

BEFORE THE ATTORNEY GENERAL
OF THE STATE OF WASHINGTON

MANUFACTURED/MOBILE HOME
DISPUTE RESOLUTION PROGRAM

In the Matter of:

Rosemarie Gee,

Complainant,

v.

Kingsbury West MHP,

Respondent.

NOTICE OF VIOLATION

RCW 59.30.040

MHDRP Complaint No.: 352504

Following an investigation into the above-entitled matter pursuant to RCW 59.30.040, the Program Manager of the Manufactured Housing Dispute Resolution Program of the Office of the Attorney General of Washington has found a VIOLATION of the Manufactured/Mobile Home Landlord-Tenant Act, RCW 59.20. If you are aggrieved the Program Manager's 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 obtaining review of this decision by an administrative law judge.

I. INTRODUCTION

1. On November 3, 2009, the Complainant, Rosemarie Gee, filed a complaint under RCW 59.30 with the Washington State Attorney General's Manufactured Housing Dispute Resolution Program (MHDRP) against her landlord, Kingsbury West Mobile Home Park (Kingsbury West), alleging violations of the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), RCW 59.20. Kingsbury West is a mobile home park for purposes of RCW 59.20.030(10), and is located in Lynnwood, Washington. Ms. Gee owns her home and resides at Kingsbury West. Kingsbury West is owned by Marvin Palmer and managed by Jeff Palmer.

2. In her complaint and in subsequent communications with the MHDRP, Ms. Gee alleged that Kingsbury West is in violation RCW 50.20.135 for their attempt to transfer the responsibility for the upkeep of her driveway and failure to maintain it by permitting it to become cracked as a result of tree roots growing underneath it. Kingsbury West, through its attorney, Walt Olsen, responded that maintenance of the driveway is Ms. Gee's responsibility. Additionally, Mr. Olsen maintains that Ms. Gee is also responsible for maintenance of any trees on her rented property.

3. After attempts to resolve the disputes through the informal dispute resolution process were unsuccessful, the MHDRP conducted a formal investigation pursuant to RCW 59.30.040(3).

4. As will be more fully set forth below, the MHDRP has concluded that Kingsbury West is in VIOLATION of RCW 59.20.135.

III. BACKGROUND AND INVESTIGATION

1. On November 3, 2009, Ms. Gee complained to the MHDRP that Kingsbury West had attempted to transfer the responsibility for the upkeep of her driveway and failed to maintain it by permitting it to become cracked as a result of tree roots growing underneath it. Prior to filing a complaint with the MHDRP, Ms. Gee requested that the park manager, Jeff Palmer, have the park repair the damaged driveway. Mr. Palmer informed Ms. Gee that he would not be repairing the driveway and that such repairs were Ms. Gee's responsibility.

2. The MHDRP's investigation revealed that Ms. Gee purchased her mobile home at Kingsbury West in 1997 and moved in the same year. Ms. Gee reports that while the tree roots were not visible when she moved into the park in 1997, over time the roots have damaged the walkway and driveway. Three of the trees at issue are on her rented space. A fourth tree is located on the common premises of the park. Ms. Gee did not plant any of the trees, nor does she know who did. All four trees are located on Kingsbury West's property.

3. Kingsbury West was built around 1971. The park was expanded in 1976 or 1977 and several new mobile home spaces were added. Kingsbury West claims that the original tenants were required to install the driveway as part of a "park package" at the park's inception in 1971. Kingsbury West also reports that in September 1984, Kingsbury contracted for the blacktopping of the streets and driveways within the park. Each tenant paid for the blacktopping on his or her individual driveway. Kingsbury West did not offer any documentary evidence regarding the installation of the driveways. Kingsbury West did indicate that, as present landlord, it did not plant any of the trees in question.

4. The MHDRP also spoke to one former park tenant and one current park tenant, Norma Kruger and Mazine Hutto, respectively. Ms. Kruger stated that she lived in the park from 1979 to 2009. Ms. Kruger stated that that she does not know whether the original tenants were required to install the driveways. Ms. Kruger also stated that the trees in Ms. Gee's space were already planted when Ms. Gee moved into the park in 1997.

5. Ms. Hutto stated that she moved into the park at the time of the 1976 annexation. Ms. Hutto reported that upon moving into the park she was required to pay for installation of the carport and the driveway as part of the "park package."

6. The park rules, which are incorporated into Ms. Gee's lease agreement with Kingsbury West, do not indicate who is responsible for driveway maintenance on a tenant's rented space. Kingsbury West maintains that its policy since 1971 is that tenants are responsible for maintaining their driveways.

IV. CONCLUSIONS

1. The MHLTA regulates and determines the legal rights, remedies, and obligations arising from a rental agreement between a mobile home lot tenant and a mobile home park landlord. RCW 59.20.040. Any party aggrieved by a violation of RCW 59.20 party has the right to file a complaint with the MHDRP of the Attorney General's Office. RCW 59.30.040 (1). After receiving the complaint, the Attorney General's Office shall initiate the dispute resolution program by investigating alleged violations at its discretion and, if appropriate, facilitate negotiation between the parties. RCW 59.30.040(3). If after an investigation the MHDRP determines an agreement cannot be negotiated between the parties, the MHDRP will make a written determination on whether a violation of the MHLTA has occurred. RCW 59.30.040(5)-(6).

2. If the attorney general finds by a written determination that a violation of the MHLTA has occurred, the attorney general shall deliver a written notice of violation to the respondent 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 results if corrective action is not taken within the specified timed period, and the process for contesting the determination through an administrative hearing. RCW 59.30.040(5)(a).

3. Ms. Gee, a tenant, submitted a complaint to the MHDRP on November 3, 2009 against Kingsbury West, a mobile home park, alleging violations of RCW 59.20. Accordingly, the MHDRP has jurisdiction to conduct the dispute resolution program under RCW 59.30.040 and determine whether a violation of the MHLTA has occurred. As indicated above, the MHDRP has concluded that based on the information obtained during the course of its investigation, Kingsbury West is in violation of RCW 59.20.135 for attempting to transfer responsibility for the maintenance and care of Ms. Gee's driveway, a permanent structure as that term is used in RCW 59.20.135, by allowing it to deteriorate and refusing to conduct needed repairs.

4. Here, Kingsbury West has impermissibly attempted to transfer the responsibility for the maintenance and care of a permanent structure on Ms. Gee's property by allowing it to deteriorate. This is prohibited under RCW 59.20.135(1)-(2). A permanent structure includes, but is not limited to, structures that are provided as amenities to park tenants, such as the clubhouse, carport, and storage sheds. RCW 59.20.135 (3). Here, Kingsbury West required all original tenants to install and pay for a driveway leading to their mobile home as a requirement of moving into the park. This is the type of "permanent structure" that RCW 59.20.135 encompasses, as the original tenant had no choice whether to install the driveway or not – installation of the driveway was mandatory. While RCW 59.20.135 does not require landlords to maintain permanent structures installed by tenants, Kingsbury West cannot escape its obligation under the statute by transferring responsibility for driveway maintenance when construction of the driveway was a prerequisite of moving into the park, despite the fact that the original tenant paid for its construction. The fact that the tenant paid for the installation of the driveway is immaterial, as installation of the driveway was mandatory as part of the "park package."

Moreover, a driveway is not a movable structure and is therefore “permanent” within the meaning of RCW 59.20.135. Accordingly, Kingsbury West is in violation of RCW 59.20.135(2) for failing to maintain the driveway on Ms. Gee’s rented property.

6. Moreover, to the extent that the deterioration of the driveway is caused by the tree roots, an additional basis exists for finding that Kingsbury West is in violation of RCW 59.20.135(2). One of the trees in question is located on the park’s common premises. The remaining three trees are on Ms. Gee’s rented lot. All four trees are located on Kingsbury West’s property. However, Ms. Gee did not plant any of the trees in question. The trees were planted long before Ms. Gee purchased her home and moved into the park. Either Kingsbury West or a previous tenant planted the trees. If Kingsbury West planted the trees, then it caused the damage and should be responsible for fixing the driveway. If a previous tenant planted the trees, then, when the tenant left, even if the manufactured home was sold to Ms. Gee, ownership of the trees and the land the trees stand on were not sold to the new tenant. Rather, by virtue of having been abandoned by the previous tenant, as indicated by the previous tenant’s decision to leave the trees in place on Ms. Gee’s rented lot, ownership of those trees devolved to Kingsbury West. Generally, trees on rented lot belong to the landlord, not the tenant. The trees are therefore the property of Kingsbury West. Thus, to the extent the trees on Ms. Gee’s property are causing the damage to the driveway, Kingsbury West is responsible for their removal.

V. CORRECTIVE ACTION REQUIRED

Pursuant to RCW 59.30.040(5)(a), Kingsbury West is hereby ordered to take the following corrective action within sixty (60) days of receiving this Notice:

(1) Repair or replace the entirety of the damaged portion of the driveway located at the Complainant’s place of residence, by resurfacing or repaving any cracked or damaged portions of the driveway.

(2) Remove any trees or tree roots that are damaging or have damaged the driveway located on the Complainant’s place of residence rented lot.

(3) Provide photographic or documentary proof of completion of the above repairs, including an invoice from a contractor or an itemized receipt of materials purchased, and a signed affidavit indicating that repairs have been completed.

Failure to take corrective action within the time required in this Notice, Kingsbury West shall be subject to a fine of \$100 per day for the first fifteen days, and a fine of \$250 per day for every day thereafter until compliance is achieved.

VI. ORDER

Now, based on the foregoing, it is therefore ORDERED that Kingsbury West Mobile Home Park take the **CORRECTIVE ACTION** set forth in **PART V** of this Notice, and that this **NOTICE OF VIOLATION** be issued and served upon all parties in this matter pursuant to RCW 59.30.040.

Signed this 23 day of June, 2010

Manufactured Housing Dispute Resolution Program

ROBERT M. MCKENNA

Attorney General



CATHIE CALDWELL

Program Manager

A copy of this Notice has been mailed to the following parties:

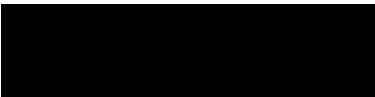
Rosemarie Gee

Complainant



Walt Olsen
Olsen Law Firm PLLC

Attorney for Respondent



**The Office of the Attorney General of Washington prohibits the use of its name to promote any business practice or service.*

APPEAL OF THIS NOTICE

You may appeal this Notice by requesting a hearing before an administrative law judge. RCW 59.30.040. Any appeal must be made within fifteen (15) days of receipt of this Notice and sent to the following address:

**Attorney General of Washington
Manufactured Housing Dispute Resolution Program
800 Fifth Avenue Suite 2000
Seattle, WA 98104-3188**

Your appeal must be submitted in writing and must be signed. The administrative law judge has authority to receive evidence and testimony in order to decide whether the evidence supports the MHDRP's decision by a preponderance of the evidence.

If you do not submit a signed, written appeal within fifteen (15) days of receiving this Notice, this Notice will become final and binding on all parties. For more information on your rights and responsibilities with regard to this Notice, consult RCW 59.30.