COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

Suffolk, ss. FAR-26803

DAVID NANNAN AND RHEA NANNAN

Plaintiffs-Appellants

v.

KAFER NEVINS

Defendant-Cross Appellant

On appeal from a final judgment of
the Eastern (Boston) Housing Court

Cross Appellant Kafer Nevins' Application for Further Appellate Review

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Date: May 24, 2019 (corrected May 28, 2019)

Introduction

Pursuant to Mass. R.A.P. 27.1, Cross Appellant Kafer Nevins (the "Tenant") hereby requests the Supreme Judicial Court accept this appeal for further appellate review of the construction and application of the Commonwealth's anti-discrimination statute, G.L. c. 151B § 4(10), as amended by St. 1989, c. 722, § 19A, which forbids discrimination "because of any requirement of" the tenant's "housing subsidy program." See DiLiddo v. Oxford Street Realty, 450 Mass. 66, 76 (2007).

Here, the Tenant was prevented from using an available housing subsidy under the Section 8 Program[1] to pay his rent, because the Landlord refused to comply with the Housing Quality Standards ("HQS") requirements of the Section 8 Program, 24 C.F.R. §§ 982.401 and 982.453(a)(1), thereby triggering a termination of the subsidy payments made on behalf of the Tenant. And immediately after the Landlord caused the subsidy payments to cease, the

[1] 42 U.S.C. § 1437f(o).

Landlord brought a summary process case against the Tenant for non-payment of the rent, including the portion that would have been paid by the subsidy.

Despite these facts, which were uncontested by the Landlord and were found by the trial judge,[2] both the trial court and the Appeals Court concluded that they did not constitute discrimination on the basis of the Tenant's "status as a subsidy recipient." In reaching this conclusion, neither the trial court nor the Appeals Court acknowledged that the discrimination asserted was based not on "status" but **"because of any requirement of" the tenant's "housing subsidy program."** In doing so, they have disregarded not only the Legislature's clear mandate that tenants be able to rent apartments using subsidies the same way that they would if they were paying cash, they have also ignored this Court's guidance in DiLiddo.

[2] The Amended Findings of Fact, Rulings of Law and Order for Judgment (June 23, 2016, Muirhead, J.) are included in the Addendum.

More than 80,000 Massachusetts families rely on Section 8 and other housing subsidies to maintain housing stability.[3] Landlords who refuse to comply with housing subsidy program requirements, particularly Housing Quality Standards, are a common and substantial impediment to tenants using housing subsidies, as demonstrated by the decisions of the Massachusetts Commission Against Discrimination ("MCAD") discussed below, as well as by the *amicus* brief filed below.[4] The Legislature, in enacting the housing subsidy "requirement" provisions of G.L. c. 151B § 4(10), intended to do away with that impediment. The refusal of the courts below to give effect to those provisions

[3] Center on Budget and Policy Priorities https://www.cbpp.org/sites/default/files/atoms/files/4-13-11hous-MA.pdf

[4] The *amici* were represented by a clinical instructor and a student of the Harvard Legal Aid Bureau ("HLAB"). At the time that the brief was submitted, there was no overlap between either the parties and *amici*, or between their counsel, and the interests of the *amici* were accurately stated as required by Mass. R. App. P. 17 as then in effect. Mr. Nevins hereby discloses, in accordance with Mass. R. App. P. 17(c)(5), 481 Mass. 1601, that as of May 2019, Attorney Gary Allen, in addition to representing Mr. Nevins as part of his private practice, is also now a clinical instructor at HLAB.

of the statute – or even acknowledge their existence – therefore completely defeats the Legislature's purpose. This Court should accept this appeal for further appellate review, in order to effectuate its holding in DiLiddo, and make clear that subsidy dollars are as good as regular dollars, and landlords therefore cannot be allowed to use their unwillingness to comply with subsidy program requirements to prevent tenants from using available housing subsidies to pay their rent.

STATEMENT OF PRIOR PROCEEDINGS

The underlying action to this appeal began as a summary process complaint for non-payment of rent, which the Landlord commenced because MBHP - the agency which administered the Tenant's Section 8 housing subsidy, terminated the subsidy payments to the Landlord. It is undisputed, and was specifically found by the trial judge, that the subsidy termination was solely the result of the Landlord's refusal to make repairs required by the PHA after an annual property inspection. The Tenant, by counterclaim in the summary process action, asserted *inter alia* a claim of housing discrimination in violation of G.L. c. 151B § 4(10), on the basis that the Landlord refused to comply with the requirements of the housing subsidy program. The Tenant eventually vacated the premises before the summary process action reached trial, and the case was transferred to the Housing Court's civil docket and adjudicated by bench trial.

Notwithstanding the undisputed facts that the Landlord knowingly refused the repair instructions issued by the PHA, which triggered the termination of the subsidy, and that the Landlord then brought the eviction action because of the non-payment of the full amount of the rent (including the portion of the rent previously paid by the subsidy), the Housing Court judge ruled on June 23, 2016 that "there was no evidence to support a claim of discrimination based on receipt of public or rental assistance."

The Tenant appealed the Housing Court judgment on the discrimination counterclaim to the Appeals Court (Docket 2017-P-1034). The Appeals Court issued a Memorandum and Order Pursuant to Rule 1:28 ("AC Memorandum") on April 11, 2019, 95 Mass. App. Ct. 1107, concluding that "...there is no indication that the Nannans [the Landlords] refused to make the repairs and forced Nevins to move **because of his status as a subsidized tenant**." AC Memorandum N.3.[5]

STATEMENT OF FACTS[6]

Kafer Nevins ("Mr. Nevins" or "the Tenant") is a disabled man who began renting an apartment from the

[5] The Appeals Court ultimately ruled in favor of the Tenant on three other claims, and remanded the case for further proceedings. Further review is not sought regarding those issues.

[6] Because of its view of the case, and because it was a decision in its Rule 1:28, the Appeals Court set out very few of the facts relevant to the subsidy requirements discrimination claim for which FAR is sought. In accordance with Mass. R. App. P. 27.1(b)(3), the Tenant has therefore set forth a short statement of facts relevant to the appeal. See Amended Findings of Fact, Rulings of Law and Order for Judgment (June 23, 2016, Muirhead, J.).

Landlord in 2003, relying from the commencement of the tenancy on the assistance of the Section 8 housing subsidy program underwritten by the US Department of Housing and Urban Development("HUD"). The Section 8 housing program was enacted in 1974 for the purpose of "aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing." 42 U.S.C. § 1437f(a). Carter v. Lynn Hous. Auth., 450 Mass. 626 n.1 (2008). Under the Section 8 Program, the family pays "thirty percent of its adjusted monthly income to the owner of the unit in satisfaction of its rent obligation. 42 U.S.C. § 1437f(o)(2)(A)," Wojcik v. Lynn Hous. Auth., 66 Mass. App. Ct. 103 n.2 (2006), while "the housing authority then pays the owner the difference between what the tenant has paid and the monthly rent charged. 42 U.S.C. § 1437f(c)(3)." Id. The administrator for the Tenant's Section 8 subsidy was the Metropolitan Boston Housing Partnership ("MBHP").

On April 25, 2014, the Tenant contacted the Landlord and identified a number of conditions that needed to be repaired. The Landlord responded with a notice dated June 25, 2014, informing the Tenant that his lease would not be renewed, effective August 31, 2014. No reason was stated for termination. The Landlord never commenced summary process based on this no-fault termination of the lease.

It is a Section 8 “program requirement” to maintain the premises according to HUD’s “housing quality standards.” 24 C.F.R. §§ 982.401 and 982.453(a)(1). MBHP conducted its annual inspection of the Tenant’s apartment on August 8, 2014, and informed the Landlord that the Premises had failed inspection and if repairs were not completed by September 12, 2014, payment from MBHP would be suspended. MBHP re-inspected the Premises on October 6, 2014, and again informed the Landlord that if the repairs were not made by November 12, 2014, payments would be suspended. The repairs were not completed by November 12, 2014 and MBHP notified the Landlord of one last opportunity to maintain the subsidy by completing the repairs by December 10, 2014 but he did not. The subsidy was terminated by MBHP as of December 31, 2014.

The judge explicitly found that MBHP terminated the subsidy payments because of the Landlord's refusal to make repairs. The judge also found "Had the Plaintiffs made the repairs as required by MBHP, rent would have been paid in full until the Defendant vacated voluntarily or was ordered to do so by the court." Indeed, such payments are required by HUD regulations, 24 C.F.R. §§ 982.311(b) (housing agency required to continue the subsidy payments "until the owner has obtained a court judgment or other process allowing the owner to evict the tenant").

In December of 2014, shortly before the subsidy was terminated, the property manager began sending text messages to the Tenant taunting him that he would be responsible for the full rent once the subsidy contract ended. "If you are still in the apartment as of January 1, 2015, you will be responsible for the full amount of rent." Record Appendix ("RA") at 396. "So just that we are clear, your rent is $1300. Housing called us again today, confirming the end if [sic] the contract tomorrow. Maybe the best bet is for you to move in with your family till you get an apartment." RA at 398. "I have been telling you since December 7th that the contract with housing has ended. You are responsible for $1300.00. We no longer deal with housing since December 31st." RA at 402. See also: RA at 399 and 403.

Promptly after the subsidy was terminated, the Landlord served the Tenant with a notice to quit for non-payment stating the Tenant failed to pay the total monthly rent of $1300 (most of which was the subsidy that MBHP had ceased paying),[7] and then brought a summary process case seeking eviction on that ground. Meanwhile, once MBHP terminated the subsidy payments, it instructed the Tenant to vacate the apartment and find new housing, or risk losing eligibility to participate in the Section 8 program.

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[7] The Tenant continued to offer his share of the rent but the Landlord refused to accept it. RA at 403.

ISSUE FOR WHICH REVIEW IS SOUGHT

The question presented to this Court is whether a landlord's refusal or failure to comply with the requirements of housing subsidy programs – particularly Housing Quality Standards – when that refusal prevents the tenant from using an available subsidy to pay all or part of the rent demanded by the landlord, and the non-payment of which results in an eviction action against the tenant, constitutes discrimination "because of any requirement of" the tenant's "housing subsidy program" in violation of G.L. c. 151B § 4(10).

WHY FURTHER APPELLATE REVIEW IS APPROPRIATE

A. Standard of Review

This case turns on the interpretation and application of G.L. c. 151B § 4(10), which makes it unlawful

> For any person furnishing … rental accommodations to discriminate against any individual … who is a tenant receiving federal, state, or local housing subsidies, including rental assistance or rental supplements, because the individual is such a recipient, or **because of**

> **any requirement of such** public assistance, rental assistance, or **housing subsidy program**.

Emphasis added. “The Legislature has directed that the provisions of G. L. c. 151B ‘shall be construed liberally" for the accomplishment of the remedial purposes of the statute.’” Dahill v. Police Dep't of Boston, 434 Mass. 233, 240 (2001), quoting G.L. c. 151B, § 9.

"We review questions of statutory interpretation de novo." Commerce Ins. Co. v. Commissioner of Ins., 447 Mass. 478, 481 (2006). “[A] statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished." Lowery v. Klemm, 446 Mass. 572, 576-577 (2006), quoting Hanlon v. Rollins, 286 Mass. 444, 447 (1934).

B. The Landlord discriminated against the Tenant on the basis of the requirements of the Tenant's housing subsidy, in violation of G.L. c. 151B § 4(10)

Like the Section 8 subsidy program itself, "General Laws c. 151B, § 4 (10), has the goal of providing 'affordable, decent housing for those of low income.' Burbank Apartments Tenant Ass'n v. Kargman, 474 Mass. 107, 118 (2016), quoting Attorney Gen. v. Brown, 400 Mass. 826, 830 (1987).

The language pertaining to subsidy program requirements was specifically added by the Legislature, St. 1989, c. 722, § 19A, to make clear that objection to program requirements is not a legitimate business justification for refusing a subsidy. DiLiddo v. Oxford Street Realty, 450 Mass. 66, 76 (2007). In DiLiddo, this Court explained that a landlord's rejection of the **requirements** of a housing subsidy program was discriminatory conduct. The Court instructed that "it is G.L. c. 151B, itself, not the defendants' conception of what should or should not constitute discrimination, that delineates what is 'legitimate' and 'nondiscriminatory' under the statute. **The statute contains no language requiring a showing of 'animus**'" Emphasis added. 450 Mass. at 77.

In the instant matter, it is undisputed that the Landlord prevented the Tenant from continuing to use his available Section 8 subsidy in the premises by:

- refusing to comply with the Section 8 program requirements;
- demanding that the Tenant pay the full amount of the rent including the portion that had previously been paid by the subsidy;
- promptly bringing a summary process case for non-payment of those amounts right after the subsidy terminated.

This Court therefore must conclude that the Landlord's refusal to make repairs was discriminatory conduct because of a subsidized housing program requirement in violation of G.L. c. 151B § 4(10).

The Massachusetts Commission Against Discrimination (“MCAD”) has consistently ruled that refusals by landlords to comply with Section 8 Housing Quality Standards violates G.L. c. 151B § 4(10). Because MCAD is “the agency charged with enforcing G.L.c. 151B,” its interpretation of G.L. c. 151B § 4(10) “is entitled to deference.” DiLiddo, 450 Mass. at 76, n. 17. See Rock v. Massachusetts Comm'n Against Discrimination, 384 Mass. 198, 206 (1982) ("primary responsibility" to determine scope of G. L. c. 151B, "has been entrusted to the MCAD, not to the courts").

A 2013 MCAD decision with facts similar to the instant matter is particularly informative. In MCAD and Ortega v. Papalia, 35 MDLR 110, 2013 WL 3357137, a landlord approved an application for a tenancy knowing that the monthly rent would be subsidized by assistance from Section 8. However, when the subsidy administrator inspected the property and ordered repairs, the landlord changed his mind because he did not want to make repairs to the property, as required by the Section 8 program. MCAD reasoned this was not a legitimate non-discriminatory reason not to rent to Ortega, "because it contravenes the plain language of the statute, which clearly manifests the intent of the legislature on an issue of public policy with respect to affordable housing." Ortega, *supra*. MCAD observed:

> The Supreme Judicial Court has held as a matter of policy in DiLiddo that "where the Legislature has exercised its authority to set the balance between the protection of landlords' interests and the need for affordable housing," a landlord's refusal to agree to a provision that is required by a government sponsored housing subsidy program, "violates the strictures of G. L. c. 151B, s. 4 (10)." DiLiddo at 68.

Id. See also: MCAD and Smith v. Cao, 29 MDLR 179, 2007 WL 4623481 (refusing to rent apartment to Section 8 applicant with children because of unwillingness to comply with Section 8 lead paint requirement was direct discrimination in violation of G.L. c. 151B § 4(10)); MCAD and Portis v. Paul, 25 MDLR 344 (2004), (Full Commission: "It is well-settled that the refusal to rent to a Section 8 recipient due to the cost of repairs as required by the health code of the Commonwealth is not a defense to a claim under c.151B, s.4(10)”); MCAD and Williams v. Hardy, 23 MDLR 292, 2001 WL 1602770, affirmed by full Commission, 25 MDLR 17, 2003 WL 25332972 (Landlord cannot refuse to rent to Section 8 recipient because of program requirement that apartment must pass Section 8 inspection); MCAD and Leary v. Braden, 26 MDLR 224, 2004 WL 2361014, (Even substantial or “costly” repairs required by Section 8 requirements are not a defense to a claim of violation under G.L.c. 151B § 4(10).

This does not mean that every Housing Code violation in a subsidized apartment is automatically subsidy discrimination under G.L. c. 151B § 4(10). The Legislature and this Court have provided other remedies for simple Housing Code violations. See, e.g. G.L.c. 111, §§ 127A-127H; G.L.c. 239, § 8A; Boston Housing Authy. v. Hemingway, 363 Mass. 184 (1973). It is only when a landlord’s refusal to comply with a subsidy program’s requirements interferes with the tenant's ability use the housing subsidy that the line into subsidy discrimination is crossed.

Here, that line was crossed. The Landlord refused to make the required repairs with a clear understanding that this refusal to comply with Section 8 program requirements would result in a termination of the subsidy payments on behalf of the Tenant. RA at 279 lines 10-18. Not only did this trigger an affordability problem for the Tenant, but the property manager actively flaunted the subsidy termination to the Tenant in a series of text messages, such as: "We no longer have a contract with housing, so you are responsible for the whole amount," RA at 399. The Landlord sent the Tenant a notice to quit for non-payment of that full contract rent (the bulk of which had been paid by the subsidy until the termination) just days after the subsidy contract was terminated, and then followed up with a non-payment summary process action against the Tenant. RA at 371.

The Landlord argued below it was not obligated to continue complying with the subsidy program requirements after it believed it had terminated the lease. It is true that as the Appeals Court observed: "The Nannans correctly assert that the section 8 program requirements, such as those cited by MBHP in its inspections, do not outlive the lease. 24 C.F.R. § 982.309(b)(1) (1999)." AC Memorandum N.4. However, nothing in G.L. c. 151B § 4(10) makes its prohibition against discrimination based on the requirements of the subsidy program dependent on there being a lease in place. Indeed, in DiLiddo and most of the MCAD cases, there was no lease in place because the landlords had discriminatorily refused to enter one. It is absurd to suggest that a landlord can avoid housing discrimination laws simply by terminating or refusing to enter into a lease. See MCAD and Williams v. Hardy, 2003 WL 25332972 (Full Commission: rejecting landlord argument that subsidy discrimination depended on the existence of a lease). What was at issue here is what was at issue in DiLiddo and in Williams: a landlord's unwillingness to agree to comply with program requirements in order that the tenant could use the available subsidy in the apartment.[8]

The Landlord also argued below that the application of the subsidy program "requirement" provision of G.L. c. 151B § 4(10) after the termination of the lease would in effect make Section 8 leases "endless" and prevent landlords from terminating such tenancies at the end of the lease term. This argument reflects a profound misunderstanding of the discrimination claim. The Landlord, having sent a no-fault notice of lease non-renewal, was free to bring a no-fault summary process case and recover possession from the Tenant on that basis. Such an eviction would not have

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[8] To be sure, in DiLiddo and in Williams, the question was the landlord's obligation to enter into a lease, whereas here, at issue was the landlord's obligation to conform to subsidy program requirements pending summary process so that the Tenant could use his subsidy (which continued to be available, 24 C.F.R. §§ 982.311(b)) to pay the rent demanded by the Landlord during that time. But that is a distinction without a difference. G.L. c. 151B § 4(10) makes no mention of leases. Rather, the statute is concerned about barriers to the use of subsidies, and the ability of subsidized tenants to use those subsidies the way that market tenants use cash. The refusal to make the required repairs in this case was just such a barrier.

constituted subsidy discrimination. During that process, the subsidy payments could have continued (provided the premises were in compliance with the Housing Quality Standards), protecting both the Tenant (whose rent would have continued to be affordable) and the Landlord (who would have continued to receive the full contractual rent). What the Landlord was not free to do under G.L. c. 151B § 4(10) was what he did here - refuse to comply with the Housing Quality Standards, triggering a termination of the subsidy, an immediate affordability crisis for the Tenant, and a non-payment eviction.

C. Further appellate review is appropriate

Preventing the tenant from being able to use an available subsidy - as the Landlord did here by causing the housing agency to terminate the subsidy because of the Landlord's failure to maintain the property, and then attempting to evict the Tenant for not paying the portion of the rent previously paid by the subsidy - is precisely the kind of harm that the prohibitions in c. 151B § 4(10) seek to prevent. As explained above, Landlords who refuse to comply with housing subsidy program requirements, particularly Housing Quality Standards, are a common and substantial barrier to tenants using housing subsidies.

Given the refusal of the courts below to give effect to the provisions of Section 4(10) meant to break down that barrier – or even acknowledge their existence – this Court should accept this application for further appellate review, in order to make clear that Landlords cannot be allowed to use their unwillingness to comply with subsidy program requirements to prevent tenants from using available housing subsidies to pay their rent.

Respectfully submitted
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By his counsel,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 28th day of May 2019, served the foregoing on Robert Daidone Esq. 44 School Street Ste. 700, Boston MA 02108 through the Massachusetts trial court's eFile provider system.

/s/ Gary Allen

Gary Allen

CERTIFICATE OF COMPLIANCE WITH Mass. R.A.P. 20

I hereby certify that this application for further appellate review complies with Mass. R.A.P. 20 (form and length of briefs, appendices, and other papers; Compliance with Mass. R.A.P.20 is satisfied by using the Century proportional font, 14 points, containing 1888 words indicating why further appellate review is appropriate.

/s/ Gary Allen

Gary Allen

CROSS APPELLANT'S ADDENDUM

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

17-P-1034

DAVID NANNAN & another[1]

vs.

KAFER NEVINS.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

David and Rhea Nannan filed a summary process action against Kafer Nevins for unpaid rent.[2] Nevins counterclaimed for retaliation, discrimination based on receipt of public rental assistance, interference with quiet enjoyment, breach of the warranty of habitability, a violation of G. L. c. 186, § 15B, and violations of G. L. c. 93A. Following a bench trial, a Housing Court judge found for Nevins on all but his claims for retaliation and quiet enjoyment. Both sides appealed on numerous grounds. For the reasons discussed below, we vacate and remand solely on the judge's decision pertaining to Nevins's retaliation and quiet enjoyment claims, and for consideration of

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[1] Rhea Nannan.

[2] The Nannans also sued for possession but dropped that claim once Nevins vacated the apartment at issue before trial. This case then moved from the summary process docket to the civil docket.

attorney's fees and costs related to Nevins's c. 93A claim; we affirm the judge's determinations on all other respects.

Discussion. 1. Unpaid rent. The judge found against the Nannans on their unpaid rent claim after ruling that a "Section 8 Housing Choice Voucher Program Model Dwelling Lease" (model lease) governed the tenancy over an earlier lease (original lease) entered into by the parties. On appeal, the Nannans unpersuasively reassert that the original lease governed the tenancy. "In reviewing the judge's decision, we accept her findings of fact unless they are clearly erroneous," but review her legal conclusions de novo. Anastos v. Sable, 443 Mass. 146, 149 (2004).

Here, the Nannans and Nevins entered into a lease agreement on August 12, 2003. In it Nevins agreed to a rental payment of $1300 per month. However, on August 28 and September 2, 2003, Nevins and David Nannan entered into the subsequent model lease, which set the monthly rental payment at $1052 -- with Nevins contributing only $101 per month. This model lease also contained a merger clause, which stated, "this Lease with attached Tenancy Addendum constitutes the entire agreement between the parties."

Despite the existence of this superseding lease, the Nannans assert that the originally signed lease and not the subsequently signed model lease controlled the tenancy because

(1) the parties did not intend for the subsequent lease to control; (2) a "standard lease form" automatically overrides a subsequently signed model lease; (3) Nevins did not follow the procedure outlined in 24 C.F.R. § 982.302 (c) (1999) for submitting the subsequent model lease for approval by the housing authority; (4) the model lease is nullified due to a misspelling of Nevins's surname by one letter; (5) David Nannan failed to read the model lease before signing; and (6) Nevins's pattern and practice of paying $1300 per month rent for some time overrides the subsequent model lease. We disagree.

First, the Nannans have pointed us to no authority, nor are we aware of any, supporting their contention that the "standard lease form" automatically overrides a subsequently signed model lease. Rather, when the parties freely replaced the original lease agreement with a subsequent properly executed second lease agreement, it became the entire agreement between them. Roddy & McNulty Ins. Agency, Inc. v. A.A. Proctor & Co., 16 Mass. App. Ct. 525, 536 (1983). Furthermore, absent intentional misrepresentation or other intentional misconduct, of which there is no claim here, the merger clause controlled, and this clause clearly expressed the parties' intent to make the later model agreement the entire agreement of the parties. See Beatty v. NP Corp., 31 Mass. App. Ct. 606, 612 (1991) ("contracts rest on objectively expressed manifestations of intent").

Second, we see no record support for the proposition that Nevins did not follow the procedure outlined in 24 C.F.R. § 982.302 (c) for submitting the model lease to the relevant public housing authority for approval. Third, despite the fact that in the model lease Nannan's name appears misspelled by one letter, it is clear the agreement was between the Nannans and Nevins; the misspelling had no material effect upon the agreement. Cf. Ciampa v. Bank of Am., 88 Mass. App. Ct. 28, 31-33 (2015) (misspelled name does not undo trust agreement if intent is clear from attendant circumstances). See also Brown v. Gilman, 13 Tyng 158, 161 (1816) (wrong name in contract may be corrected or supplied by extrinsic evidence).

Fourth, it is also of no material consequence that David Nannan failed to read the model lease before signing it. He is still bound by the terms of a contract that he voluntarily signed and entered into. Commerce Bank & Trust Co. v. Hayeck, 46 Mass. App. Ct. 687, 693 (1999). Finally, while Nevins engaged in a ten-year course of conduct of paying a $1300 monthly rental fee, that course of conduct alone did not override the unambiguous terms of the parties' written agreement. Lodge Corp. v. Assurance Co. of Am., 56 Mass. App. Ct. 195, 197-198 (2002). See Harrington v. Fall River Hous. Authy., 27 Mass. App. Ct. 301, 307 (1989) (although defendant proceeded on a course of conduct consistent with an oral promise for three years, the fact that such a promise contradicted express language found in contemporaneously signed leases warranted excluding evidence of the oral promise under the parole evidence rule).

2. Subsidy discrimination. We now turn to Nevins's cross appeal. He first contends that the judge erroneously found that the Nannans did not discriminate against him on the basis of receipt of public assistance. We are not persuaded. G. L. c. 151B, § 4 (10), makes it unlawful

> "For any person furnishing . . . rental accommodations to discriminate against any individual . . . who is a tenant receiving [F]ederal, [S]tate, or local housing subsidies . . . because the individual is such a recipient, or because of any requirement of such public assistance, rental assistance, or housing subsidy program."

When a tenant establishes a prima facie case of discrimination, the burden then shifts to the landlord to rebut the claim of subsidy discrimination. See Attorney Gen. v. Brown, 400 Mass. 826, 833 (1987); Wheelock College v. Massachusetts Comm'n Against Discrimination, 371 Mass. 130, 131, 136-139 (1976). Here, however, Nevins did not establish a prima facie claim of subsidy discrimination. There is no evidence that the Nannans ended Nevins's tenancy due to his status as a subsidy recipient. Rather, operating under the misassumption that original lease governed the tenancy, the Nannans moved to terminate the tenancy on the basis of their belief that he was in violation of that original lease agreement. There was otherwise no breakdown in their ten year long landlord-tenant relationship relating to Nevins's housing subsidy.[3]

3. Covenant of quiet enjoyment. Nevins next contends that the judge erred in failing to find a breach of the covenant of quiet enjoyment. A landlord violates the covenant of quiet enjoyment through "acts or omissions [that] impair the value of the leased premises." Cruz Mgt. Co. v. Thomas, 417 Mass. 782, 789 (1994). Such impairments ripen into a cause of action only when the landlord is on notice of them and fails to remedy them. Al-Ziab v. Mourgis, 424 Mass. 847, 851 (1997).

Here, there was evidence that on April 25, 2014, Nevins complained of numerous defects in the apartment and that an inspection by Metropolitan Boston Housing Partnership, Inc. (MBHP), on August 4, 2014 revealed the existence of defects. There was also evidence that on March 3, 2015, a Boston housing inspector also recorded numerous defects in the apartment, including nonfunctioning smoke and carbon monoxide detectors,

[3] Nevins also contends that the Nannans' failure to make repairs required by Metropolitan Boston Housing Partnership, Inc. (MBHP), when he remained in the apartment after his lease term ended constitutes subsidy discrimination because MBHP eventually stopped making use and occupancy payments, forcing him to move. This also fails to show subsidy discrimination because there is no indication that the Nannans refused to make the repairs and forced Nevins to move because of his status as a subsidized tenant.

which he ordered replaced immediately.[4] The judge did not address Nevins's quiet enjoyment claim on the basis of his assertion of uninhabitable conditions but rather on the basis of a cross-metering claim that Nevins neither pleaded nor discussed at trial. Accordingly, we vacate the judge's determination of the quiet enjoyment claim, and remand that issue for redetermination by the judge under the appropriate analysis. See Muldoon v. Planning Bd. of Marblehead, 72 Mass. App. Ct. 372, 376 (2008) (remand needed for findings relating to an issue the trial judge did not reach).

4. Retaliation. We likewise remand for the judge to consider Nevins's retaliation claim. Pursuant to G. L. c. 186, § 18,

> "Any person or agent thereof who threatens to or takes reprisals against any tenant of residential premises for the tenant's act of . . . reporting or complaining of such violation or suspected violation [of housing laws] in writing to the landlord or to the agent of the landlord . . . shall be liable for damages . . . .
>
> "The receipt of any notice of termination of tenancy, except for nonpayment of rent, or, of increase in rent, or, of any substantial alteration in the terms of tenancy within six months after the tenant has . . . made such report or complaint, . . . shall create a rebuttable presumption that such notice or other action is a reprisal against the tenant

[4] The Nannans correctly assert that the section 8 program requirements, such as those cited by MBHP in its inspections, do not outlive the lease. 24 C.F.R. § 982.309(b)(1) (1999). However, this does not change Nevins's ability to raise concerns regarding the state of the apartment. See Meikle v. Nurse, 474 Mass. 207, 209 n.3 (2016) (tenants at sufferance may raise sanitation code violations as defense to summary process).

> for engaging in such activities. Such presumption shall be rebutted only by clear and convincing evidence that such person's action was not a reprisal against the tenant and that such person had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, regardless of tenants engaging in, or the belief that tenants had engaged in, activities protected under this section."

Here, there is evidence that Nevins e-mailed a complaint to the Nannans regarding the conditions of the apartment on April 25, 2014, and Rhea Nannan responded with a notice of nonrenewal, asking that he vacate the apartment on June 25, 2014. The timing of the Nannans's notice of nonrenewal fell squarely within the statutory time frame for the existence of a rebuttable presumption of retaliation but the judge did not address whether the Nannans rebutted this presumption by clear and convincing evidence. Accordingly, we vacate and remand on this claim as well. See Muldoon, 72 Mass. App. Ct. at 376.

5. Damages and fees under c. 93A. Nevins also asserts that the judge should have entered damages under G. L. c. 93A for his claim pursuant to G. L. c. 186, § 15B, and for his claim for breach of warranty of habitability. We disagree.

Whether a party's actions violate G. L. c. 93A and whether that violation is willful or knowing are questions of fact for the trial court. Squeri v. McCarrick, 32 Mass. App. Ct. 203, 207-208 (1992). We will not disturb such factual findings unless they are clearly erroneous. Anastos, 443 Mass. at 149.

We discern no error in the judge's finding of a c. 93A violation but refusal to award separate damages under that chapter. Where the judge found that the Nannans did not breach c. 93A willfully or knowingly, and she had already awarded damages for identical conduct under a different theory, the judge was under no obligation to award separate damages under c. 93A. Nevins is not automatically entitled to multiple damages. See G. L. c. 93A, § 9 (3).

However, once the judge found that the Nannans violated c. 93A, she was required to award reasonable attorney's fees and costs relating to that claim. See G. L. c. 93A, § 9 (4). Therefore, because the judge did not address this issue, we remand for her consideration of fees and costs related to only the time and costs expended in proving the Nannans' c. 93A violations. See Muldoon, 72 Mass. App. Ct. at 376.

6. Costs. Finally, Nevins claims that the judge should have awarded him costs for his taking of a deposition. We are not convinced.

We review the judge's decision on costs for an abuse of discretion. Passatempo v. McMenimen, 86 Mass. App. Ct. 742, 747 (2014). Here, the judge found that the Nannans violated G. L. c. 93A, § 9 (4), and G. L. c. 186, § 15B, both of which provide for the recovery of costs by the prevailing party. However, a prevailing party may only recover costs expended on a claim pertaining to those statutes. Cf. Miller v. Risk Mgt. Found. of Harvard Med. Insts., Inc., 36 Mass. App. Ct. 411, 421 (1994) (discussing c. 93A). On the record before us, we see no support for his claim that the deposition related to Nevins's c. 93A or § 15B claims.[5] Accordingly, we discern no abuse of discretion.

Conclusion. The portions of the judgment on the claims for breach of covenant of quiet enjoyment and for retaliation, and on defendant's request for attorney's fees related to the G. L. c. 93A claim, are vacated. The judgment is otherwise affirmed. The matter is remanded for further proceedings consistent with this memorandum and order.

So ordered.

By the Court (Green, C.J.,
Hanlon & Maldonado, JJ.[6]),

Joseph F. Stanton

Clerk

Entered: April 11, 2019.

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[5] Nevins did not include any portion of the deposition in his record appendix, thereby, preventing appellate review of this issue. See Mass. R. A. P. 18 (a), as amended, 481 Mass. 1637-1638 (2019) ("The appellant shall prepare and file an appendix to the briefs[, which] shall contain: . . . any . . . parts of the record relied upon in the brief").

[6] The panelists are listed in order of seniority.

Judgment For Defendant(s)	Docket Number 15H84CV000899	Commonwealth of Massachusetts Housing Court Department

RE: David Nannan et al v. Kafer Nevins

Defendant(s) who are parties to this Judgment: Kafer Nevins	Boston Housing Court Edward W. Brooke Courthouse 3rd Floor 24 New Chardon Street Boston, MA 02114 (617)788-8485
Plaintiff(s) who are parties to this Judgment: David Nannan Rhea Nannan	

After coming before the court, the issues duly tried or heard, and finding or a verdict having been duly rendered, IT IS ORDERED AND ADJUDGED by the court (Muirhead, J.) that the Plaintiff(s) named above take nothing, that the action be dismissed on the merits and the Defendant(s) named above recover of the Plaintiff(s) the "Judgment Total" below.

Date of Breach, Demand or Complaint	11/03/2015
Date Judgment Entered	06/27/2016
Pre Judgment Interest as provided by law from 11/03/2015 to	$.00
Damages	$7,224.00
Double or Treble Damages Awarded by Court	$
Filing Fee & Surcharge	$
Other Costs Awarded by Court	$
Other Costs	$
Court Ordered Attorney Fees	$4,400.00
Judgment Total Payable to Defendant(s)	**$11,624.00**

Further orders of the court:

Entered and notice sent on June 27, 2016.

Robert L. Lewis
Clerk - Magistrate

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

HOUSING COURT DEPARTMENT
CITY OF BOSTON DIVISION
CIVIL ACTION
No. **15H84CV000899**

DAVID and RHEA NANNAN,
Plaintiffs

v

KAFER NEVINS,
Defendant

AMENDED[1] FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR JUDGMENT

This matter was before the court for trial on March 7, March 9 and April 20, 2016. The case was commenced in the Dorchester division of the Boston Municipal Court in February 2015 as a summary process action to recover possession of Unit 3 at 214 Hancock Street in the Dorchester neighborhood of Boston (the Premises) and damages for unpaid rent for the months of January and February 2015. The Defendant timely filed an answer, claiming a jury trial, denying he owed rent, alleging that his tenancy was not properly terminated and asserting claims of retaliation arising out of conditions, discrimination based on receipt of public or rental assistance, breach of warranty of habitability, violation of the security deposit statute, interference with quiet enjoyment arising out of a cross-metering claim, violation of G.L. c. 93A and a demand for a jury trial.[2] The Defendant also filed a notice of transfer to this court on February 18, 2015. It was first before this court on March 12, 2015.

[1] The amendment in this case relates solely to the issue of rent in September 2014 and appears on page 4.
[2] In March 2015, the Defendant submitted a Motion to Amend Counterclaims. The court declined to entertain the motion and the Defendant did not request reconsideration, submit a second motion setting forth the need for amendment more clearly or request that the counterclaims be amended to conform to the evidence at trial.

The Defendant vacated the Premises on September 21, 2015 and the matter was transferred to the regular civil docket by order dated October 21, 2015.

Notice of a jury trial to take place on February 1, 2016 was mailed to the parties on December 4, 2015. On January 6, 2016, the court allowed the Plaintiffs' motion to continue the trial and pretrial conference.

At the pretrial conference on February 26, 2016, the parties executed a jury waiver.

Based on all the credible testimony and other evidence presented at trial and the reasonable inferences drawn therefrom, in light of the governing law, the court finds as follows.

The Defendant and Rhea Nannan signed a lease to rent the Premises on August 12, 2003. (Exhibit "3"). Under the terms of the lease (Exhibit "3"), the tenancy commenced on September 1, 2003 and ended on August 31, 2004. The agreed upon rent was $1,300.00 a month. At the time the parties signed the lease (Exhibit "3") the Plaintiffs accepted a security deposit in the amount of $1,300.00 and an additional $1,000.00 representing five months of "advance rent" in the amount of $200.00 a month.[3] Ms. Nannan provided the Defendant with a receipt dated August 12, 2003 indicating the payments received. (Exhibit "42").

Thereafter, on August 28, 2003, the Defendant signed a "Section 8 Housing Choice Voucher Program Model Dwelling Lease" (Exhibit "2") and forwarded same to the Plaintiffs. David Nannan signed the section 8 Model Lease (Exhibit "2") and a Housing Assistance Payments Contract (Exhibit "1"). Accordingly, from the date the Defendant took occupancy of the Premises, the tenancy at issue was subsidized by the U.S. Department of Housing and Urban De-

[3] The Defendant did not assert a claim for violation of G.L. c. 186, s. 15B(1)(b).

velopment ("HUD") administered by Metropolitan Boston Housing Partnership Inc. ("MBHP").[4] In 2003, the contract rent for the Premises was $1,052.00 a month and the Defendant's share of that rent was $101.00 a month. The total contract rent was never adjusted, but in March 2014, MBHP informed Mr. Nannan that the Defendant's share of the rent would be increased to $210.00 a month effective July 1, 2014. (Exhibit "12").

In order to receive rent from HUD, the Plaintiffs executed an Housing Assistance Payments ("HAP") Contract. (Exhibit "1"). Paragraph 5(e) of Part C of the HAP Contract provides in relevant part that the "owner may not charge or accept . . . any payment for rent for the unit in addition to the rent to the owner . . ." under the contract. In fact, by signing the HAP contract, the Plaintiffs certified to HUD that they were not and had not received any monies for rent of the Premises to the Defendant, other than the rent authorized by HUD.

The HAP contract further requires the Plaintiffs to maintain the Premises in accordance with the housing quality standards and to permit the BHA to conduct inspections as it sees fit. (Exhibit "1"). The BHA may cease payments if the Plaintiffs do not correct the defect is corrected within the time provided by the BHA. ("Exhibit "1"). The tenant is not responsible for payments not made by the BHA because the Plaintiffs failed to comply with the demand to repair a defect and the failure to do so is not a violation of the lease. (Exhibit "1").

By notice dated June 25, 2014, Rhea Nannan notified the Defendant that his lease would not be renewed. (Exhibit "4"). No reason was stated for non-renewal.

By notice dated July 8, 2014, MBHP acknowledged receipt of the notice of intention not to renew the lease. (Exhibits "24" and "40").

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[4] Exhibit "1" is not signed by a representative of MBHP, but there is no dispute that MBHP administered the Defendant's subsidy.

Because the lease between the parties was still in effect, MBHP conducted its annual inspection on August 8, 2014. By notice of even date (Exhibits "10" and "41") MBHP informed David Nannan that the Premises had failed inspection and if repairs were not completed by Setember 12, 2014, payment from MBHP would be suspended.

The Defendant did not vacate the Premises on August 31, 2014.

MBHP could not gain access to the Premises on September 12, 2014 (Exhibit "9") to determine whether the repairs had been completed.

The Defendant did pay rent in September 2014. The Plaintiffs caused him to receive a notice to quit for non-payment of rent on or about September 17, 2014. (Exhibit "5").

MBHP re-inspected the Premises on October 6, 2014 at which time it was noted that there was an additional violation. (Exhibit "30). Again David Nannan was informed that if the repairs were not made by November 12, 2014, payments would be suspended. (Exhibit "30").

The repairs were not completed by November 12, 2014 and MBHP notified David Nannan of one last opportunity to maintain the subsidy by completing the repairs by December 10, 2014 (Exhibit "30") but he did not. The subsidy was terminated as of December 31, 2014. (Exhibit "26").

Plaintiffs' Case in Chief

On January 9, 2015, the Plaintiffs caused the Defendant to receive a notice to quit for non-payment of rent for January in the amount of $1,300.00. (Exhibit "6"). This is the notice the Plaintiffs rely on in this action. The Summary Process Summons and Complaint seeks unpaid rent for January and February 2015. While the Plaintiffs did not receive any rent from January through September 2015, there was no motion to amend the account annexed or to amend the complaint to conform to the evidence at trial.

As a matter of law, the Defendant was not required to vacate the Premises unless and until a court ordered him to do so. As a result, the HAP contract was not terminated by receipt of the notice not to renew the lease and MBHP, absent any other reason, was obligated to continue payments to the Plaintiffs unless and until the Defendant vacated the Premises. (See 24 CFR 928.311).[5] Had the Plaintiffs made the repairs as required by MBHP, rent would have been paid in full until the Defendant vacated voluntarily or was ordered to do so by the court. The Plaintiffs cannot recover MBHP's share of the contract rent from the Defendant.

In addition, the terms of the HAP contract and the section 8 Model lease supersede the August 2003 lease and the maximum amount of rent the Plaintiffs could collect from the Defendant and MBHP was, at all times, $1,052.00 a month. From November 2014 through September 2015, the Defendant failed to pay $1,010.00 representing his share of the rent for that ten month period. Even if the Plaintiffs had moved to amend their account annexed to recover unpaid rent from March through September 2015, the Plaintiffs charged the Defendant an amount significantly more than $1,010.00 during that time and the Defendant would not owe rent to the Plaintiffs. Judgment will enter for the Defendant on the Plaintiffs' claim for unpaid rent.

Defendant's Claims

The Defendant has asserted claims of retaliation arising out of conditions, discrimination based on receipt of public or rental assistance, breach of warranty of habitability, violation of the security deposit statute, interference with quiet enjoyment arising out of a cross-metering claim

[5] The statements contained in Exhibits "24" and "40" with respect to continued payment after August 31, 2014 were not in accordance with 24 CFR 928.311.

and violation of G.L. c. 93A. There was no evidence to support a claim of discrimination based on receipt of public or rental assistance or the claim of cross metering and judgment will enter for the Plaintiffs on those claims.

Retaliation

G.L. c. 186, s. 18 prohibits reprisal against a tenant for engaging in certain protected activities; among these activities is the commencing, proceeding with, or obtaining relief in any judicial or administrative action the purpose of which action is to obtain damages under, or otherwise enforce, any federal, state or local law, regulation, by-law or ordinance, which has as its objective the regulation of residential premises or reporting to the board of health or, in the city of Boston to the commissioner of housing inspection or to any other board having as its objective the regulation of residential premises a violation or a suspected violation of any health or building code. The Defendant did not contact MBHP to request an inspection and there was no evidence, testimonial or otherwise that the Defendant ever took any action or ever commenced litigation to obtain relief in any judicial or administrative action to obtain damages under, or otherwise enforce, any federal, state or local law, regulation, by-law or ordinance, which has as its objective the regulation of residential premises. While there is no dispute that the Defendant contacted the City of Boston Inspectional Services Department and by notice dated March 3, 2015, the Plaintiffs were informed of violations of the state sanitary code at the Premises, including an emergency violation. (Exhibit "21"). The instant action had been pending for more than a month when the notice issued and therefore such contact could not support a presumption of retaliation.

Finally, while there was evidence that on April 25, 2014, the Defendant contacted Rhea Nannan and identified several conditions that needed to be repaired (Exhibit "37"), this notice does not create a presumption of retaliation as the notice to quit was sent more than six months after the Defendant informed Ms. Nannan of his issues. The Defendant could still assert a claim of retaliation, but he was required to affirmatively prove that the Plaintiffs retaliated against him. There was no such evidence at trial. Judgment will enter for the Plaintiffs on the Defendant's claim of retaliation.

Breach of Warranty of Habitability

To recover monetary damages from the Plaintiffs based upon a claim of breach of warranty of habitability, the Defendant must prove that there was a material breach of the implied warranty of habitability. Material means something of importance. The existence of a material breach of the implied warranty of habitability is a question of fact to be determined in the circumstances of each case. Factors to be considered in making a determination as to whether a breach was material include (a) the seriousness of the claimed defect and its effect on the habitability of the premises, (b) the length of time the defect persists, (c) whether or when the plaintiff or his agent received notice of the defect, (d) the possibility that the residence could be made habitable in a reasonable time and (e) whether the breach resulted from abnormal conduct or use by the Defendants and (f) whether the defendant interfered with the plaintiff's attempts to make repairs. Not every defect gives rise to a diminution in rental value and isolated violations may be found not to constitute a breach of the warranty of habitability. On the other hand, there may be instances in which minor violations, in conjunction with major violations or a multitude of minor violations with a cumulative effect on habitability give rise to a diminution in rental value.

On April 25, 2014, the Defendant contacted Rhea Nannan and identified several conditions that needed to be repaired; the stove needed to be leveled, there was a problem with sheetrock over entrance doors, issues with the kitchen wall and window sill, the radiator leaked in the kitchen, the kitchen tiles were damaged and ceiling cracked, and the door to the back porch let in the snow. (Exhibit "37").

The MBHP inspector identified several violations of the Housing Quality Standards at the Premises which required remediation; a damaged window sill in the kitchen, cracks and holes in the kitchen ceiling, the window in the bathroom was screwed shut, the door knob and the towel rod in the bathroom needed to be replaced, there was no access to the basement so the inspector could not state that there were no electric or other hazards, or determine the sufficiency and safety of heating and plumbing equipment, other than to determine the hot water was too hot (Exhibit "41"). When the inspector returned in October the basement was accessible and it was determined that there were no electric or other hazards and that the heating and plumbing equipment was sufficient and safe; however, there was damage to the floor in the bathroom, the tub/shower and vanity top needed to be caulked. (Exhibit "30"). Some of these conditions were corrected in March 2015. (Exhibits "20" and "31"). There was no evidence when, if ever the others were addressed.

The court finds that the Defendant is entitled to damages in the amount of $2,500.00 on his claim for breach of warranty of habitability.

Violation of the Security Deposit Statute

There is no dispute that the Plaintiffs accepted a security deposit of $1,300.00 from the Defendant in 2003 and provided him with a document entitled "Receipt." (Exhibit "42"). However, the law (G.L. c. 186, s. 15B(2)(b)) requires the Plaintiffs to have provided the Defendant with a receipt that not only states the amount of such security deposit, the name of the person receiving it and the date on which it is received, but also a description of the premises leased or rented. The Plaintiffs have failed to comply with this provision of the statute.

In addition, G.L. c. 186, s. 15B(3)(a), requires a landlord who accepted a security deposit to provide the tenant with a second receipt, within thirty days of the receipt of the security deposit, which sets forth the name and location of the bank in which the security deposit is held and the amount and account number of said deposit. The statute further provides that failure to comply with this paragraph shall entitle the tenant to immediate return of the security deposit. There is no dispute that the Plaintiffs did not provide such a receipt.

Finally, c. 186 s. 15B(3)(b) requires a landlord to pay interest on a security deposit, beginning on the first day of the tenancy, at the rate of five per cent per year, or other such lesser amount of interest as has been received from the bank where the deposit has been held. Interest is to be paid each year on the anniversary of the tenancy by giving or sending the tenant a statement which shall indicate the name and address of the bank in which the security deposit has been placed, the amount of the deposit, the account number, and the amount of interest payable by such lessor to the tenant with the interest which is due or a notification the tenant may deduct the interest from the tenant's next rental payment. There is no dispute that the Plaintiffs did not comply with this provision. At trial, there was evidence that the security deposit at issue was placed in some type of interest bearing account, no direct evidence at to the amount of interest paid; the court finds that the Defendant is entitled to interest of five percent a year on the security deposit.

Based on the Plaintiffs' failure to provide information to the Defendant relative to the name and location of the bank in which the security deposit is held and the amount and account number of said deposit, the Defendant was entitled to the immediate return of the security deposit and five per cent interest, upon demand. The demand for the return was set forth in the Defendant's answer dated February 18, 2015. (Exhibit "32"). The security deposit was not returned until April 16, 2015. (Exhibit "19"). The court finds the return of the security deposit approximately eight weeks after the demand was made does not comply with the statute. Moreover the interest tendered to the Defendant, also did not comply with the statute. The Defendant was entitled to the immediate return of the security deposit in the amount of $1,300.00 and $715.00 interest.

Because the Plaintiffs did not immediately return the Defendant's security deposit and interest upon demand, the Defendant is entitled to triple damages and reasonable attorney's fees. Triple damages is $6,045.00. The court will credit the amount tendered on April 16, 2016, $1,320.01 and judgment will enter for the Defendant on his claim for violation of the security deposit statute in the amount of $4,7249.00, plus reasonable attorneys' fees.

Violation of G.L. c. 93A

The court finds that while the claims on which the Defendant prevailed constitute a violation of G.L. c. 93A under the relevant regulations of the Attorney General, the actions of the Plaintiffs do not rise to the level of an unfair and deceptive business practice and were not knowing and willful. The court declines to double or treble the damages beyond the damages awarded herein and further declines to award attorney's fees, other than those awarded pursuant to G.L. c. 186, sec. 15B.

Requests for Findings of Fact and Rulings of Law

The Plaintiffs have submitted Requests for Findings of Fact and Rulings of Law and, except to the extent same are incorporated herein, same are **DENIED**.

ORDER OF JUDGMENT

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

1. Judgment enter for the Defendant on the Plaintiffs' claim for unpaid rent.
2. Judgment enter for the Plaintiffs on the Defendant's claims of retaliation arising out of conditions, discrimination based on receipt of public or rental assistance and interference with quiet enjoyment arising out of a cross-metering claim.
3. Judgment enter for the Defendant on his claim for breach of warranty of habitability in the amount of $2,500.00.
4. Judgment enter for the Defendant on the claim for violation of the security deposit statute in the amount of $4,724.00 and reasonable attorney's fees in the amount of $4,400.00. The court declines to award costs.
5. Judgment to enter for the Defendant on the claim of violation of G.L. c. 93A, but the court declines to award further damages or attorney's fees as further fees would be duplicative of the fees awarded pursuant to G.L. c. 186, sec. 15B.

SO ORDERED.

MARYLOU MUIRHEAD
ASSOCIATE JUSTICE

June 23, 2016
Nunc pro tunc to May 2, 2016

cc: Robert Diadone, Esquire
Gary Allen, Esquire