

RECEIVED

DEC 27 2017

STATE OF NH
OPLC - TECH

**THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING**

Raymond S. Tunstall)	
"Complainant")	
)	
v.)	Docket No. 17-17
)	
Jensen's, Inc.)	
"Respondent")	

Hearing held on August 4, 2017, at Concord, New Hampshire.

DECISION

This matter came before the Board of Manufactured Housing (hereinafter referred to as the Board) on the complaint of Raymond Tunstall (hereinafter referred to as the Complainant) against Jensen's, Inc. (hereinafter referred to as the Respondent) alleging Respondent's conduct to be in violation of RSA 205-A:2, VII and RSA 205-A:2, VIII(d). At the hearing, Complainant, Raymond Tunstall, appeared and represented himself. Chuck MacDonald appeared for the Respondent, and Respondent was represented by Attorney Brian Kelly. After careful consideration of the evidence presented, including the exhibits offered and the testimony presented, the Board finds the following facts and makes the following rulings:

FINDINGS OF FACT

The Complainant is a resident of River Pines Manufactured Housing Park in Nashua, New Hampshire. The park is owned by Jensen's, Inc. The Complainant presented evidence that he has a temporary, vinyl snow barrier attached to one side of the porch of his manufactured home. He testified that he had previously had a different plastic barrier in place on his porch and that the park owner never complained about that one. The park owner has, however, complained about the current snow barrier. According to the Complainant, he received a letter from the park area supervisor to remove the barrier.

The Respondent provided the Board with a copy of the Park Rules applicable during the period at issue in this matter. There was no dispute that Complainant was provided with a copy of the rules. The Respondent asserted that Section A(3) of the Park Rules states that any exterior "changes" or "modifications" to a home shall be approved by Jensen's prior to performing the change or modification. Section B(1)(a) provides that any exterior modification or changes to a Home's walls are permitted provided that such modifications or changes are approved by the park in writing prior to the commencement of the modification, construction or repair of the addition or appurtenance and confirm with the remainder of the park rules. Section B(1)(b) requires that such additions and appurtenances shall be made of materials that are "substantially the same as those used in the construction of the home."

The Complainant did not receive written permission or approval to install the snow barrier. This was undisputed. The Complainant's position was that the barrier was not a change, modification or addition to the home. In essence, he argued that it was merely temporarily attached for seasonal purposes. The Respondent's position was simply that the barrier was a change, modification or addition and that the Complainant had no permission to install it. The Respondent also presented evidence that the materials used were not substantially the same as those used in the construction of the home.

RULING

The Board is charged with hearing and determining matters involving manufactured housing parks, specifically RSA 205-A:2, RSA 205-A:7 and RSA 205-A:8. (See RSA 205-A:27, I.) The Board is further vested with the authority to determine whether a rule is reasonable as applied to the facts of a specific case. (See RSA 205-A:27, I(a).)

Pursuant to RSA 205-A:2, VII, no person who owns or operates a manufactured housing park shall:

Fail to disclose to each prospective tenant, in writing and a reasonable time prior to the entering into of any rental agreement, all terms and conditions of the tenancy, including rental, utility, entrance and service charges.

The Complainant asserted to the Board that the Respondent violated RSA 205-A:2, VII because the Park Rules were unclear and unfair and were not comprehensive. With regard to this section of the statute, that appeared to be the extent of the Complainant's argument. Because the evidence presented was that the Respondent had timely disclosed the Park Rules to the Complainant, RSA 205-2, VII was satisfied.

Pursuant to RSA 205-A:2, VIII(d) no person who owns or operates a manufactured housing park shall:

Require a tenant to sell or otherwise dispose of any personal property, fixture, or pet which the tenant had prior permission from the park owner or former park owner to possess or use; provided, however, that such a rule may be made and enforced if it is necessary to protect the health and safety of other tenants in the park.

The Complainant asserted that he did not believe that prior permission from the park owner was required to install the snow barrier at issue in this case. After he installed the first barrier, he did not receive a complaint from the Respondent. On that basis, the Complainant assumed it was permissible to install a new and different snow barrier. Such an assumption does not render the applicable Park Rules unreasonable, and it does not establish a violation of the statute by the Respondent. The Respondent presented legitimate reasons for the applicable, cited Park Rules and presented a reasonable basis for requiring the Complainant to remove the snow barrier at issue in this case. Most significantly, the Complainant had no prior permission to install the snow barrier.

Accordingly, the Board finds and rules that Respondent is not in violation of RSA 205-A:2, VII or VIII(d) and that its rules are reasonable as applied to the facts of this case. The Board UNANIMOUSLY finds and rules that Respondent is not in violation of RSA 205-A:2, X (b). The Board does not rule on the issue of the providing of park rules because the issue is moot.

Man 211.01 Motions for rehearing, reconsideration or clarification or other such post-hearing motions shall be filed within 30 days of the date of the Board's order or decision. Filing a rehearing motions shall be a prerequisite to appealing to the superior court in accordance with RSA 204-A:28, II.

SO ORDERED
BOARD OF MANUFACTURED HOUSING

By: 

Robert D. Hunt, Esq., Vice-Chairman

Members participating in this action:

Judy Williams
Adam Gidley
Lois Parris
Rep. Franklin Sterling
Kenneth Dame
Robert D. Hunt, Esq.


Members not participating in this action:

Mark Tay, Esq., Chair

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to the parties.

Dated: 12-27-17



Rick Wisler, Clerk
Board of Manufactured Housing