

ATTORNEY GENERAL
OF THE STATE OF WASHINGTON

MANUFACTURED HOUSING
DISPUTE RESOLUTION PROGRAM

**In the Matter of the Complaint of
Shannon Zipfel Against Eastside Trailer
Park**

NOTICE OF VIOLATION

RCW 59.30.040

MHDRP Complaint No. 545075

Following an investigation into the above-entitled matter pursuant to RCW 59.30.040, the Manufactured Housing Dispute Resolution Program of the Office of the Attorney General of Washington has found there to be a VIOLATION of the Manufactured/Mobile Home Landlord-Tenant Act, RCW 59.20. If you disagree with this decision, your attention is directed to the section entitled APPEAL RIGHTS at the end of this Notice, which outlines the procedures under RCW 59.30.040 for filing an appeal.

This Notice does not limit the rights of any party to take other legal action.

I. INTRODUCTION

- 1.1 On February 28, 2019, Shannon Zipfel filed a complaint against Eastside Trailer Park (Park) with the Manufactured Housing Dispute Resolution Program (the Program). Zipfel alleged that the Park violated the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), RCW 59.20, by failing to offer a written rental agreement. The Program contacted the Park in an attempt to facilitate negotiations between the parties to resolve the dispute. During dispute resolution, the Park sought to increase Zipfel's rent. The parties were not able to negotiate a resolution to this matter and the Program therefore concluded that an agreement could not be reached between the parties. As more fully set forth below, the Program concludes that the Park has violated: (1) RCW 59.20.050(1) by failing to offer Zipfel a written rental agreement for a term of one year or more, (2) RCW 59.20.060 by failing to offer Zipfel a written rental agreement containing the required provisions, and (3) RCW 59.20.090(2) by seeking to increase Zipfel's rent prior to the expiration of the term of her rental agreement and without three months written notice.

II. FACTUAL BACKGROUND

- 2.1 Eastside Trailer Park is a mobile home park for purposes of RCW 59.20.030(10), and is located in Republic, Washington.
- 2.2 Eastside Trailer Park is registered with the Department of Revenue as a Manufactured Home Community, UBI # 600-232-708.
- 2.3 Shannon Zipfel owns and resides in a manufactured/mobile home located on space rented from the Park, and therefore is a tenant under RCW 59.20.030(18).
- 2.4 Zipfel and her husband moved their mobile home into the Park in early June 2008. Zipfel does not recall the specific day she moved into the Park.
- 2.5 The Park did not offer Zipfel a written rental agreement when she moved her mobile home into the Park.
- 2.6 Although the Park did not offer Zipfel a written rental agreement, the parties agreed to a monthly rent of \$150.
- 2.7 The Park, through its owner Clifford McKillop, admits the Park does not have a written rental agreement with Zipfel. The Park contends that Zipfel never asked for a rental agreement after the first year of occupancy, and that the Zipfel's rental agreement is month to month.
- 2.8 In June 2019, the Park offered Zipfel a written month to month rental agreement, signed only by the Park, dated June 25, 2019. This rental agreement was retroactively dated to commence in February 2019, with a monthly rent of \$200, effective March 1, 2019. The Park also provided a rent increase notice, signed only by the Park and dated June 25, 2019. The rent increase notice attempts to retroactively increase rent to \$200 per month, effective March 1, 2019. Finally, the Park provided an unsigned copy of the Park's rules.
- 2.9 Zipfel, and her husband, through their attorney at Northwest Justice Project, did not agree to the month to month rental agreement and park rules. Nor did Zipfel, or her husband, agree to pay any increased rent, informing the Park that they will continue to pay \$150 per month.
- 2.10 The Program requested multiple times, from April 8, 2019 through October 2, 2019, that the Park offer Zipfel a rental agreement that complies with RCW 59.20.

III. LEGAL AUTHORITY

- 3.1 The MHLTA prohibits a landlord from offering a mobile home lot for rent without offering a written rental agreement for a term of one year or more. RCW 59.20.050(1). If the tenant prefers a month-to-month tenancy, the tenant must waive, in writing, the right to a term of

one year or more. *Id.* A tenant who waives the right to a term of one year or more can require the landlord to offer a written rental agreement for the term of one year at any anniversary date of the tenancy. *Id.*

- 3.2 A written waiver to the right to a term of one year or more must be separate from the rental agreement. *Holiday Resort Cmty. Ass'n v. Echo Lake Associates, LLC*, 134 Wn. App. 210, 225, 135 P.3d 499 (2006), *review denied*, 160 Wn.2d 1019 (2007)
- 3.3 Similarly, the MHLTA prohibits a landlord from allowing a mobile home to be moved into a park until a written rental agreement has been signed by and is in the possession of the landlord and tenant. RCW 59.20.050(1). However, if a landlord allows a tenant to move a mobile home in a park without obtaining a written rental agreement, the term of the tenancy shall be for a term of one year from the date of occupancy of the mobile home lot. *Id.*
- 3.4 The failure of a landlord to offer and obtain a written rental agreement, creates an implied tenancy between the landlord and tenant. *Gillette v. Zakarison*, 68 Wn. App. 838, 842, 846 P.2d 574 (1993) (Although landlord never offered written rental agreement prior to tenant moving her mobile home onto lot, implied agreement existed, which the tenant could assign to purchaser of mobile home).
- 3.5 The MHLTA provides that “unless otherwise agreed rental agreements shall be for a term of one year. Any rental agreement of whatever duration shall be automatically renewed for the term of the original rental agreement, unless a different specified term is agreed upon.” RCW 59.20.090(1).
- 3.6 “To promote long term and stable mobile home lot tenancies, the Legislature established an unqualified right at the beginning of the tenancy to a one-year term, automatic renewal at the end of the one-year rental term, and the right to a one-year term at any anniversary date of the tenancy.” *Holiday Resort*, 134 Wn. App. at 224.
- 3.7 The MHLTA requires that, “any mobile home space tenancy regardless of the term, shall be based upon a written rental agreement, signed by the parties....” RCW 59.20.060(1).
- 3.8 The MHLTA identifies specific provisions a written rental agreement must contain, RCW 59.20.060(1)(a)-(o), and prohibited provisions, RCW 59.20.060(2)(a)-(h).
- 3.9 The purpose of RCW 59.20.060(1) is to satisfy the statute of frauds because it governs the “formal requirements for creating a valid lease.” *Western Plaza, LLC v. Tison*, 184 Wn.2d 702, 709, 364 P.3d 76 (2015). To comply with the statute of frauds under the MHLTA “all rental agreements must be based on a written rental agreement that is signed by the parties, regardless of the duration of the rental. *Id.* at 714.
- 3.10 The MHLTA requires that “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.” RCW 59.20.090(2).

IV. VIOLATIONS

- 4.1 The Park has a duty to offer Zipfel a written rental agreement under RCW 59.20.050(1).
- 4.2 The Park cannot escape liability under RCW 59.20.050(1) through Zipfel's initial failure to request a written rental agreement.
- 4.3 The Park violated RCW 59.20.050(1) by failing to offer Zipfel a written rental agreement for a term of one year or more prior to renting a mobile home lot to Zipfel.
- 4.4 However, the Park allowed Zipfel to move her mobile home into the Park, thus creating an implied tenancy for a term of one year, commencing in early June 2008. RCW 59.20.050(1); *Gillette v. Zakarison*, 68 Wn. App. at 842.
- 4.5 Zipfel's implied one year tenancy renews automatically on an annual basis, for a term of one year. RCW 59.20.090(1).
- 4.6 Zipfel did not agree, in writing, separate from any rental agreement, to a month to month tenancy. RCW 59.20.050(1); *Holiday Resort*, 134 Wn. App. at 225.
- 4.7 The Park violated RCW 59.20.050(1) by offering Zipfel the June 2019 month to month rental agreement because it is not a rental agreement for a term of one year or more.
- 4.8 The Park violated RCW 59.20.060 by offering Zipfel the June 2019 month to month rental agreement because it does not contain the provisions required by the MHLTA.
- 4.9 The Park continues to violate RCW 59.20.050(1) by failing to offer Zipfel a rental agreement for a term of one year or more that complies with RCW 59.20.060. *See also*, RCW 59.20.090(1).
- 4.10 The Park violated RCW 59.20.090(2) through the rent increase notice, effective March 1, 2019, because it seeks to increase Zipfel's rent prior to the expiration of the term of her implied rental agreement, and the notice seeks to retroactively increase Zipfel's rent.

V. CORRECTIVE ACTION

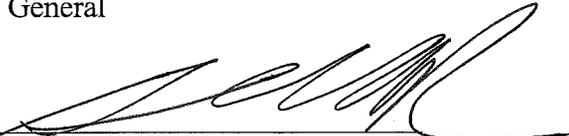
- 5.1 The Park must, within fifteen (15) business days of receipt of this Notice, offer Zipfel, and her husband, a written rental agreement that complies with RCW 59.20.060.
- 5.2 The Park shall not attempt to seek any rent in excess of \$150 per month based on the defective rent increase notice provided to Zipfel in June 2019.
- 5.3 The Park shall not seek to increase Zipfel's rent without complying with RCW 59.20.090(2).

- 5.4 A failure to take the corrective action set forth above within fifteen (15) business days of receipt of this Notice will result in the imposition of a \$200 per violation per day, for each day that a violation remains uncorrected.

Signed this 27th day of November, 2019.

MANUFACTURED HOUSING DISPUTE
RESOLUTION PROGRAM

ROBERT W. FERGUSON
Attorney General



SHANNON E. SMITH
Senior Counsel
Division Chief, Consumer Protection Division

APPEAL RIGHTS

Either party may appeal this Notice by requesting a hearing before an administrative law judge. If neither party appeals this Notice, the Notice of Violation becomes a final order of the Attorney General and is not subject to review by any court or agency.

RCW 59.30.040 governs the parties' appeal rights. A copy of RCW 59.30.040 is attached. An appeal of this Notice requesting a hearing must be:

- In writing, stating the basis for the appeal and the specific remedy sought
- Signed by the appealing party
- Received by Manufactured Housing Dispute Resolution Program within fifteen (15) business days of the party's receipt of this notice
- Mailed or delivered to:
 - Attorney General's Office
 - Manufactured Housing Dispute Resolution Program
 - 800 Fifth Avenue, Suite 2000, TB-14
 - Seattle, WA 98104-3188

If a timely appeal is received, the Program will coordinate with the Office of Administrative Hearings to schedule a hearing. In an appeal you will bear the cost of your own legal expenses. An administrative law judge will hear and receive pertinent evidence and testimony and decide whether a violation of the MHLTA has occurred by a preponderance of the evidence. The administrative law judge's decision will constitute the final agency order of the Program. A final order may be appealed to superior court according to instructions included in a decision.

PROOF OF SERVICE

I certify that on this day, I caused to be served a copy of this document on the following parties via the method indicated:

Eastside Trailer Park Attention: Clifford McKillop PO Box 731 Republic, WA 99166	<input checked="" type="checkbox"/> Certified Mail, Receipt Requested
Kerry Summers Northwest Justice Project 132 W First Ave Colville, WA 99114	<input checked="" type="checkbox"/> Certified Mail, Receipt Requested
Shannon Zipfel 1100 Hesse Blvd #13 Republic, WA 99166	<input checked="" type="checkbox"/> Certified Mail

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 27th day of November, 2019, at Seattle, Washington.



KRISTINA WINFIELD
Legal Assistant

RCW 59.30.040

Dispute resolution program—Complaint process.

(1) An aggrieved party has the right to file a complaint with the attorney general alleging a violation of chapter 59.20 RCW.

(2) Upon receiving a complaint under this chapter, the attorney general must:

(a) Inform the complainant of any notification requirements under RCW 59.20.080 for tenant violations or RCW 59.20.200 for landlord violations and encourage the complainant to appropriately notify the respondent of the complaint; and

(b) If a statutory time period is applicable, inform the complainant of the time frame that the respondent has to remedy the complaint under RCW 59.20.080 for tenant violations or RCW 59.20.200 for landlord violations.

(3) After receiving a complaint under this chapter, the attorney general shall initiate the manufactured/mobile home dispute resolution program by investigating the alleged violations at its discretion and, if appropriate, facilitating negotiations between the complainant and the respondent.

(4)(a) Complainants and respondents shall cooperate with the attorney general in the course of an investigation by (i) responding to subpoenas issued by the attorney general, which may consist of providing access to papers or other documents; and (ii) providing access to the manufactured/mobile home facilities relevant to the investigation. Complainants and respondents must respond to attorney general subpoenas within thirty days.

(b) Failure to cooperate with the attorney general in the course of an investigation is a violation of this chapter.

(5) If after an investigation the attorney general determines that an agreement cannot be negotiated between the parties, the attorney general shall make a written determination on whether a violation of chapter 59.20 RCW has occurred.

(a) If the attorney general finds by a written determination that a violation of chapter 59.20 RCW has occurred, the attorney general shall deliver a written notice of violation to the respondent who committed the violation by certified mail. The notice of violation must specify the violation, the corrective action required, the time within which the corrective action must be taken, the penalties including fines, other penalties, and actions that will result if corrective action is not taken within the specified time period, and the process for contesting the determination, fines, penalties, and other actions included in the notice of violation through an administrative hearing. The attorney general must deliver to the complainant a copy of the notice of violation by certified mail.

(b) If the attorney general finds by a written determination that a violation of chapter 59.20 RCW has not occurred, the attorney general shall deliver a written notice of nonviolation to both the complainant and the respondent by certified mail. The notice of nonviolation must include the process for contesting the determination included in the notice of nonviolation through an administrative hearing.

(6) Corrective action must take place within fifteen business days of the respondent's receipt of a notice of violation, except as required otherwise by the attorney general, unless the respondent has submitted a timely request for an administrative hearing to contest the notice of violation as required under subsection (8) of this section. If a respondent, which includes either a landlord or a tenant, fails to take corrective action within the required time period and the attorney general has not received a timely request for an administrative hearing, the attorney general may impose a fine, up to a maximum of two hundred fifty dollars per violation per day, for each day that a violation remains uncorrected. The attorney general must consider the severity and duration of the violation and the violation's impact on other community residents when determining the appropriate amount of a fine or the appropriate penalty to impose on a respondent. If the respondent shows upon timely application to the attorney general that a good faith effort to comply with the corrective action requirements of the notice of violation has been made and that the corrective action has not been completed because of mitigating factors beyond the respondent's control, the attorney general may delay the imposition of a fine or penalty.

(7) The attorney general may issue an order requiring the respondent, or its assignee or agent, to cease and desist from an unlawful practice and take affirmative actions that in the judgment of the attorney general will carry out the purposes of this chapter. The affirmative actions may include, but are not limited to, the following:

(a) Refunds of rent increases, improper fees, charges, and assessments collected in violation of this chapter;

(b) Filing and utilization of documents that correct a statutory or rule violation; and

(c) Reasonable action necessary to correct a statutory or rule violation.

(8) A complainant or respondent may request an administrative hearing before an administrative law judge under chapter 34.05 RCW to contest:

(a) A notice of violation issued under subsection (5)(a) of this section or a notice of nonviolation issued under subsection (5)(b) of this section;

(b) A fine or other penalty imposed under subsection (6) of this section; or

(c) An order to cease and desist or an order to take affirmative actions under subsection (7) of this section.

The complainant or respondent must request an administrative hearing within fifteen business days of receipt of a notice of violation, notice of nonviolation, fine, other penalty, order, or action. If an administrative hearing is not requested within this time period, the notice of violation, notice of nonviolation, fine, other penalty, order, or action constitutes a final order of the attorney general and is not subject to review by any court or agency.

(9) If an administrative hearing is initiated, the respondent and complainant shall each bear the cost of his or her own legal expenses.

(10) The administrative law judge appointed under chapter 34.12 RCW shall:

(a) Hear and receive pertinent evidence and testimony;

(b) Decide whether the evidence supports the attorney general finding by a preponderance of the evidence; and

(c) Enter an appropriate order within thirty days after the close of the hearing and immediately mail copies of the order to the affected parties.

The order of the administrative law judge constitutes the final agency order of the attorney general and may be appealed to the superior court under chapter 34.05 RCW.

(11) When the attorney general imposes a fine, refund, or other penalty against a respondent, the respondent may not seek any recovery or reimbursement of the fine, refund, or other penalty from a complainant or from other manufactured/mobile home tenants.

(12) All receipts from the imposition of fines or other penalties collected under this section other than those due to a complainant must be deposited into the manufactured/mobile home dispute resolution program account created in RCW 59.30.070.

(13) This section is not exclusive and does not limit the right of landlords or tenants to take legal action against another party as provided in chapter 59.20 RCW or otherwise. Exhaustion of the administrative remedy provided in this chapter is not required before a landlord or tenants may bring a legal action. This section does not apply to unlawful detainer actions initiated under RCW 59.20.080 prior to the filing and service of an unlawful detainer court action; however, a tenant is not precluded from seeking relief under this chapter if the complaint claims the notice of termination violates RCW 59.20.080 prior to the filing and service of an unlawful detainer action.

[2007 c 431 § 4.]

NOTES:

Implementation—2007 c 431: See note following RCW 59.30.010.