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ATTORNEY GENERAL OF WASHINGTON
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Manufactured Housing Dispute Resolution Program
•Consumer Protection Division•
1-866-924-6458

NOTICE OF VIOLATION

Date: June 23, 2009

Complainant: Dana Peffly
[REDACTED]

Respondent: Colonial Estates LLC
c/o Alan Swanson,
Swanson Law Firm, PLLC
[REDACTED]

RE: Complaint # 333498 – Dana L. Peffly

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 59.20.130(2) – Maintenance of Common Areas/Drainage Responsibility*

Introduction

The Complainant, Ms. Dana Peffly, complained that Colonial Estates Mobile Home Park (“Colonial Estates”) required her to maintain the “rock swale” located in her rented lot. This work included paying out-of-pocket for cleaning and upgrading the swale. Ms. Peffly then requested that Mr. DeTray, owner of Colonial Estates, split her costs, but he refused. The Complainant filed a request for dispute resolution with the Manufactured Housing Dispute Resolution Program (MHDRP) on February 3, 2009. 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 Colonial Estates Mobile Home Park located in Olympia, Washington.
 - b. The Complainant owns her manufactured home and has rented lot [REDACTED] during all times relevant to this Notice.
 - c. Mr. Paul DeTray is the owner of Colonial Estates MHP. P&P Investments is the name of Mr. DeTray's company under which he owns various mobile home parks.
 - d. In January 2008, Ms. Peffly's father, Edgar Peffly, died and Dana Peffly, the Complainant, moved into the residence with her mother, Vivian Peffly.
 - e. Complainant means Dana Peffly, unless otherwise noted.
2. Lease Agreement
 - a. Ms. Peffly's parents, Vivian and Edgar Peffly, purchased a mobile home in November 2001.
 - b. On October 23, 2001, the Pefflys signed a one year Rental Agreement with Colonial Estates and moved in.
 - c. The Pefflys were provided with a copy of the Park Rules and Regulations upon moving in.
 - d. On March 1, 2006, P & P Investments sent a letter to the Pefflys that included an addendum to their park rules, including a document entitled "Your Rock Swale."
3. Rock Swale ("Bio-filtration Swale")
 - a. Each lot in the Colonial Estates Mobile Home Park contains a rock swale serving as the filtration and drainage system for that lot.
 - b. The swale is located between the road/sidewalk and the front yard of each lot.
 - c. The swale is continuous, thereby running the full length of each rented lot.
 - d. The purpose of the swale is to mitigate the effects of stormwater run-off and control drainage of the park. In addition, the swale acts as a bio-filter, allowing pollutants to be filtered out before impacting groundwater supplies.
 - e. The water that enters the swale may not originate from discrete rented lots.
 - f. If one swale is damaged or non-functional, neighboring swales can flood and the system's overall effectiveness can be compromised.
4. Maintenance of the Rock Swale
 - a. Colonial Estates has placed the burden of maintaining the swales on each individual lot.
 - b. When asked, Colonial Estates ownership has refused to reimburse tenants for the cost of maintaining their swale.

Explanation of Violation

The Attorney General hereby finds as follows:

1. Violation (1)

- a. RCW 59.20.130(2) requires landlords to “maintain the common premises and prevent the accumulation of stagnant water and to prevent the detrimental effects of moving water when such condition is not the fault of the tenant.”
- b. The rock swale is primarily for the purpose of managing stormwater run-off. This benefits the entire park. Moreover, documentation provided by the Park indicates that a damaged swale can cause neighboring swales to flood, indicating that the system as a whole must be in good working order to provide the intended common benefit.
- c. While the Park currently requires tenants to maintain the rock swales, the tenants are limited in their activities involving the swale. In effect, they cannot use the swale for anything, including parking, and must keep it clear so that it functions as intended as a stormwater management system.
- d. Ms. Peffly has not damaged or otherwise mistreated her swale, thereby causing a condition that is the fault of the tenant. Ms. Peffly was maintaining the swale, though not required by law, and did so in accordance with the relevant codes and regulations.
- e. For the foregoing reasons, Colonial Estates has violated RCW 59.20.130(2) by failing to maintain the rock swale located on the lot rented by Ms. Peffly.

Corrective Action Required

Pursuant to RCW 59.30.040(5)(a), Colonial Estates shall reimburse Ms. Peffly for 100% of the cost of maintaining the swale incurred by Ms. Peffly to date and shall take responsibility for all future maintenance of the swale. The amount for reimbursement shall be **\$1,048**. The reimbursement shall be made within **15 calendar days** of receipt of this Notice of Violation, unless a Request for Hearing letter is received by this office as described below. The precise amount to be reimbursed by Colonial Estates shall be computed by adding up the receipts for money paid by Ms. Peffly to maintain the rock swale.

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

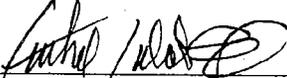
You may appeal this Notice, and any fines or orders resulting from it, by requesting a hearing before an Administrative Law Judge (ALJ). Such a request **must** be made **in writing** to this office within **15 business days** of your receipt of this notice; otherwise this decision is final. This request 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 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 23 day of June, 2009

Manufactured Housing Dispute Resolution Program

ROBERT M. MCKENNA
Attorney General



CATHIE CALDWELL
Program Manager