

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

HOUSING COURT DEPARTMENT  
CITY OF BOSTON DIVISION  
SUMMARY PROCESS  
NO. 11H84SP000071

**PD REALTY, LLC,**  
Plaintiff

VS

**BRENDA AZEVEDO and  
ALFREDO DOMENECH,**  
Defendants

**ORDER**

This matter was before the Court on January 27, 2011 with respect to the Defendants' Motion to Dismiss or, in the alternative, for Summary Judgment, based on the Plaintiff's failure to properly terminate the Defendants' tenancy in the basement unit at 58 Adams Street in the Dorchester neighborhood of Boston (the "Premises"). It is the position of the Defendants that they are entitled to the benefit of the Protecting Tenants at Foreclosure Act (the "Act"), a federal statute imposing certain obligations on property owners who purchase certain properties at foreclosure. After an evidentiary hearing, for the reasons set forth herein, the Defendants' Motion to Dismiss is **ALLOWED**.

There is very little dispute as to the facts in this case.

Evelyn Alvarez, the former owner occupant of the property at 58 Adams Street, testified that she owned the property from 2000 until it was foreclosed on by the mortgagee. In 2007, Alfredo Domenech, who is related to Ms. Alvarez' brother, rented a room at 58 Adams Street from Ms. Alvarez. After a year, Mr. Domenech asked Ms. Alvarez if he could move to the

Premises; Ms. Alvarez acquiesced to the request and accepted rent from the Defendants in exchange for their occupancy.

Brenda Azevedo testified that she and Mr. Domenech have lived at the Premises since January 2009 and, until August 2010, paid rent to Ms. Alvarez in the amount of \$740.00 per month. Ms. Alvarez testified to a different amount, but the Court accepts the testimony of Ms. Azevedo. The Defendants occupied the Premises when the Plaintiff acquired the property.

The Plaintiff is the present owner of the property at 58 Adams Street, which was purchased at a foreclosure auction in the summer of 2010. Domingios Pina is the manager of PD Realty, LLC. Sometime after the Plaintiff acquired title to the property, Mr. Pina went to the City of Boston Building Department and, as a result the information he obtained there, he believes the property to be a three-family dwelling. (See Exhibit "1"). He testified that there were no certificates of occupancy for the Premises. For the purposes of this motion, the Court will accept, without finding, that no such certificate exists.

The Premises are at least partially below grade and consist of two "rooms" -- one containing a sink, cabinets and two windows<sup>1</sup> and the other containing a closet and windows -- as well as a bathroom with a toilet, shower and sink. Other than the heat from the pipes that run across the basement ceiling, there is no source of heat at the Premises; there is no stove;<sup>2</sup> there is no emergency means of egress; the only electrical outlet is in the kitchen and the exterior walls are foundation walls. The utilities that services the basement are not separately metered. The

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<sup>1</sup>The "room" also contains a microwave and cube refrigerator, but those items are personal property and not part of the space.

<sup>2</sup>Prior to the Plaintiff's ownership, there was a stove in the hall outside the Premises which the Defendants used.

Defendants use space heaters to heat the Premises.

There was no evidence, testimonial or otherwise, that the City of Boston Inspectional Services Department has condemned the Premises or ordered the Premises to be vacated.

The Plaintiff is concerned for the health, safety and well being of the Defendants and other residents at 58 Adams Street resulting from the Defendants' use of space heaters.

The Defendants maintain that under the Act they are *bona fide* tenants residing at the property are entitled to a ninety day notice terminating their tenancy. The Plaintiff acknowledges that he did not provide the Defendants with a ninety day notice and contends that the Defendants are not protected by the Act because they occupy an illegal unit.

The Act provides, at section 702, in relevant part

(a) In general. In the case of any foreclosure on . . . any dwelling or residential real property after [May 20, 2009], any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to

(1) the provision, by such successor in interest of a notice to vacate to any *bona fide* tenant at least 90 days before the effective date of such notice; and

(2) the rights of any *bona fide* tenant, as of the date of such notice of foreclosure

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(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1), except that nothing under this section shall affect the requirements for termination of any Federal or State subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) *Bona fide* lease or tenancy. For purposes of this section, a lease or tenancy shall be considered *bona fide* only if

(1) the mortgagor or the child, spouse, or parent of the mortgagor under the

contract is not the tenant;

(2) the lease or tenancy was the result of an arms-length transaction; and

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy.


The tenets of statutory interpretation require that where a statutory term is undefined, the Legislature should be supposed to have adopted the common meaning of the word. *First Data Corp. v. State Tax Comm'n*, 371 Mass. 444, 447 (1976). The Act does not define the word "tenant." In common parlance a residential tenant is one who occupies a house or an apartment belonging to another person for a period of time. Accepting this common meaning, these Defendants are tenants at the Premises.

There is no language in the Act which provides that the protected tenants must be tenants in residential units for which a certificate of occupancy has issued and U.S. Supreme Court has instructed that it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion of specific words or language. *Bates v. United States*, 522 U.S. 23, 29-30 (1997). This Court will not imply a requirement not set forth in the statute.

Finally, there is no doubt that at the time of the foreclosure the Defendants were not the mortgagor or the child, spouse, or parent of the mortgagor or that the Defendants' tenancy was the result of an arms length transaction which commenced in January 2009. There was no evidence that the rent paid by the Defendants to the former owner, \$740.00 per month, is substantially below the fair market rent.

Based thereupon, the Court finds that the Defendants are *bona fide* tenants, entitled to a ninety day notice terminating their tenancy and the Defendants' Motion to Dismiss is **ALLOWED**.

**SO ORDERED.**



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**MARYLOU MUIRHEAD  
ASSOCIATE JUSTICE**

February 3, 2011

cc: Lee Goldstein, Esquire  
Stuart T. Schrier, Esquire