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Seattle, Washington 98104

Docket: 09-2018-AGO-00025
Portal Access Code: 176089

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:

Oaks Mobile and RV Court,

Appellant.

Docket No. 09-2018-AGO-00025

**FINAL ORDER DENYING
APPELLANT'S MOTION TO STRIKE
AND GRANTING
MANUFACTURED HOUSING DISPUTE
RESOLUTION PROGRAM'S
MOTION FOR SUMMARY JUDGMENT**

Agency: Attorney General's Office
Program: Manufactured Housing Unit
Agency Nos. 524803, 525341, 526772 and 533727

Based on the Attorney General's Office's 'Manufactured Housing Dispute Resolution Program's Motion for Summary Judgment', filed on November 19, 2018 and Appellant's 'Motion to Strike Portions of Declaration of Bradley Furer', filed January 9, 2019:

1. ISSUES:

A. Appellant's 'Motion to Strike Portions of Declaration of Bradley Furer'-

- 1.1. Whether portions of the 'Declaration of Bradley Furer', in support of the Attorney General's Office's 'Manufactured Housing Dispute Resolution Program's Motion for Summary Judgment', should be stricken since those portions are not relevant to the present action?

B. Manufactured Housing Dispute Resolution Program's (MHDRP) Motion for Summary Judgment-

- 1.2. Whether a genuine dispute of material fact exists as whether the Appellant, Oaks Mobile and RV Court, increased the rent of Oaks Mobile and RV Court tenants, Donna Gosney, Walter Lane, Lorraine Simoni and Nanette Stickley prior to the identified expiration of the term of a valid rental agreement, in violation of RCW 59.20.090(2)?
- 1.3. If no genuine dispute of material fact exists, whether the Attorney General's Office Manufactured Housing Dispute Resolution Program is entitled to summary judgment in its favor as a matter of law?

[Continued]

2. ORDER SUMMARY:

A. APPELLANT'S 'Motion to Strike Portions of Declaration of Bradley Furer'-

- 2.1. The Appellant's 'Motion to Strike Portions of Declaration of Bradley Furer' is **DENIED**. While the 'Notice of Violation' related to the Lois Bowen matter is not before this administrative tribunal, the facts and circumstances of her case may have some probative value to the present summary judgment motion.

B. Manufactured Housing Dispute Resolution Program's (MHDRP) Motion for Summary Judgment-

- 2.2. The Attorney General's Office's 'Manufactured Housing Dispute Resolution Program's Motion for Summary Judgment' is **GRANTED**.
- 2.3. The Appellant, Oaks Mobile and RV Court, owned and operated by TST, LLC, changed the rental amount, of tenants, Donna Gosney, Walter Lane, Lorraine Simoni and Nanette Stickley, during the term of the rental period in violation of RCW 50.20.090(2). The Office of the Attorney General's Manufactured Housing Dispute Resolution Program's 'Notice of Violation', regarding MHDRP Complaint Nos. 525341 (Gosney), 524803 (Lane), 526772 (Simoni) and 533727 (Stickley), is **AFFIRMED**.

3. 'MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM'S (MHDRP) MOTION FOR SUMMARY JUDGMENT':

- 3.1. Oral Argument Date: Friday, January 25, 2019 at 1:00 p.m.
- 3.2. Appellant/Licensee: Oaks Mobile and RV Court ('Appellant')
- 3.2.1. Representative: Mark G. Passannante, Attorney
- 3.3. Agency: Attorney General's Office ('AGO')
- 3.3.1. Representative: Shidon B. Aflatooni, Assistant Attorney General

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3.4. Documents Considered: The undersigned administrative law judge considered the following relevant documents for purposes of the Attorney General's Office's 'Manufactured Housing Dispute Resolution Program's Motion for Summary Judgment':

Doc. No.	Document Name	Doc. Date	No. Pages
1	Attorney General's Office Manufactured Housing Dispute Resolution Program's 'Notice of Violation' regarding MHDRP Complaint Nos. 525341, 524803, 526772 and 533727	08/24/2018	13
2	Appellant's 'Appeal of Oaks Mobile and RV Court and Request for Hearing'	09/17/2018	6
3	Office of Administrative Hearings' 'Prehearing Conference Order'	10/22/2018	9
4	Attorney General's Office's 'Manufactured Housing Dispute Resolution Program's Motion for Summary Judgment', 'Declaration of Bradley Furer in Support of Manufactured Housing Dispute Resolution Program's Motion for Summary Judgment' (with Exhibits 1-22) and 'Declaration of Bau Vang in Support of Manufactured Housing Dispute Resolution Program's Motion for Summary Judgment'	11/19/2018	120
5	Office of Administrative Hearings' 'Status Conference Order and Summary Judgment Brief Schedule'	01/02/2019	4
6	Appellant's 'Motion to Strike Portions of Declaration of Bradley Furer'	01/07/2019	2
7	Appellant's 'Response to Motion for Summary Judgment', 'Declaration of Brooke Torres' and 'Declaration of Mark G. Passannante'	01/07/2019	12
8	Attorney General's Office's 'Response in Opposition to Appellant's Motion to Strike Portions of Declaration of Bradley Furer'	01/14/2019	6
9	Attorney General's Office's 'Manufactured Housing Dispute Resolution Program's Reply in Support of Motion for Summary Judgment'	01/14/2019	12

4. FACTS FOR PURPOSE OF SUMMARY JUDGMENT:

On a motion for summary judgment, the decision maker only considers those facts for which the parties establish “no genuine issue as to any material fact”.¹ “Summary judgment is appropriate only where the undisputed facts entitle the moving party to judgment as a matter of law.”² Only evidence in the record and inferences from the evidence establish facts. If evidence in the record points to more than one possible finding of fact, then summary judgment may not rest on the moving party’s version of the facts.³ Admissions, stipulations, procedural history, and uncontested declarations and affidavits establish facts for summary judgment. Therefore, the record here supports the following facts for the purposes of summary judgment:

Jurisdiction

- 4.1. On August 24, 2018, the Attorney General of the State of Washington’s Manufactured Housing Dispute Resolution Program (MHDRP) issued a ‘Notice of Violation’ to the Oaks Mobile and RV Court (Appellant) regarding MHDRP Complaint Nos. 525341 (Donna Gosney), 524803 (Walter Lane), 526772 (Lorraine Simoni) and 533727 (Nanette Stickley).
- 4.2. On September 17, 2018, the Appellant filed the ‘Appeal of Oaks Mobile and RV Court and Request for Administrative Hearing’.
- 4.3. On September 19, 2018, the Office of the Attorney General sent the ‘Notice of Violation’ and the Appellant’s ‘Appeal of Oaks Mobile and RV Court and Request for Administrative Hearing’ to the Office of Administrative Hearings (OAH) for an administrative law judge to be assigned to the Appellant’s appeal and to conduct an administrative hearing on the appeal.

Appellant’s Motion to Strike Portions of Declaration of Bradley Furer

- 4.4. On January 6, 2019, the Appellant, Oaks Mobile and RV Court, filed a ‘Motion to Strike Portions of Declaration of Bradley Furer’.
- 4.5. On January 14, 2019, the Attorney General’s Office filed a ‘Response in Opposition to Appellant’s Motion to Strike Portions of Declaration of Bradley Furer’.

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¹ WAC 10-08-135. In Superior Court matters, CR 56 governs summary judgment. Where the relevant procedural rules do not conflict with CR 56, it and the cases interpreting it serve as persuasive authority in the management of summary judgment under WAC 10-08-135.

² *Verizon NW, Inc. v. Employment Sec. Dep’t*, 164 Wn.2d 909, 916 (2008), citing *Alpine Lakes Prot. Soc’y v. Dep’t of Natural Res.*, 102 Wn. App. 1, 14 (1999).

³ *Verizon NW*, 164 Wn.2d 916.

MHDRP's Motion for Summary Judgment

- 4.6. On November 19, 2018 Attorney General's Office filed 'Manufactured Housing Dispute Resolution Program's Motion for Summary Judgment', 'Declaration of Bradley Furer in Support of Manufactured Housing Dispute Resolution Program's Motion for Summary Judgment' (with Exhibits 1-22) and 'Declaration of Bau Vang in Support of Manufactured Housing Dispute Resolution Program's Motion for Summary Judgment'.
- 4.7. On January 7, 2019, the Appellant filed a 'Response to Motion for Summary Judgment', 'Declaration of Brooke Torres' and 'Declaration of Mark G. Passannante'.
- 4.8. On January 14, 2019, Attorney General's Office filed 'Manufactured Housing Dispute Resolution Program's Reply in Support of Motion for Summary Judgment'.

Material Facts regarding MHDRP's Motion for Summary Judgment

- 4.9. Oaks Mobile and RV Court is located in Woodland, Washington.
- 4.10. On or around June 1, 2016, TST, LLC, acquired Oaks Mobile and RV Court from Tom Esteb Properties, LLC. No current, written leases existed, only a rent roll indicating tenant rent was \$320.00 per month. Rent had not been raised for ten years. *Declaration of Brooke Torres ('Dec. of Brooke Torres'): Pg. 1; Ln. 18-21.*
- 4.11. On or around June 1, 2016, Brooke Torres, one of the co-owners, on behalf of TST, LLC, contacted Oaks residents Gosney, Lane, Simoni and Stickley regarding the existence of any rental agreements. Each tenant confirmed no written rental agreements existed and rent had not increased in the past ten years. *Dec. of Torres: Pg. 1; Ln. 22-26.*
- 4.12. On June 1, 2016, TST, LLC, notified the tenants of Oaks Mobile and RV Court the property was under the new management. *Dec. of Furer: Ex. 2.*

New Lease Agreements

- 4.13. On July 1, 2016, Oaks sent correspondence to all tenants informing them new leases were being created as well as new rules and regulations and a welcome packet were being prepared to be sent to the tenants. *Dec. of Furer: Ex. 3.*
- 4.14. On July 15, 2016, TST, LLC, sent new lease agreements to the Oaks tenants, requesting they review, sign, and return the leases agreements no later than August 5, 2016. *Dec. of Furer: Ex. 4.*

[Continued]

- 4.15. At that time, TST, LLC, sent to Donna Gosney, a 'Mobile Home Space and/or Mobile Home Lease Agreement and Security Deposit Receipt', effective July 1, 2016. The document was not signed by either Gosney or Oaks. *Dec. of Furer: Ex. 7.*
- 4.16. On August 1, 2016 Walter Lane and TST, LLC, signed and executed 'Mobile Home Space and/or Mobile Home Lease Agreement and Security Deposit Receipt', effective July 1, 2016. Rent was set at \$320.00 per month. *Dec. of Furer: Ex. 8.*
- 4.17. In July 2016, TST, LLC, sent to Lorraine Simoni, a 'Mobile Home Space and/or Mobile Home Lease Agreement and Security Deposit Receipt', effective July 1, 2016. However, the agreement only appears to be signed by Simoni with rent set at \$320.00 per month. *Dec. of Furer: Ex. 9.*
- 4.18. At that time, TST, LLC, sent to Nanette Stickley, a 'Mobile Home Space and/or Mobile Home Lease Agreement and Security Deposit Receipt', effective July 1, 2016. However, only the signature of TST, LLC, appears on the agreement. *Dec. of Furer: Ex. 10.*
- 4.19. On August 20, 2016, TST, LLC, requested any Oaks tenants having a current valid lease agreement to provide it to the manager no later than August 31, 2016. TST, LLC, stated it would abide by any current leases in the possession of tenants. *Dec. of Furer: Ex. 5.*

90-Day Notices to Change Rent

- 4.20. On August 29, 2016, TST, LLC, sent a '90 Day Notice to Change Rent' to Donna Gosney. The Notice notified Ms. Gosney of a rent increase from \$320 to \$525 per month, beginning December 1, 2016. *Dec. of Furer: Ex. 11.*
- 4.21. On August 29, 2016, TST, LLC, sent a '90 Day Notice to Change Rent' to Walter Lane. The Notice notified Mr. Lane of a rent increase from \$320 to \$525 per month, beginning December 1, 2016. *Dec. of Furer: Ex. 12.*
- 4.22. On August 29, 2016, TST, LLC, sent a '90 Day Notice to Change Rent' to Lorraine Simoni. The Notice notified Ms. Simoni of a rent increase from \$320 to \$525 per month, beginning December 1, 2016. *Dec. of Furer: Ex. 13.*
- 4.23. On August 29, 2016, TST, LLC, sent a '90 Day Notice to Change Rent' to Nannette Stickley. The Notice notified Ms. Stickley of a rent increase from \$320 to \$525 per month, beginning December 1, 2016. *Dec. of Furer: Ex. 14.*
- 4.24. The rent increases, effective December 1, 2016, were served at least 90 days prior to the effective date of the rent increase and more than one year after the last rent increase. *Dec. of Torres: Pg. 1; Ln. 27-28.*

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Additional Rent Increases

- 4.25. On August 28, 2017, TST, LLC, mailed and then posted a '90 Day Notice to Increase Rent' to Donna Gosney. The Notice notified Ms. Gosney of a rent increase from \$525 to \$550 per month, effective December 1, 2017. *Dec. of Furer: Ex. 15.*
- 4.26. On August 28, 2017, TST, LLC, mailed and then posted a '90 Day Notice to Increase Rent' to Lorraine Simoni. The Notice notified Ms. Simoni of a rent increase from \$525 to \$550 per month, effective December 1, 2017. *Dec. of Furer: Ex. 17.*
- 4.27. On August 28, 2017, TST, LLC, mailed and then posted a '90 Day Notice to Increase Rent' to Nanette Stickley. The Notice notified Ms. Stickley of a rent increase from \$525 to \$550 per month, effective December 1, 2017. *Dec. of Furer: Ex. 18.*
- 4.28. On September 6, 2017, TST, LLC, mailed and then posted a '90 Day Notice to Increase Rent' to Walter Lane. The Notice notified Mr. Lane of a rent increase from \$525 to \$550 per month, effective January 1, 2018. *Dec. of Furer: Ex. 16.*
- 4.29. On December 5, 2017, Lois Bowen (Bowen), not a party to the present action, filed a complaint against Oaks alleging it violated the Manufactured/Mobile Home Landlord Tenant Act ('MHLTA'), RCW 59.20, by failing to provide her with proper notice of rent increases. *Dec. of Furer: Pg. 2-3; Ln. 12-15 and Ln. 22-8 and Exhibits ('Exs') 1-6.*
- 4.30. Sometime thereafter, TST, LLC, provide an explanation to the Attorney General's Office's Manufactured Housing Dispute Resolution Program ('MHDRP') regarding the Bowen complaint. TST, LLC, provided Ms. Bowen did not maintain a current lease agreement with the previous owner. On July 15, 2016, TST, LLC, provided Ms. Bowen with a new lease agreement. Effective beginning September 1, 2016, Ms. Bowen signed a new lease agreement, with a new rent increases, effective December 1, 2016. *Dec. Furer: Pg. 6.*

One-Year Rental Agreements

- 4.31. On December 15, 2017, TST, LLC, and Lorraine Simoni entered into a 'Manufactured Home Lot-One Year Rental Agreement'. The contract term commenced on January 1, 2018 and expired on December 31, 2018. The rent amount was set at \$550.00 per month. *Dec. of Furer: Pg. 2; Ln. 20-21 and Ex. 19.*
- 4.32. On December 15, 2017, TST, LLC, and Nanette Stickley entered into a 'Manufactured Home Lot-One Year Rental Agreement'. The contract term commenced on January 1, 2018 and expired on December 31, 2018. The rent amount was set at \$550.00 per month. *Dec. of Furer: Pg. 2; Ln. 20-21 and Ex. 20.*

- 4.33. On December 15, 2017, TST, LLC, and Walter Lane entered into a 'Manufactured Home Lot-One Year Rental Agreement'. The contract term commenced on January 1, 2018 and expired on December 31, 2018. The rent amount was set at \$550.00 per month. *Dec. of Furer: Pg. 2; Ln. 20-21 and Ex. 21.*
- 4.34. On December 15, 2017, TST, LLC, and Donna Gosney entered into a 'Manufactured Home Lot-One Year Rental Agreement'. The contract term commenced on January 1, 2018 and expired on December 31, 2018. The rent amount was set at \$550.00 per month. *Dec. of Furer: Pg. 2; Ln. 20-21 and Ex. 22.*
- 4.35. Oaks Mobile and RV Court tenants Gosney, Lane, Simoni and Stickley executed their rental agreements with the effective date of January 1st of each year. Each rental agreement included some changes from the previous rental agreements, including the lack of a provision for interim rent increases. Each rental agreement included the December 1, 2017 rental amount. *Dec. of Torres: Pg. 2; Ln. 4-8.*

Complaints

- 4.36. On January 11, 2018, Walter Lane filed a complaint against the Appellant alleging it violated the MHLTA, RCW 59.20, by failing to provide him with proper notice of rent increases. *Dec. of Furer: Pg. 1-2; Ln. 23- 2 & Pg. 2; Ln. 12-14.*
- 4.37. On January 22, 2018, Donna Gosney filed a complaint against the Appellant alleging it violated the MHLTA, RCW 59.20, by failing to provide her with proper notice of rent increases. *Dec. of Furer: Pg. 2; Ln. 3-5 & Pg. 2; Ln. 9-11.*
- 4.38. On February 15, 2018, Lorraine Simoni filed a complaint against the Appellant alleging it violated the MHLTA, RCW 59.20, by failing to provide her with proper notice of rent increases. *Dec. of Furer: Pg. 2; Ln. 6-8 & Pg. 2; Ln. 15-17.*
- 4.39. On July 9, 2018, Nanette Stickley filed a complaint against the Appellant alleging it violated the MHLTA, RCW 59.20, by failing to provide her with proper notice of rent increases. *Dec. of Furer: Pg. 2; Ln. 9-11 & Pg. 2; Ln. 18-20.*
- 4.40. On October 15, 2018, Attorney General's Office Consumer Protection Division and Manufactured Housing Unit Investigator/Analyst Bau Vang spoke with Walter Lane. Mr. Lane told Investigator/Analyst Vang he paid \$525 in rent in December 2017. *Declaration of Bau Vang in Support of Manufactured Housing Dispute Resolution Program's Motion for Summary Judgment ('Dec. of Vang'): Pg. 2; Ln. 4-5.*
- 4.41. The MHDRP attempted to resolve the Lane, Gosney, Simoni and Stickley complaints with the Appellant. However, the parties could not reach a resolution. *Dec. of Furer: Pg. 2; Ln. 16-19.*

[Continued]

5. CONCLUSIONS OF LAW:

Based upon the facts above, the undersigned administrative law judge makes the following conclusions:

Jurisdiction

- 5.1. The Office of Administrative Hearings (OAH) has jurisdiction over the persons and subject matter of this case and the Attorney General Office's 'Manufactured Housing Dispute Resolution Program's Motion for Summary Judgment' and Appellant's 'Motion to Strike Portions of Declaration of Bradley Furer' under Revised Code of Washington (RCW) 59.30.040 and RCW 34.12.036.

Appellant's 'Motion to Strike Portions of Declaration of Bradley Furer'

- 5.2. The Appellant's motion sought to '[S]trike paragraph 8 and Exhibit 1 through 6', of the 'Declaration of Bradley Furer' as a part of the MHDRP's Motion for Summary Judgment. The Appellant argued those portions of Furer's declaration relate to another tenant [Lois Bowen], not a person involved in the present appeal. The Appellant did not appeal the 'Notice of Violation' relating to Ms. Bowen. *Motion to Strike Portions of Declaration of Bradley Furer: Pg. 1; Ln. 13-17.*
- 5.3. Chapter 34.12 RCW (Revised Code of Washington) established the 'Office of Administrative Hearings', an independent state agency authorized to conduct impartial administrative hearings for other government agencies.
- 5.4. RCW 34.12.080 'Procedural Code of hearings-Rules' provides: "All hearings shall be conducted in conformance with the Administrative Procedure Act, Chapter 34.05 RCW."
- 5.5. RCW 34.05.452 'Rules of evidence-cross examination' establishes the rules relating to evidence, testimony and official notice in administrative proceedings.
- 5.6. RCW 34.04.452(1) establishes:

Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

- 5.7. Further, RCW 34.05.452(2) provides: "If not inconsistent with subsection (1) of this section, the presiding officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings.

- 5.8. Washington State Civil Court Evidence Rule (ER) 401 establishes 'relevant evidence' as: [E]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'
- 5.9. Washington State Civil Court Evidence Rule (ER) 402 establishes:
- All relevant evidence is admissible, except as limited by constitutional requirements or as otherwise provided by statute, by these rules, or by other rules or regulations applicable in the courts of this state. Evidence which is not relevant is not admissible.*
- 5.10. In the its motion, the Appellant argues any information pertaining to Lois Bowen, an unrelated tenant, is not relevant to the present appeal nor the issues raised in the Attorney General's 'Manufactured Housing Dispute Resolution Program's Motion for Summary Judgment'. Therefore, the Appellant contends paragraph 8 and Exhibit 1 through 6 of the 'Declaration of Bradley Furer' should be stricken from consideration *Motion to Strike Portions of Declaration of Bradley Furer: Pg. 1; Ln. 14-16 & 23-24.*
- 5.11. The Attorney General's Office argues the 'Notice of Violation' related to Lois Bowen is factually similar and the actions by the Appellant are similar to the facts in the present appeal. *Response in Opposition to Appellant's Motion to Strike Portions of Declaration of Bradley Furer: Pg. 1; Ln. 17-19.*
- 5.12. The Attorney General's Office contends paragraph 8 and Exhibits 1 through 6 of the Declaration of Bradley Furer are relevant to the present appeal and summary judgment. Therefore, paragraph 8 and Exhibits 1 through 6 should be admitted under the relaxed, administrative evidentiary rule of RCW 34.04.452(1), and the Appellant's Motion to Strike should be denied. *Id. @ Pg. 3; Ln. 21-25.*
- 5.13. "Evidence is relevant and necessary if the purpose of admitting the evidence is of consequence to the action and makes the existence of the identified fact more probable." *State v. Powell*, 126 Wn.2d 244(1995) citing *State v. Dennison*, 115 Wn.2d 609 (1990).
- 5.14. Upon reviewing the information relating to the Bowen matter, the undersigned administrative law judge determined such information may have probative value, under RCW 34.04.452(1), to help to establish or call into question material facts being asserted in the present summary judgment motion. As a result, the undersigned administrative law judge admitted 'Paragraph 8' and Exhibits 1 through 6 of the Declaration of Bradley Furer.
- 5.15. Therefore, the Appellant's 'Motion to Strike Portions of Declaration of Bradley Furer' is **DENIED**.

[Continued]

Summary Judgment

- 5.16. "A motion for summary judgment may be granted and an order issued if the written record shows no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." WAC 10-08-135.
- 5.17. "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.' Civil Rule (CR) 56(c)." *American Legion Post #149 v. Washington State Dept. of Health*, 164 Wn.2d 570, 584, 192 P.3d 306 (2008).

Summary Judgment Material Facts Not in Dispute

- 5.18. The undersigned administrative law judge does not find any genuine dispute of material fact in the present matter. Rather, as a matter of law, the dispute between the MHDRP and the Appellant, stems from their differing, legal interpretations of RCW 59.20.090(2).
- 5.19. The issue before this administrative tribunal is when can a landlord increase the rent of a mobile home/rv court tenant. The MHDRP contends rent increases can only occur at the expiration of the rental agreement and with at least three months' notice. Whereas, the Appellant contends such rent increases can occur at any time during the rental agreement period, so long as at least three months' notice is provided.
- 5.20. Chapter 59.20 RCW 'Manufactured/Mobile Home Landlord-Tenant Act' establishes the rights and responsibilities of landlords and tenants regarding mobile home, manufactured home, or park model situated in a mobile home park.
- 5.21. Chapter 59.20 governs in the present matter since the Appellant's appeal of the MHDRP's 'Notice of Violation' stems from a dispute between the landlord, TST, LLC, and tenants, Donna Gosney, Walter Lane, Lorraine Simoni and Nanette Stickley, of the Oaks Mobile and RV Court.
- 5.22. RCW 59.20.060(1) requires all mobile home space tenancies be evidenced by a written rental agreement.
- 5.23. If such occupancy of a mobile home space does not have a written rental agreement, the agreement is then considered an 'implied rental agreement' for a period of one year, renewed annually. *Gillette v. Zakarison*, 68 Wash. App. 838 (1993).

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- 5.24. RCW 59.20.090(2) provides: A landlord seeking to increase the rent upon expiration of the term of a rental agreement of any duration shall notify the tenant in writing three months prior to the effective date of any increase in rent. (Emphasis Added).
- 5.25. In the present case, on or around June 1, 2016, TST, LLC, acquired Oaks Mobile Home and RV Court from Tom Esteb Properties, LLC.
- 5.26. At that time, no tenant possessed a written, rental agreement, including tenants Donna Gosney, Walter Lane, Lorraine Simoni and Nanette Stickley. Without a written rental agreement, the Oaks tenants held 'implied rental agreements', for a one year period, renewing annually, with rent set at \$320.00 per month.
- 5.27. Since none of the tenants nor the former owner could produce written rental agreements, no expiration date of the rental agreement term could be established.
- 5.28. Essentially, a new, implied rental agreement term began on or around June 1, 2016, when TST, LLC, took possession of the Oaks Mobile and RV Court.
- 5.29. In the early part of July, 2016, TST, LLC, presented Oaks tenants Donna Gosney, Walter Lane, Lorraine Simoni and Nanette Stickley with written rental agreements for review, signature and return to TST, LLC, no later than August 5, 2016.
- 5.30. On August 5, 2016, Walter Lane signed the rental agreement, for one year, with an effective date of July 1, 2016. Rent was set at \$320.00 per month.
- 5.31. The rental agreements between TST, LLC, and tenants Donna Gosney, Lorraine Simoni and Nanette Stickley were never signed by both the landlord and tenant. The failure by the parties to enter into a written rental agreement, essentially created an 'implied rental agreement' for a period of one year, commencing when TST, LLC, took possession of Oaks Mobile and RV Court, since they did not assume any written rental agreements from the previous owner, Tom Esteb Properties, LLC.
- 5.32. However, on August 29, 2016, TST, LLC, delivered to the Oaks tenants, including Gosney, Lane, Simoni and Stickley, a '90-Day Notice to Change Rent', increasing rent from \$320.00 to \$525.00 per month, effective December 1, 2016.
- 5.33. No evidence exists in the record establishing tenants Gosney, Lane, Simoni and Stickley agreed with the rental increases from \$320.00 to \$525.00 per month.
- 5.34. While the Appellant contends at least three months' notice of the rental increase was provided to the tenants, such action still violates RCW 59.20.090(2).
- 5.35. As cited above, RCW 59.20.090(2) requires three month's notice of any rent increase, as well as, may only be increased at the end of the rental term.

- 5.36. In the present case, the landlord, TST, LLC, sought to increase rent during the term of the rental agreement, not upon expiration of the rental term. Case in point, Oaks Tenant Walter Lane signed a new rental agreement with TST, LLC, with an effective date of July 1, 2016, for one year, with rent established at \$320.00 per month. *Dec. of Furer; Ex. 8*. However, on August 29, 2016, TST, LLC, provided him with a '90 Day Notice to Change Rent', from \$320.00 to \$525.00 per month, effective December 1, 2016. *Dec. of Furer; Ex. 12*. While TST, LLC, provided three months' notice, the rent increase occurred during the term of Lane's one-year rental agreement, in violation of RCW 59.20.090(2).
- 5.37. In the case of Oaks tenants Donna Gosney, Lorraine Simoni and Nanette Stickley, despite having implied rental agreements, their rents were increased from \$320.00 to \$525.00 per month, effective December 1, 2016. While three months' notice was provided by TST, LLC, regarding the rent increases, such increases occurred during the term of their rental agreements, in violation of RCW 59.20.090(2).
- 5.38. The Oaks tenants dealt with the similar rental increases in 2017, from \$525.00 to \$550.00 per month.
- 5.39. The Appellant contends rent increases can occur at any time after the expiration of the original rental term, contending the tenants' original term, entered into between Tom Esteb Properties, LLC, and the Oaks tenants had expired years ago. Therefore, TST, LLC, contends it could increase rent whenever it liked. The undersigned administrative law judge does not agree with the Appellant's interpretation of RCW 59.20.090(2).
- 5.40. The Appellant's interpretation of RCW 59.20.090(2) leads to an illogical end. Namely, such an interpretation would allow a landlord to increase rent each and every month, even during the term of a written, one-year rental agreement, if it liked, so long as it provided three months' notice of the increase. RCW 59.20.090(2) does not allow for such an interpretation.
- 5.41. In fact, the legislative intent of the statute provides: "By its plain language, RCW 59.20.090(2) does not give a landlord an immutable right to increase rent; it is a 'limitation' on rent increases." *Western Plaza v. Tison*, 184 Wn.2d 702, 364 P.3d 76 (2015), citing *McGahvey v. Hwang*, 104 Wn.App. 182 (1981).
- 5.42. Further, the Appellant's argument of being able to change the rental amount during the term of a rental agreement would violate both traditional notions of contract law and the Statute of Frauds. Changing or amending any of the material terms of a written contract requires, offer, consideration, and acceptance by both parties to the contract, not just one party making unilateral changes to the material terms, such as the rent amount, of the agreement or rental contract. *Pacific Cascade Corp. v. Nimmer*, 256 Wn.App. 552 (1980).

- 5.43. While a party, such as a landlord, can adjust the rent amount during the term, for property taxes and/or utility assessments or charges, such increases must be articulated in the rental agreement and approved by both the landlord and tenant, at the time the contract is signed by both parties. However, such a discussion, pertaining to RCW 59.20.060(2)(c), is beyond the scope of the present matter.
- 5.44. In the present matter, the only way a mobile home and rv court landlord could increase rent is with three months' notice prior to the expiration of the rental agreement term. At that point, the tenant would have two months to decide to enter into a new rental agreement or else to relocate, since the tenant must provide one month's notice of his/her intent to vacate prior to the expiration of the rental agreement term, as per RCW 59.20.090(3).
- 5.45. Based on the above-cited 'Findings of Fact' and 'Conclusions of Law', no genuine dispute of material fact exists as whether the Appellant, Oaks Mobile and RV Court, increased the rent of Donna Gosney, Walter Lane, Lorraine Simoni and Nanette Stickley prior to the identified expiration of the term of a valid written or implied rental agreement, in violation of RCW 59.20.090(2).
- 5.46. As a result, the Attorney General's Office Manufactured Housing Dispute Resolution Program is entitled to summary judgment in its favor as a matter of law. Therefore, MHDRP's motion for summary judgement is **GRANTED**.
- 5.47. The Appellant, Oaks Mobile and RV Court, owned and operated by TST, LLC, changed the rental amount during the term of the rental period in violation of RCW 50.20.090(2). The Manufactured Housing Dispute Resolution Program's 'Notice of Violation', regarding MHDRP Complaint Nos. 525341, 524803, 526772 and 533727, is **AFFIRMED**.
- 5.48. Based on MHDRP's Motion for Summary Judgment being granted, the evidentiary hearing scheduled from February 25, 2019 to February 27, 2019 is **STRICKEN**.

6. INITIAL ORDER:

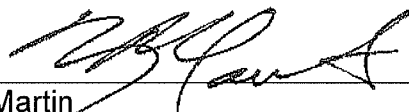
IT IS HEREBY ORDERED:

- 6.1. The Appellant's 'Motion to Strike Portions of Declaration of Bradley Furer' is **DENIED**.
- 6.2. The Attorney General Office's Manufactured Housing Dispute Resolution Program's Motion for Summary Judgment is **GRANTED**.
- 6.3. The Appellant, Oaks Mobile and RV Court, owned and operated by TST, LLC, changed the rental amount during the term of the rental period in violation of RCW 50.20.090(2). The Manufactured Housing Dispute Resolution Program's 'Notice of

Violation', regarding MHDRP Complaint Nos. 525341, 524803, 526772 and 533727, is **AFFIRMED**.

- 6.4. The evidentiary hearing scheduled from February 25, 2019 to February 27, 2019 is **STRICKEN**.

SIGNED at Tacoma, Washington on the date of mailing.



TJ Martin
Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

PETITION FOR RECONSIDERATION

Within 10 days of the service of this order, any party may file a petition for reconsideration with the Office of Administrative Hearings at:

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98406

The petition for reconsideration must state the specific grounds upon which relief is requested. RCW 34.05.470(1). WAC 10-08-215. The petition for reconsideration will not stay the effectiveness of this order. *Id.* at (2).

PETITION FOR REVIEW

This order becomes final on the date of mailing unless within thirty (30) days of mailing, a party files a petition for judicial review with the Superior Court. RCW 34.05.542(2). The petition for judicial review may be filed in the Superior Court of Thurston County, of the county where petitioner resides, or of the county where the property owned by the petitioner and affected by the contested decision is located. RCW 34.05.514(1). The petition for judicial review must be served on all parties of record within thirty (30) days of mailing of the final order. Service of the petition for judicial review on opposing parties is completed when deposited in the U.S. Mail, as evidenced by the postmark. RCW 34.05.542(4).

The petition for judicial review must include the following: (1) the name and mailing address of the petitioner; (2) the name and mailing address of the petitioner's attorney, if any; (3) facts that demonstrate that the petitioner is entitled to obtain judicial review; (4) the petitioner's reasons for believing that relief should be granted; and (5) a request for relief, specifying the type and extent of relief requested. RCW 34.05.546.

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 09-2018-AGO-00025

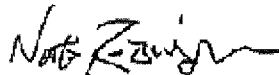
I certify that true copies of this document were served from Tacoma, Washington via Consolidated Mail Services upon the following as indicated:

Oaks Mobile & RV Court c/o TST, LLC PMB 452 16420 SE McGillivray Blvd Ste 103 Vancouver, WA 98683 <i>Appellant</i>	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Mark G. Passannante Broer & Passanante, PS 1001 SW 5 th Ave Ste 1220 Portland, OR 97204 <i>Appellant Representative</i>	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Shidon Aflatooni, AAG Office of the Attorney General MS: TB-14 800 5 th Ave Ste 2000 Seattle, WA 98104 <i>Agency Representative</i>	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Donna Gosney 38308 NW Lakeshore Dr Spc #1 Woodland, WA 98674 <i>Intervenor</i>	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Lorraine Simoni 7816 NE Cedar Creek Rd Woodland, WA 98674 <i>Intervenor</i>	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail

<p>Nanette Stickley 38308 NW Lakeshore Dr Spc #6 Woodland, WA 98674 <i>Intervenor</i></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Walter Lane PO Box 434 Woodland, WA 98674 <i>Intervenor</i></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Lois M. Bowen PO Box 2 Woodland, WA 98674 <i>Other Representative</i></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Friday, February 15, 2019

OFFICE OF ADMINISTRATIVE HEARINGS



Nathan Robinson
Legal Assistant 3

