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Manufactured Housing Dispute Resolution Program
•Consumer Protection Division•
1-866-924-6458

NOTICE OF VIOLATION

Date: January 20, 2009

Complainant: Terry Thacker
[REDACTED]

Respondent: Lakeside Villa Mobile Home Park
Attn: Dennis Daly
c/o John Woodring
[REDACTED]

RE: Complaint # 327765 – Terry Thacker

Pursuant to RCW 59.30.040, the Manufactured Housing Dispute Resolution Program has found there to be a VIOLATION of the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA) with regard to the above referenced complaint. This notice is based upon the results of an investigation pursuant to RCW 59.30.040(3) and the information gathered to date.

Explanation of Violation

- (1) *RCW 59.20.020 -- Failure to Meet the Obligation of Good Faith*
 - (a) The issuance of three 15-day Notices to Comply or Vacate for Failure to Comply With the Material Terms of the Rental Agreement or Park Rules fails to meet the obligation of good faith because no material term of the rental agreement was violated.
 - (b) The issuance of one 15-day Notice to Comply or Vacate for Failure to Comply With the Material Terms of the Rental Agreement or Park Rules fails to meet the obligation of good faith because no enforceable rule was violated.
 - (c) The failure to issue Notices for Violations of Park Rules under RCW 59.20.080(1)(a) fails to meet the obligation of good faith because it avoids the requirement of mediation under RCW 59.20.080(2).

Introduction

The Complainant, Mr. Terry Thacker, complained that Mr. Dennis Daly, landlord of Lakeside Villa MHP, attempted to force Mr. Thacker and his wife to remove their three cats from their home by issuing "Notices to Comply or Vacate for Failure to Comply with the Material Terms of the Rental Agreement or Park Rules." Mr. Daly intended to ultimately enforce these Notices by filing an Unlawful Detainer action against Mr. and Mrs. Terry Thacker. The Complainant filed a request for dispute resolution with the Manufactured Housing Dispute Resolution Program (MHDRP) on November 3, 2008. The MHDRP has now conducted an investigation and provides the following Summary of Investigation and Explanation of Violation.

Summary of Investigation

1. Parties

- a. The Complainant is a tenant in the Lakeside Villa Mobile Home Park located in Olympia, Washington.
- b. The Complainant owns his manufactured home and has rented [REDACTED] during all times relevant to this Notice.
- c. Mr. Dennis Daly is the registered owner of Lakeside Villa Mobile Home Park and purchased it on or about July 30, 2002.
- d. Mr. Thacker discussed the substance of this complaint with Mr. Daly prior to filing a complaint with the MHDRP.

2. Rental Agreements

- a. Mr. and Mrs. Thacker signed a rental agreement in 1992 with Lakeside Villa, then owned by Mr. Bruce Lambert.
- b. Mr. and Mrs. Thacker signed a new rental agreement with Lakeside Villa Mobile Home Park on April 1, 2007.
- c. Paragraph 10 of the April 1, 2007 Rental Agreement concerns Pets and states: "Tenant agrees to have no animals or pets of any kind on the Lot, or in the Community, other than the following." This statement has a handwritten insertion stating "2 indoor dogs (Pookie Pomeranian) (Tiki Chihuahua).
- d. Paragraph 11 of the April 1, 2007 Rental Agreement lists tenant responsibilities. Among these responsibilities is compliance with the Park Rules and Regulations.
- e. Additionally, an Addendum "E" Pet Agreement ("Pet Addendum") was signed by Mr. and Mrs. Thacker. It was accepted by Lakeside Villa on April 1, 2007. This Pet Addendum states that tenants are allowed "one indoor, small to medium sized, DOG or Cat," but the Addendum lists two dogs, their breed type, pet license number, and names and was presumably accepted by Lakeside Villa.
- f. The Lakeside Villa Park Rules address pets in Rule No. 25–28, though only Rule 25 and Rule 28 are relevant. Rule 25 requires each tenant who anticipates having a pet to ask the Manager for the Pet Addendum and each pet must have prior authorization before being allowed in the park. Rule 28 states that a \$50 fee will be charged to a tenant when the management finds a non-authorized pet. The rule states that the unauthorized pet, "if not accepted into Lakeside Villa" would have to be removed, subject to a further fee of \$50 if the pet is not removed within 5 days of notice to do so.

3. Circumstances of the Signing of the April 1, 2007 Rental Agreement.

- a. Mr. Thacker, in a sworn declaration, states that Mr. Daly desired new rental agreements to be signed by the Thackers.

- b. On April 1, as the Thackers were signing the lease, Mr. Thacker listed only the two dogs. Mr. Thacker told Ms. Randa Mikel, Park Manager, that he and his wife also had three cats.
 - c. Ms. Mikel told him not to worry about the cats, and both Ms. Mikel and Mr. Daly informed Mr. Thacker that once the cats died, they could not be replaced. Mr. Thacker and his wife agreed to this.
- 4. Notices to Comply or Vacate
 - a. Mr. and Mrs. Thacker received Notices to Comply or Vacate for Failure to Comply with the Material Terms of the Rental Agreement or Park Rules on November 21, December 8, and December 24, 2008.
 - b. The Notice issued on November 21, 2008 lists violations of "Lease agreement Section 10 & 11," "Pet agreement Addendum E," and "Rule 25 & 28 of Community Rules and Regulations."
 - c. The Notices issued on December 8 and December 24 list only violations of Section 10 & 11 of the Lease Agreement and Addendum E.
 - d. These Notices do not allege that any of Mr. and Mrs. Thackers' animals were causing any harm or damage to the park property or any other tenant's property. These Notices do not allege that the Thackers' cats were affecting the convenience, health, safety, or welfare of the residents.
- 5. Pets
 - a. Mr. and Mrs. Thacker own two small dogs, Pookie and Tiki.
 - b. Mr. and Mrs. Thacker, until recently, owned three cats, aged 9, 12, and 15 years of age.
 - c. Prior to the first Notice issued by Mr. Daly, the cats were indoor/outdoor cats.
 - d. After the Thackers received the first Notice from Mr. Daly, the cats remained indoor only.
 - e. The cats caused no damage to any property owned by Mr. Daly or any other tenant of Lakeside Villa.
 - f. The Thackers owned these pets and had them in the park for their entire lives (minimum of nine years).
 - g. The Thackers removed all cats from their home on or before January 8, 2009.
- 6. Homeowner's Association
 - a. Mr. Thacker is the President of the Lakeside Villa Homeowner's Association.

Explanation of Violation

The Attorney General hereby finds as follows:

- 1. RCW 59.20.020 states that "every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement."
- 2. Good faith means the following: "A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage." Black's Law Dictionary 713 (8th ed. 2004). Good faith also "excludes a variety of types of conduct characterized as involving bad faith because it violates community standards of decency, fairness or reasonableness." Restatement (Second) of Contracts § 205 cmt. a (1979).
- 3. *Violation 1(a)*

- a. It is a condition precedent to the filing of an unlawful detainer action that the tenant be served with three or more 15-Day Notices to Comply or Vacate For Failure to Comply with the Material Terms of the Rental Agreement or Park Rules ("Notice to Comply") in a 12 month period.
- b. A "material term" is "a contractual provision dealing with a significant issue such as subject matter, price, payment, quantity, quality, duration, or the work to be done." Black's Law Dictionary 999 (8th ed. 2004). A "material breach" is one that substantially defeats the purpose of the contract, or relates to an essential element of the contract, and deprives the injured party of a benefit that he or she reasonably expected." *Washington Pattern Jury Instructions: Civil* 302.03, at 216 (2005) (WPI). *See also Cartozian Sons, Inc. v. Ostruske-Murphy, Inc.*, 64 Wn.2d 1, 6, 390 P.2d 548 (1964) (A breach is material if it amounts to "a substantial or total failure of consideration."). "Material" means, among other things, "of such a nature that knowledge of the item would affect a person's decision making; significant; essential." Black's Law Dictionary 998 (8th ed. 2004).
- c. The possession of two cats, whether indoor or outdoor, (1) when the tenants are permitted to own two small dogs, (2) when other tenants are permitted to own cats, (3) when the tenant owns the manufactured home, and (4) when pets are not banned from the manufactured home park is not a material breach of a rental agreement stating that "Tenant agrees to have no animals or pets of any kind on the Lot, or in the Community, other than the following: <"two indoor dogs" handwritten in>." Further, the evidence of the circumstances of the signing of the lease, specifically, that Ms. Mikel informed Mr. Thacker that he should sign and not worry about the cats, demonstrates a lack of good faith in the enforcement of the lease terms because the management knew about the cats for almost a year before taking issue with them.
- d. Finally, Mr. Daly purchased the Park in 2002. The Thackers youngest cat is nine years old. Therefore, the Thackers had possession of all the cats before Mr. Daly purchased the park. Additionally, Mr. Daly, for nearly six years, was not bothered by the cats. Actions taken forcing the removal of pets that tenants have owned prior to the current owner's purchase of the property violate community standards of decency, fairness, and reasonableness.
- e. The issuance of one or more Notices to Comply requiring removal of the Thackers' cats from their home when possession of their cats is not a material breach of the terms of their rental agreement fails to meet the obligation of good faith required in RCW 59.20.020 because it, among other things, violates community standards of decency, fairness and reasonableness.

4. *Violation 1(b)*

- a. The terms of the relevant rules of Lakeside Villa are described in Paragraph 2(f) above.
- b. A rule is enforceable if its purpose is to "promote the convenience, health, safety or welfare of the residents, protect and preserve the premises from abusive use, or make a fair distribution of services and facilities made available for the tenants generally." RCW 59.20.045(1). Rules must also be enforced fairly and evenly and must not be for the purpose of discrimination or retaliation. RCW 59.20.045(3),(5).
- c. First, Mr. and Mrs. Thacker did not violate the terms of Rule 25. Rule 25 applies when a tenant anticipates obtaining a pet, but all of the Thackers' cats had been at Lakeside Villa before Mr. Daly purchased it.

- d. Second, Rule 28 restricts tenants from having pets “not authorized” on the Addendum “E” Pet Agreement, however, the rule does not describe a process or criteria for authorizing pets. Moreover, the Pet Addendum itself is self-contradictory, ambiguous, and not, in fact, enforced because it purports to limit a household to one dog or cat, although it was accepted despite the Thackers’ inclusion of two small dogs on the agreement. Therefore, Rule 28, as applied to the Thacker’s’ three cats is unenforceable when: (1) those pets have not caused any harm to other tenants or property, (2) the pets are not dangerous, (3) the pets provide companionship to the owner, (4) the manager informed the Thackers “not to worry about the cats,” and (5) the pets have been in the home for at least six years without cause for concern by the current management.
- e. The issuance of multiple Notices to Comply requiring removal of the Thackers’ cats from their home fails to meet the obligation of good faith because the Thackers did not violate Rule 25 and Rule 28 is unenforceable regarding the Thackers’ cats under RCW 59.20.045. This violates the requirement of good faith in the enforcement of remedies because the Respondent attempted to implement an unenforceable rule thereby coercing the tenants into removing their cats from their home. This act fails to indicate a state of mind consisting of observing reasonable commercial standards of fair dealing. It also indicates the intent to seek an unconscionable advantage. Finally, this act fails to meet community standards of decency, fairness and reasonableness because the Thackers had the cats for years without problems, have not breached any other aspect of their lease, pay their rent on time, do not engage in criminal or drug-related activity, and have not caused harm to any property owned by Lakeside Villa or other tenants.

5. *Violation 1(c)*

- a. RCW 59.20.080(1)(a) provides for the termination of a tenant’s rental agreement for “substantial violation, or repeated or periodic violations of the rules of the mobile home park as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant or for violation of the tenant’s duties as provided in RCW 59.20.140.” This subsection also requires that the “tenant shall be given written notice to cease the rule violation immediately.” RCW 59.20.080(1)(a).
- b. Further, RCW 59.20.080(2) requires mediation efforts to take place with an independent third party within five (5) days of notice being given under RCW 59.20.080(1)(a).
- c. It is a further violation of the obligation of good faith to issue any notices under RCW 59.20.080(1)(h) for violations of park rules, specifically Rule 25 & 28, because the use of RCW 59.20.080(1)(h) avoids the mediation provisions of the Manufactured/Mobile Home Landlord-Tenant Act and denies the tenants their right to third-party mediation.
- d. When the Respondent enforced Rule 25 & 28 under RCW 59.20.080(1)(h), a provision that does *not* require mediation, he acted with the intent to seek an unconscionable advantage, namely the avoidance of mediation procedures designed to prevent eviction for rule violations (as opposed to non-payment of rent, which does *not* require mediation under the MHLTA). The mediation provisions are especially important given the circumstances of manufactured home park living, *see, e.g.*, RCW 59.30.010(1) (the legislature finds circumstances unique to manufactured home tenants and landlords that lead to an inequality of bargaining position of the parties).

Corrective Action Required

Pursuant to RCW 59.30.040(5)(a), the Park shall immediately amend the Thackers' Rental Agreement and Pet Addendum to include each of the three cats. Additionally, the Park shall issue no further Notices to Comply or Vacate of any kind because of the cats unless they cause harm or damage to property owned by individuals other than Mr. and Mrs. Thacker. Finally, the Park shall not impede the Thackers in their ability to bring their cats back into their home. These actions shall be done within **15 business days** after receipt this Notice of Violation unless a Request for Hearing letter is received by this office as described below.

Failure to Take Corrective Action

Pursuant to RCW 59.30.040(6), if corrective action is not taken in accordance with the above paragraph, the Park shall be subject to a fine of **\$100 per day** for the first 15 days, and **\$250 per day** thereafter. Additionally, the attorney general will issue an order requiring the park to take the necessary steps to ensure compliance with this Notice of Violation.

Appeal of this Notice

You may appeal this Notice, and any fines or orders resulting from it, by requesting a hearing before an Administrative Law Judge. Such a request **must** be made **in writing** to this office within **15 business days** of your receipt of this notice; otherwise this decision is final. This request must be mailed to: Attorney General of Washington, Manufactured Housing Dispute Resolution Program, 800 Fifth Avenue Suite 2000, Seattle, WA 98104-3188. Upon receipt of your request, this office will coordinate with the Office of Administrative Hearings to schedule a hearing. The Administrative Law Judge (ALJ) is authorized by statute to hear and receive pertinent evidence and testimony, and decide, by a preponderance of the evidence, whether a violation of the MHTLA has occurred. The ALJ's decision will constitute the final order of the Attorney General and may be appealed to Superior Court in accordance with instructions to be included in the ALJ's decision.

Signed this 20 day of January, 2009

Manufactured Housing Dispute Resolution Program

ROBERT M. MCKENNA

Attorney General



Cathie Caldwell
Program Manager
206-389-2016