

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HAMPDEN, SS

HOUSING COURT DEPARTMENT  
WESTERN DIVISION

DOCKET NO. [REDACTED]

WORTHY APARTMENTS C/O  
CARABETTA MANAGEMENT  
COMPANY,

Plaintiff

v.

[REDACTED]

Defendant

RULINGS AND ORDER ON  
APPOINTMENT OF COUNSEL AND  
MOTION TO EXTEND STAY

The above-captioned matter came before the court for hearing on the plaintiff's (landlord's) opposition to appointment of a guardian ad litem (GAL) and request to lift stay, and the defendant's (tenant's) motion to extend the stay of trial. Treating the landlord's opposition as a motion to revoke appointment of the GAL, for the reasons set forth herein that request is denied, and the tenant's motion to extend stay is allowed.

1. **Appointment of GAL:** Primarily for the reasons set forth in the court's order entered on September 11, 2017 and the tenant's memorandum in reply to the landlord's opposition, I decline to revoke the appointment of counsel for the tenant. Read together, *Lassiter v. Dept. of Social Services*, 452 U.S. 18 (1981) and *Turner v. Rogers*, 564 U.S. 431 (2011) stand for the proposition that while there is no *automatic* right to counsel in civil proceedings, the question of whether due process requires the appointment of counsel where liberty is not at issue is "to be answered in the first instance by the trial court, subject, of course, to appellate review." *Lassiter*, 452 U.S. at 32.

In this case, the tenant's significant private interest in his subsidized housing, combined with the risk of self-incrimination in the related criminal case, and in light of the tenant's disability and demonstrated difficulty navigating the complexity of conducting a trial without counsel, combine to persuade the court that nothing short of appointing counsel suffices to protect the tenant's rights under the federal and state constitutions. This is not a case in which "substitute procedural safeguards," *Turner v. Rogers*, 424 U. S. at 335, would allow the tenant to defend himself effectively. Rather, any defense in this case requires an understanding of complex legal issues, and the expert skills needed to apply that understanding to the facts and the evidence offered.

2. In addition, sound administration of justice principles require appointment of counsel. Specifically, the court's obligation in this civil case to provide an accessible process for the tenant were he to proceed without counsel, see *Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants*,<sup>1</sup> could unacceptably impact the related criminal case. The court is therefore convinced that the only proper and effective way for the tenant to get the process to which he is entitled in this case is with the assistance of counsel.

3. **Motion to extend stay:** The tenant's motion to extend the stay in this case is allowed, at least through December 19, 2017, the anticipated date of trial in the related criminal case. Other than experiencing understandable frustration that this case has not proceeded quickly to disposition as is generally expected in summary process, the landlord is not prejudiced by a stay pending the outcome of the criminal case. The stay is conditioned upon the tenant paying rent, paying towards the rent arrears, and complying strictly with restrictions on his behavior. The

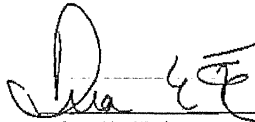
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<sup>1</sup> <http://www.mass.gov/courts/court-info/trial-court/exec-office/ocm/jud-institute/jg-self-rep.html>

landlord's argument that the stay unfairly allows the tenant to occupy a unit he has no right to occupy, by virtue of having violated his lease, assumes proof of the criminal conduct which has been alleged against him. Pending proof of that conduct, the tenant is a lawful occupant, and assuming that he is paying use and occupancy and not engaging in conduct that violates the lease or poses a risk of harm to the landlord or other residents, the landlord is not prejudiced by a stay. The prejudice to the tenant were the stay lifted, on the other hand, would be great, given the risk of self-incrimination in the criminal case.

4. **Order:** The conditions of the stay established by order of the court on September 11, 2017 shall remain in full effect. Counsel shall notify the Clerk's office when the tenant's criminal case has been concluded, after which the trial herein will be resumed.

So entered this 8th day of December, 2017.



Dina E. Fein  
First Justice

cc: ACM Laura Fenn