

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

DEPT. OF THE TRIAL COURT
SUFFOLK SUPERIOR COURT
CIVIL ACTION NO. 20-2127

DARYL CREESE,

Plaintiff

vs.

PABLO ALVAREZ RODRIGUEZ a/k/a
EFRAIN RODRIGUEZ a/k/a "PAPO",

Defendant

**~~[PROPOSED]~~ ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY
INJUNCTION PURSUANT TO M.G.L. c. 139, § 19**

Upon consideration of Plaintiff's Motion for Preliminary Injunction, the parties' briefing, and oral argument, this Court finds that Plaintiff has demonstrated a need for and entitlement to preliminary injunctive relief in this case.

Section 19 of Chapter 139 of the General Laws, most recently amended by St. 1995, c. 179, § 13, authorizes equitable relief in furtherance of the purpose of the statute, including a preliminary and permanent injunction granting the lessor or owner immediate possession of the leased premises and ordering an offending tenant to vacate the premises forthwith. M.G.L. c. 139, s. 19; *New Bedford Housing Authority v. Olan*, 435 Mass. 364, 369 (2001). If a landlord can demonstrate that it will likely prevail on its underlying claim to void the lease or tenancy on account of a defendant tenant's criminal conduct identified in the statute, that the defendant's continued presence on the rental premises pending trial on the merits poses a risk of irreparable harm, and that risk of irreparable harm outweighs the harm that the tenant would

10/1/2020
Melinda J. [Signature]
Assistant Clerk

suffer as a result of the injunction, the judge may issue a preliminary injunction against the offending tenant. *See Olan*, 435 Mass. at 375-376 (Sosman, J. Concurring Opinion).

As amended in 1985, § 19 provides, in pertinent part, that “[i]f a tenant or occupant of a building or tenement, under a lawful title, uses such premises or any part thereof for the purposes of ... the illegal keeping, sale or manufacture of controlled substances, as defined in [G. L. c. 94C, §1,... such use or conduct shall, at the election of the lessor or owner, annul and make void the lease.” *See* St. 1985, c. 421, § 3. Section 19 of Chapter 139 of the General Laws, most recently amended by St. 1995, c. 179, § 13, is part of a comprehensive legislative scheme that provides criminal penalties for certain nuisances and criminal acts, as well as “equitable relief in furtherance of the purpose of the statute.” *Olan*, 435 Mass. at 369. As part of this comprehensive scheme, the Legislature provided the additional remedy of a private right of action to evict a tenant who violates the statute, and upon a finding of a violation, grants the lessor or owner immediate possession. *See ibid.*; G. L. c. 139, § 19. A tenancy may be terminated for the reasons provided in s. 19 even in the absence of any provision in the lease to terminate for such reasons. *See ibid.*¹ Section 19, as amended, confers equitable jurisdiction on the District, Superior, and Housing Courts to effectuate the legislative purpose of permitting a lessor or owner to expeditiously recover possession of premises occupied by a tenant who commits one of the specified common nuisances or other criminal acts. *Olan*, 435 Mass. at 369. As indicated above, Section 19 authorizes equitable relief in furtherance of the purpose of the statute, including a preliminary and permanent injunction granting the lessor or owner immediate possession of the leased premises and ordering an offending tenant to vacate the premises forthwith. *Id.*

¹ Before the operative amendment a landlord was permitted to “make immediate entry without legal process.” *Olan*, 435 Mass. at 369. The 1995 amendment curtailed self-help evictions but granted a private remedy even in those situations where there was no lease provision that barred the conduct. *See ibid.*; St. 1995, c. 179, § 13.

This Court finds that Plaintiff Daryl Creese is the owner and landlord of the real property located at 17 Ellis Street, Hyde Park, Massachusetts (hereinafter the "Property"), and that the Defendant, Pablo Alvarez Rodriguez a/k/a Efrain Rodriguez a/k/a "Papo" (hereinafter "Papo"), is a tenant at will of the Second Floor and Garage of the Property.

This Court finds and rules that Plaintiff has demonstrated a reasonable likelihood of success on the merits of his claim to void the tenancy at will for cause and recover possession of the Property, pursuant to MGL c. 139, s. 19(h), given that Defendant Pablo Alvarez Rodriguez a/k/a Efrain Rodriguez a/k/a "Papo" was involved in a criminal drug trafficking conspiracy involving, among other things, the illegal manufacturing and storage of controlled substances including fentanyl, heroin, and/or cocaine on the rental premises subject to this eviction proceeding. This finding is sufficiently supported by the exhibits presented in Plaintiff's Motion for Preliminary Injunction including: the federal criminal complaint and supporting affidavit of the DEA Task Force Officer involved in the investigation detailing the nature of the drug trafficking conspiracy and Papo's communications with co-conspirators regarding mixing, pressing, packaging, and storage of drugs; a search warrant and supporting affidavit of the DEA Task Force Officer detailing the basis for the belief that Papo manufactured and stored controlled substances on the rental premises; the search warrant return and inventory of items seized during the search of the premises by the DEA Task Force indicating that Papo in fact kept various powders, cutting agents, mixed and packaged drugs, drug manufacturing and packaging equipment and supplies, cash, drug ledgers, and other tools and instrumentalities on the rental premises; the arrest warrant for the Defendant; and, the federal grand jury indictment of the Defendant and co-conspirators on drug trafficking conspiracy charges.

I also find that the eviction of Papo is not prohibited by federal or state eviction moratoria laws because the evidence shows that Papo was engaged in criminal activity on the premises which endangers the health, safety, and welfare of others including members of the general public.

I also find that there is a potential for irreparable harm to the Plaintiff and his Property which may be caused by the maintenance of illicit drug trafficking activities on the Property, the lack of security of the building stemming from the damages to the doors of the Second Floor apartment, the disarray of personal property of the tenant and occupants in the Second Floor apartment, and/or the source of the noxious odors emanating from the Second Floor apartment. The risk of irreparable harm to the Plaintiff outweighs any similar risk of harm to Papo – who will not be rendered homeless in the event of the allowance of the requested injunctive relief – since he is presently detained in federal custody pending his criminal trial and Papo maintains a primary residence at a place other than the apartment 17 Ellis Street.

Accordingly, it is hereby ORDERED that:

1. ~~A preliminary injunction is hereby entered, pursuant to M.G.L. c. 139, s. 19, enjoining and restraining Pablo Alvarez Rodriguez a/k/a Efrain Rodriguez a/k/a "Papo", as well as his family members, household members, guests and invitees, from entering or trespassing on the Property located at 17 Ellis Street, Hyde Park, Massachusetts;~~
2. ~~the tenancy of Pablo Alvarez Rodriguez a/k/a Efrain Rodriguez a/k/a "Papo" of the Second Floor and Garage of the Property is void;~~
3. ~~the federal and state eviction moratoria laws are inapplicable to this eviction;~~
4. ~~Plaintiff is entitled to a judgment for possession, pursuant to M.G.L. c. 139, s. 19, awarding immediate possession of the Second Floor and Garage of the Property to the Plaintiff;~~
5. ~~Plaintiff is entitled to the immediate issuance of an execution on the judgment for possession, pursuant to M.G.L. c. 139, s. 19, in favor of the Plaintiff;~~

6. Plaintiff is entitled to enter the Second Floor apartment and Garage, to change the locks to the Property, and to maintain all keys; and,
7. Plaintiff is entitled to remove any and all personal property of the Defendants from the Property and place those belongings in storage for the account of Pablo Alvarez Rodriguez a/k/a Efrain Rodriguez a/k/a "Papo."

*By the court,
I ordered
Locks*

Respectfully submitted,
The Plaintiff, Daryl Creese
By His Attorney,

Dated: September 21, 2020

9/21/2020

[Signature]

*attest:
Melinda J. Guadagnoli*

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