely the impact of the COVID-19 pandemic on supply chains. However, the tenant notified the landlord of the missing screens in September 2019. Effects of COVID-19 did not disrupt supply chains from at least September through December 2019, and maybe even into March 2020.¹ See Christie v. Commonwealth, 484 Mass. 397, 398-399 (2020) (Governor declared

¹ Lockdown measures did not start in Wuhan, China, until January 23, 2020. Guo et al., The Impact of Lockdown in Wuhan on Residents Confidence in Controlling COVID-19 Outbreak at the Destination Cities, *Frontiers in Pub. Health* (Aug. 15, 2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9421152> [<https://perma.cc/QL34-28JF>].

state of emergency throughout Commonwealth in response to the spread of COVID-19; World Health Organization declared COVID-19 to be a global pandemic, on March 11, 2020). In other words, the tenant first notified the landlord of the need for repairs at least three and possibly six months before supply chains felt the impact of the COVID-19 pandemic. In considering whether the landlord's failure to remedy conditions in the apartment was willful, it was clearly erroneous to excuse the landlord's inaction based on COVID-19 before the pandemic began. Accordingly, I also would include in the remand the question whether the landlord's violation before the COVID-19 pandemic was willful and knowing.

3. The daughter was a tenant. We are remanding this matter to address claims on which we reverse the trial judge. In the interests of fairness and efficiency, I would address the judge's erroneous finding that the tenant misrepresented that her daughter was a tenant under the lease. The judge wrote:

"The [tenant] filed an answer that initially included the misrepresentation that her daughter . . . was also residing in the premises and was thus a necessary party to the action. Upon learning this, the [landlord] voluntarily dismissed the action and immediately restarted the action naming [the tenant] and her daughter as co-defendants Upon learning that she had been named as a co-defendant, [the daughter] immediately retained counsel who filed a motion to dismiss claiming that she was not now and had never been a resident of the premises. After reviewing the facts, the parties agreed that [the daughter] was not a resident at the premises and jointly agreed to a stipulation of dismissal as to [the daughter]

After securing a jury verdict on two counts [the tenant] is now seeking attorney's fees under the terms of the lease and under G. L. [c. 186, § 20,] for the count of breach of quiet enjoyment. In addition, she is also seeking to reimburse herself and her daughter for the prior case that was voluntarily dismissed and for matters directly related to her own misrepresentations to the opposing parties and the Court."

The judge even suggested that the daughter look to her mother for damages. He continued by stating, "[a]s a result, I find that no fees and costs should be awarded to the [tenant] concerning" the first summary process action or concerning the claims of the daughter. He then awarded the tenant a small fraction of the attorney's fees her attorney represented were incurred, \$12,800 out of the \$84,209.44 requested. He also failed to account for the complexity introduced into this matter by the landlord's claim that there was a written lease that it had misfiled, and later found, days before trial was scheduled to commence in the first summary process action.

The judge's conclusions that the tenant misrepresented the status of her daughter are not correct. Under the lease, the tenant's daughter and grandchildren were listed as "APPROVED TENANTS." This lease provision expressly stated that "[t]he Resident [the tenant] agrees and hereinafter certifies by signing this Agreement that only the following named person(s) shall be considered as a Resident with the lawful right to occupy the Apartment." The tenant's daughter and grandchildren

were listed as such persons.² One lease even said the daughter did not live in the apartment and could be called in case of emergency. On the lease renewal rider that the tenant signed on June 23, 2022, the tenant listed her daughter and grandchildren as tenants. This is the rider that the landlord never gave the tenant until days before trial was scheduled in the first summary process action (because the landlord maintained over months that it wanted the tenant to leave).

In responding to the complaint in the first summary process action, the tenant stated, "The tenants of this Unit are myself, my daughter . . . , and her two minor children" That was not a misrepresentation. That was an accurate statement of the lease terms and what the tenant had written on the rider, consistent with the prior leases. The tenant's answer did not state that the daughter was a "necessary party." To the extent the tenant's answer implied that the action was procedurally defective because it did not name the daughter, it was incorrect as a matter of law. See 21st Mtge. Corp. v. DeMustchine, 100 Mass. App. Ct. 792, 800 (2022) (no authority supports

² This provision benefited both parties. It protected the landlord from other parties moving into the apartment and claiming protections as a tenant. It benefited the tenant because she traveled extensively for work and the provision ensured her daughter and grandchildren could access the apartment, swim in the pool, and enjoy other amenities.

proposition it is impermissible for landlord to evict only one occupant at a time). The landlord dismissed the first summary process action for a reason having nothing to do with the tenant's answer or representation about the daughter, representing to the judge that it had dismissed the case and started over because the judge had denied the landlord's motion to amend the account annexed.³ Id. The fact that the tenant argued in her request for attorney's fees in the first action that her daughter should have been included from the beginning similarly was not a misrepresentation; it was an incorrect statement of law. Moreover, the judge did not rely on this pleading in his findings.

The trial judge also did not accurately describe the stipulation to dismiss the daughter. The stipulation does not state that "the parties agreed that [the daughter] was not a resident at the premises." It merely states that the parties "stipulate[d] to the dismissal of the [landlord's] case against [the daughter] with prejudice."

The majority contends that the tenant did not challenge as erroneous the findings that she made misrepresentations in her answer about her daughter's status. But the tenant stated in

³ Given that the lease named the daughter and grandchildren as tenants and residents, it was to the landlord's benefit to resolve their status.

her opening brief that the daughter was a tenant under the lease and more directly raised this argument in her reply brief.⁴ More importantly, because the remand order in this matter includes the issue of attorney's fees, justice requires us to address this issue. The judge already denied the tenant attorney's fees in the first action specifically based on an erroneous finding, and it is logical to be concerned that the finding affected the rest of the fee rulings.⁵ And to the extent that the trial

⁴ Moreover, the author of the majority opinion raised the question at oral argument.

⁵ The trial judge's frustration with the tenant is particularly notable in light of the landlord's unlawful conduct. The landlord is no stranger to landlord-tenant law; it owns and operates 208 luxury apartments across thirteen buildings. Yet, it admits it failed to pay interest on the tenant's security deposit for years.

Moreover, the trial judge reached a different verdict from the jury on whether there was a lease, which the judge is allowed to do. See Kattar v. Demoulas, 433 Mass. 1, 12 (2000) ("It is indeed both possible and feasible for a judge deciding a c. 93A claim to make findings of fact that are contrary to those made by a jury on a parallel common law claim . . ."). The landlord told the tenant in August and November 2022 that she did not have a mutually signed copy of the lease because the landlord did not sign the lease, and the tenant should move out. After litigation commenced, in January 2024, the landlord produced a countersigned lease renewal rider dated July 7, 2022, that it claimed was misfiled in another tenant's file. By crediting the landlord, the judge allowed the landlord to avoid a finding that it falsified evidence, though it means the landlord violated c. 93A. Of course, had the landlord genuinely intended to renew the tenant's lease, it could have just signed a new copy of the rider when she asked repeatedly for months for a signed copy. Even on appeal, the landlord presses that it is due attorney's fees under the last written lease.

judge's order on fees neglects to account for the landlord's failure to provide the written lease that the judge found existed and that complicated this entire case, it should be reconsidered on remand.

4. Attorney's fees pursuant to the lease. The three written leases between the parties each provided, in relevant part:

"M. To pay amounts due for all costs, expenses and fees including reasonable attorney's fees incurred by Management due to any matter involving Resident including, but not limited to, any eviction, disruption, loss, damage, or destruction caused by Resident. Such costs, expenses and fees shall be deemed additional rent under this Lease Agreement."

Under G. L. c. 186, § 20, if a residential lease provides, as here, that "in any action or summary proceeding the landlord may recover attorneys' fees and expenses incurred as the result of the failure of the tenant to perform any covenant or agreement" in the lease, there is implied in the lease a covenant by the landlord

"to pay to the tenant the reasonable attorneys' fees and expenses incurred by the tenant as the result of the failure of the landlord to perform any covenant or agreement . . . under the lease or in the successful defense of any action or summary proceeding commenced by the landlord against the tenant arising out of the lease" (alteration omitted).

To be fair to the judge, both sides litigated this case aggressively.

Aviksis v. Murray, 87 Mass. App. Ct. 141, 143-144 (2015), quoting G. L. c. 186, § 20.

I agree with the majority that "[o]rdinarily, terms of a lease carry over to a tenancy at will so long as the parties do not agree to modify them." Ante at . I do not think the jury verdict here changes this rule. Those terms carried over to the tenant's continued tenancy even in the absence of a written lease governing the tenancy. Even if the attorney's fee provision of the last written lease did not carry over, the last written lease did not end when the one-year term ended. Addis v. Steele, 38 Mass. App. Ct. 433, 438 (1995). This provision, by its own terms, continued to apply to disputes between the parties; indeed, both parties agree the fee provision continues to apply.⁶

On these limited bases, I respectfully dissent.

⁶ The majority concludes that "[b]ecause the tenant did not argue at trial that the terms of the earlier written leases continued into her tenancy at will, the argument is waived on appeal." Ante at note 10. The tenant did not waive the issue. Issues addressed by the judge in an order, even if not raised by a party, are not waived. Commonwealth v. Vargas, 475 Mass. 338, 344 n.6, 7 (2016). Here, the judge decided this issue in his order on fees, and the tenant's brief addresses the issue. Ironically, whether the fee provision of the lease survives appears to be the one thing on which the parties can agree.