

MHOA Mock Trial Script

October 19, 2022

The Cast:

Judge: Judge Michaud

Town Counsel: Tom Carbone

Inspector (Jennifer Hall): Amy Ewing

Occupant (Betty Smith): Rae Dick

Property Owner (Roberta Evans): Joanne Belanger

Defense Counsel: Amy Donovan Palmer

Court Officer: Coral Hope

Narrator (also leads discussion after the trial): Ruth Clay

Off: All rise, Judge Joseph Michaud presiding

Judge: Be seated. Counselor, call your first witness

TC: I call Jennifer Hall

Off: Do you swear the testimony you are about to give is the whole truth?

Insp: Yes.

TC: Good morning inspector, please state your name and occupation for the court.

Insp: My Name is Jennifer Hall and I work for the town BOH.

TC: And how long have you been employed by the BOH?

Insp: 6 years.

TC: Please explain your responsibilities.

Insp: I conduct code enforcement inspections in various facilities to ensure they are in compliance with the State Sanitary Code.

TC: Would housing inspections fall within your responsibilities?

Insp: Yes.

TC: So, you have the authority from the BOH to conduct inspections, is that correct?

Insp: Yes.

TC: Have you been inspecting homes for the 6 years you have worked for the BOH?

Insp: Yes.

TC: Please explain how you would become involved in conducting a housing inspection.

Insp: The BOH would receive a complaint about poor living conditions and assign me to contact the occupant of the housing unit to schedule an inspection. Once the inspection is completed, I draft an Order To Correct and send to the property owner.

TC: The order always goes to the property owner?

Insp: No, it goes to the person responsible for correcting the violations.

TC: How do you determine who is responsible?

Insp: The code assigns responsibility.

TC: By "the code" are you referring to 105 CMR 410.000: Minimum Standards Of Fitness For Human Habitation (State Sanitary Code, Chapter II)?

Insp: Yes, the housing code.

TC: So you used the housing code to determine violations when you inspected the home?

Insp: Yes.

TC: Please tell the court what you found.

Insp: I found there was no hot water, two of the burners on the electric stove did not work, there were several broken windows, no heat, the rear porch had collapsed making it unusable, and there was old furniture and an old pickup truck in the back yard.

TC: And these are serious violations, correct?

Insp: They are.

TC: Ok, please explain the process after you complete the inspection.

Insp: I complete an Order to Correct Violations, which includes the appropriate code citation and timeframe for repair of each violation. Then I send the Order and the Inspection Report to the owner by Constable and copy the occupant, sent by first class mail.

TC: Then what happens.

Insp: When I receive notice the order was served, I make a note to conduct a re-inspection after the shortest timeframe. I'll continue re-inspections until all repairs are completed.

TC: When you say you receive notice the order was served, do you mean legal service was given to the responsible party?

Insp: Yes.

TC: Is this the proof of service from the constable??

Insp: Yes.

TC: Your Honor, I would like to enter the Constable's confirmation of service into evidence.

Judge: So, ordered.

TC: Inspector, I'm handing you two documents signed by you. Do you recognize these documents?

Insp: Yes, they are the inspection report and order I sent to the defendant.

TC: Your Honor, I would like to enter the Inspection Report and Order To Correct into evidence.

Judge: So, ordered.

TC: In this case, you determined the property owner was the responsibility, correct?

Insp: Yes.

TC: How do you make sure you have the correct owner of the property?

Insp: Our office will research the property owner by searching the registry of deeds to confirm who the current owner is.

TC: And the search in the registry of deeds verified Ms. Evans is the current owner of 41 Elm St. in Oldtown?

Insp: Yes.

TC: Please look at this document and tell me if you recognize it.

Insp: I do, it's a copy of the deed for 41 Elm St., showing Ms. Evans is the owner of record.

TC: Your Honor, I would like to enter this copy of the deed into evidence.

Judge: So ordered.

TC: To get back to your explanation of your actions in managing a case, what happens if repairs are not made?

Insp: If they are showing progress, I'll give them more time. If not, I file a complaint application in Housing Court and explain the situation to the Clerk Magistrate during the initial hearing. If we can agree to a plan to complete the work, I'll re-inspect again. If there is no way to agree, we, the town, ask the court to issue a complaint and move to a trial.

TC: Thank you, is the reason we are in court to today because no agreement could be reached, and the repairs were not completed?

Insp: Yes.

TC: Thank you inspector, no further questions.

Judge: Counselor, your witness.

Atty: Thank you your Honor. Good morning inspector. You've been working for the BOH for the past 6 years, correct?

Insp: Yes.

Atty: Would you tell me your qualifications to conduct housing inspections?

Insp: Qualifications?

Atty: Yes, for example, did you go to college?

Insp: Yes.

Atty: Did you graduate and if so, what was your degree in?

Insp: I graduated with a B.A. in Public Health.

Atty: So, you learned how to conduct housing inspections in college?

Insp: No.

Atty: Do you hold any licenses related to your work?

Insp: Yes.

Atty: What are they?

Insp: I am a Registered Sanitarian, Title 5 Soil Evaluator and System Inspector, and a Code Enforcement Lead Paint Determinator.

Atty: Impressive. Which of those licenses taught you how to conduct housing inspections?

Insp: Well, none of them.

Atty: Really? Were you somehow trained to do inspections, or did you simply learn on the job?

Insp: I was trained by my boss, who has over 25 years of experience, and I took a class.

Atty: You took a class? What class?

Insp: It's called Mass PHIT Housing. It is 3 days of classroom instruction, followed by 5 field inspections with a Master Trainer. The class teaches you how to interpret the code, conduct inspections, write orders, condemn homes, and court procedures.

Atty: This is a college credit course?

Insp: No, I received a certificate of completion.

Atty: Who taught the course?

Insp: There are people from the Department of Public Health, Attorney General's office, Housing Court, and health agents from local communities.

Atty: And the certificate means you can do housing inspections?

TC: Objection your Honor, the inspector has answered the question and we will stipulate as to the limitations of training available.

Judge: Sustained.

Atty: Inspector, does the class teach you how to interpret rental agreements?

Insp: I'm not sure I understand the question.

Atty: I mean, when you conduct an inspection, do you review the lease to see who is responsible for heat, water, electricity, maintenance, and assure it is legally valid?

Insp: No, the housing code identifies those responsibilities.

Atty: But what if there is an agreement the tenant accepts certain terms, like maintaining the home? Wouldn't you cite them for any violations?

Insp: If the code provides for it, yes, I will cite the tenant.

Atty: Well then why did you cite my client for damages when she had an agreement that the tenant would maintain the home?

Insp: Because they were areas where the owner is responsible for, like providing hot water, repairing the porch, and providing heat.

Atty: Even if the tenant broke those things, you cite the owner? Does that seem fair?

Insp: I could only cite the tenant if I had proof they were responsible.

Atty: What kind of proof would you need?

Insp: If I saw them damage the equipment or they admitted to me they did. That would be the only way I could cite the tenant.

Atty: Even if they had an agreement with the owner?

Insp: Yes, the housing code determines responsibility and under what conditions.

Atty: And you think that is fair?

TC: Objection, the inspector has already explained the process in determining responsibility.

Judge: Sustained.

Atty: Did you have any conversations with my client prior to filing a complaint in court?

Insp: Yes, I had called her to ask when she would start working on the repairs.

Atty: And what did she tell you?

Insp: She explained she had an agreement with the tenant's husband to maintain the home when they moved in several years ago.

Atty: How did you respond?

Insp: I explained the code held her responsible.

Atty: Did you ask to see the agreement?

Insp: No
Atty: Why not?
Insp: Because the code assigns responsibility for maintenance.
Atty: So even though she tried to explain the circumstances to you, you didn't bother to review the agreement?
TC: Objection, asked and answered your Honor.
Judge: Sustained.
Atty: I have no more questions for the inspector.

Judge: Call your next witness.
TC: I call Ms. Betty Smith.
Off: Do you swear the testimony you are about to give is the whole truth?
Occ: Yes.
TC: Ms. Smith please state your name and address for the court.
Occ: My name is Betty Smith and I live at 41 Elm St., Oldtown.
TC: How long have you lived there?
Occ: About 27 years.
TC: Do you live alone?
Occ: Yes.
TC: Have you always lived there alone?
Occ: No, I lived with my husband until he passed 2 years ago.
TC: I'm sorry for your loss Ms. Smith.
Occ: Thank you.
TC: Do you recognize the defendant, Ms. Evans?
Occ: Yes, she owns the house I live in.
TC: Since you have lived there, has she always been the owner, or did someone else own the house when you moved in?
Occ: She was the owner when we moved in, but I don't know if someone else ever owned it.
TC: Ok, just to be clear, Ms. Evans is the only person you have paid rent to correct?
Occ: Yes.
TC: Ok, thank you. If you needed something repaired in your home, who did them?
Occ: My husband until he was too sick.
TC: How long had he been sick before he passed?
Occ: Oh, about 3 years.
TC: So, if once he became sick if something needed repair, who did the work?
Occ: No one.
TC: Nobody came to fix anything?
Occ: No.
TC: Did you ever call Ms. Evans about having repairs made?
Occ: Yes, but she said it was up to us.
TC: So she never made any repairs?
Occ: No.
TC: Did she say why she wouldn't do the repairs? I mean in addition to saying it's your responsibility.
Occ: Not that I remember. After the first call, she never called me back.
TC: Is the reason no repairs have been made in the past few because your husband was unable to do the work and Ms. Evans would not?
Occ: Well yes.
TC: Thank you Ms. Smith, no further questions.
Judge: Counselor, your witness.

Atty: Thank you your Honor. Good morning Ms. Smith I just have a couple of questions for you. When you first moved in, do you remember Ms. Evans telling you that you and your husband were responsible for maintaining the home?

Occ: I don't remember meeting her when we first moved in. My husband worked out the details with her.

Atty: Did your husband explain you were both responsible for repairs?

Occ: Not that I remember.

Atty: Ok, you said your husband fixed everything before he became ill, is that correct?

Occ: Yes.

Atty: Did you ever ask him why he was making any repairs that were needed.

Occ: No.

Atty: You weren't the least bit curious?

Occ: No, my husband was a very handy man and liked to tinker around the house.

Atty: And he never told you why he was doing all the work?

TC: Objection your Honor, Ms. Smith has already explained she wasn't aware of any alleged agreements.

Judge: Sustained.

Atty: Withdrawn, I have no further questions.

Judge: Counselor, do you wish to call another witness?

TC: No, your Honor, prosecution rests.

Judge: Counselor, call your first witness.

Atty: Thank you your Honor. I have only one witness to call, my client Roberta Evans.

Off: Do you swear the testimony you are about to give is the truth?

Own: Yes.

Atty: Please state your name for the court.

Own: Roberta Evans.

Atty: Ms. Evans, do you own the property at 41 Elm St., in Oldtown?

Own: Yes.

Atty: How long have you owner this property?

Own: About 50 years.

Atty: Did you rent the home to Mr. and Ms. Smith?

Own: I did.

Atty: Before the Smith's, had you rented the home before?

Own: Yes twice.

Atty: When you rented to others, who was responsible for maintaining the home?

Own: The tenants.

Atty: This was the agreement each time you rented the home?

Own: Yes, I'd charge less rent in exchange for them maintaining it.

Atty: And you had the same agreement with the Smiths?

Own: Yes.

Atty: Did you have this agreement in writing?

Own: No, I never had it in writing. There was never any reason to.

Atty: You didn't think it was necessary?

Own: No, I never had any problems with my tenants, and they didn't complain.

Atty: So, Mr. Smith didn't complain when you explained the arrangement with him?

Own: No, he always fixed whatever needed doing.

Atty: And you charged less rent because of that?

Own: Yes.

Atty: Do you remember Ms. Smith calling you about repairs needed at the home?

Own: Yes, I told her it was her responsibility.

Atty: You knew her husband had passed?

Own: Yes, and I'm sorry for that but we had a deal. I figured she'd find someone to help her.

Atty: I want to show you a copy of an Order to Correct from the town ordering you to make certain repairs. Do you recognize it?

Own: Yes.

Atty: Did you ever try to make those repairs?

Own: No.

Atty: No? Why not?

Own: I knew it wasn't up to me because of our agreement.

Atty: Did you contact the Board of Health about the order?

Own: No, I figured they would realize it was a mistake.

Atty: Then you received a notice to go to court.

Own: Yes.

Atty: What happened at the hearing?

Own: I explained the agreement to the clerk, but they said they didn't agree with me. I said that didn't matter because I had my rights as the owner. The clerk said this could end with a trial and I said that was fine with me.

Atty: And that's how we ended up here today?

Own: Yes.

Atty: Is there anything else you'd like to say.

Own: Just that I had had these agreements with tenants for almost 50 years and never had any problems. I charged less rent in exchange and thought it was a good deal for both sides.

Atty: Thank you Ms. Evans, no more questions.

Judge: Your witness Counselor.

TC: Thank you your Honor. Ms. Evans, you said you have always had the tenants maintain the property, correct?

Own: Yes.

TC: When you received the order from the Board of Health, weren't you curious since they ordered you to make the repairs rather than Ms. Smith? I mean the town cited the regulations that clearly held you responsible.

Own: Those regulations don't give the town the right to tell me how to take care of my house.

TC: Well Ms. Evans, the state laws and regulations do give them the right.

Own: I had an agreement with the Smiths, and they kept their end of the bargain until he got sick. That didn't make it my fault. The only reason the town found anything wrong is because they stopped taking care of the house.

TC: Would you be willing to change your mind, knowing the BOH has the authority and fix the house?

Own: No, we had an agreement. I kept up my end.

TC: I have no more questions.

Atty: The defense rests.

Judge: We'll move on to closing arguments. Counsel for the plaintiff proceed.

TC: Your Honor, as you have heard, the Board of Health responded to a complaint, conducted an inspection in accordance with the State Sanitary Code, 105 CMR 410.000, and ordered the property owner to make the necessary repairs listed in the inspection report. All the documents were accurate in their completion and served in accordance with the regulations to Ms. Evans, the property owner. Today's testimony has revealed Ms. Evans received the order, refused to obey the order, and wanted a trial to plead her case, which is simply that she owns the property and has always rented the home in the same manner. She could not produce a copy of the agreement. Ms. Evans willfully violated the State Sanitary Code and we ask you find in our favor. Thank you.

Atty: Your Honor, my client did not willfully violate the State Sanitary Code. She is an honest person who believed she was helping people by renting her home for less than the typical market rent. She never coerced or lied to her tenants, stating clearly, she would reduce the rent provided they maintained the home. Ms. Evans thought this was the only way she would be able to keep the home since she cannot afford to make the repairs ordered by the Board of Health. I ask you recognize the agreement with the Smith's was a standard practice used by my client and she never raised the rent on any of her tenants because of these agreements. I ask you find in favor of my client. Thank you.

