

THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

Claire E. Wheadon)
) Docket No. 002-96
 v.)
)
 Kingstown MHP (James Nealon))

Hearing held on June 4, 1996, at Concord, New Hampshire.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Board of Manufactured Housing (“the Board”) makes the following findings of fact and conclusions of law and issues the following order in the above-referenced matter.

PARTIES

1. Claire E. Wheadon (“Complainant”) is a lawful tenant of the Kingstowne MHP, a manufactured housing community located in Epsom, New Hampshire.
2. Kingstowne MHP is a manufactured housing community located in Epsom, New Hampshire. Mr. James Nealon is the owner and operator of Kingstowne MHP. For all purposes, Mr. Nealon and Kingstowne MHP shall be treated in this Order as a unified entity and shall be identified as “Respondent” or “Kingstowne MHP.”

MATTERS AT ISSUE

3. Ms. Wheadon seeks the following determinations from this Board:
 - (a) that Respondent failed to disclose verbally or in writing before purchase or occupancy that the street light in front of her home is connected to her meter and electrified at her expense.
 - (b) that Complainant is paying charges associated with the street light which exceed the current \$8.00/month allowance against her rent granted by the landlord; and

(c) that Respondent has failed to respond to a complaint filed against it by the Complainant with the Consumer Protection and Antitrust Bureau of the New Hampshire Department of Justice.

Preliminary Ruling

4. As a preliminary matter, the Board rules that the issue of whether Mr. Nealon has responded to a complaint submitted to Consumer Protection Bureau is beyond the jurisdiction of this Board. See, RSA 205-A: 27, I. (Supp. 1995). That statute limits the Board's jurisdiction to matters involving specified park rule provisions, RSA 205-A:2 (1994), security deposit violations, RSA 205-A:7 (1994), and mandatory purchase requirements, RSA 205-A:8 (1994). The question of whether Mr. Nealon has adequately responded to a consumer complaint to another agency is beyond the scope of this Board's authority and the Board makes no finding or ruling with respect to that aspect of the Complainant's case.¹

FINDINGS OF FACT

5. There is no dispute that a street lamp situated at the edge of Ms. Wheadon's home lot is connected to the meter box servicing her manufactured housing unit and that, consequently, Ms. Wheadon's monthly electric bill from Public Service of New Hampshire Company ("PSNH") includes an unitemized amount attributable to the street lamp's operation.

¹ The Board notes that , upon inquiry to the Consumer Protection Bureau, it has been informed that the Bureau's records reflect that Mr. Nealon made both verbal and written contact with Bureau representatives in an attempt to mediate the street lamp issue informally. The Bureau ceased its mediation efforts in January 1996 and referred this matter to the Board.

6. The Board further finds that there are 13 such installations in the park, including Ms. Wheadon's -- an anomaly dating back to the original installation of street lamps in the park in the early 1980's.
7. Ms. Wheadon moved into the park in July of 1993. She maintains that she was not specifically advised of the fact that the street lamp on her lot was connected to her meter until after she had moved into her unit.
8. Mr. Nealon does not specifically dispute Ms. Wheadon's contention, except to note that it has been his practice for more than twenty years to inform tenants of all material conditions affecting their tenancies, including the fact that some lots contain meters supplying street lamps.
9. However, the Board finds that there is no documentary record by which the park can establish that any such notice was provided to Ms. Wheadon prior to her purchase and occupancy; the Board further finds that the park rules in effect at the time Ms. Wheadon assumed occupancy did not provide any clear basis by which a tenant or prospective tenant could determine that he or she would be using an electric meter which was also connected to a street lamp.
10. Ms. Wheadon claims that she learned of the metering issue within a few weeks of moving into the park. *Complaint, Statement, p.2.*
11. Nevertheless, the Board finds no basis to presume that Mr. Nealon has attempted to conceal the fact that some street lamps in the park are connected to tenants' meters. In fact, he has regularly contacted affected tenants to set or adjust the amount of an allowance against rentals by which he purports to compensate tenants for additional costs to them imposed by the connection of street lamps to their residential meters ("the metering allowance").
12. At all times relevant to this matter, Mr. Nealon allowed Ms. Wheadon and all other affected tenants a metering allowance of \$5.00 per month. In January 1996, Mr. Nealon

notified affected residents in writing that the allowance would be increased to \$8.00 per month.

13. Mr. Nealon testified that he adopted the metering allowance, rather than attempting to separately meter the 13 street lamps, because PSNH has declined to separately meter the street lamps upon request. Moreover, the fact that the street lamps are scattered throughout the park precludes hooking them up to a single metered circuit. Thus the only feasible way to decouple the street lamps from tenants' residential meter boxes would be to establish separate lines and metering for each of thirteen street lamps at a cost which Mr. Nealon estimated to be in excess of four thousand dollars.²
14. Mr. Nealon testified that he calculated the metering allowance by periodically requesting an estimate of the monthly cost of operating the 13 street lamps from PSNH and establishing an allowance in excess of any such cost estimate. See, *Letters from PSNH to Nealon ("PSNH Letters")*, dated May 15, 1987, June 10, 1991, July 13, 1993, January 10, 1996.
15. The Board finds that the estimates relied on since 1993, which are the estimates relevant to Ms. Wheadon's complaint, are based on the assumption that the street lamps each contain a single 100 watt outdoor bulb which is in use for nine hours each day for thirty days (27 kilowatt hours). Using these assumptions, PSNH reported to Mr. Nealon that the monthly cost of operating a street lamp in July 1993 was \$2.98. See, *PSNH Letter, dated July 13, 1993*. In January of 1996, the reported cost estimate had risen to \$5.06. See, *PSNH Letter, dated January 10, 1996*. However, this estimate was based on an assumed usage of 39 kilowatt hours (or thirteen hours of use each day for a thirty day month).
16. By setting the metering allowance at \$5.00 since at least 1993 and at \$8.00 since February of this year, Mr. Nealon has attempted to provide affected tenants, including Ms. Wheadon,

² The Board notes that such costs could ordinarily be passed on to all residents as a legitimate component of monthly rental fees.

with an approximately three dollar cushion over the estimated typical monthly costs of operating a street lamp though their electric meters, so that tenants would not be prejudiced by any variance in the usage pattern or costs associated with the particular street lamps affecting their properties.

17. Nevertheless, the Board is unable to conclude from the evidence presented that the metering allowances permitted by the park have consistently achieved that goal. For example, Mr. Nealon acknowledged that the original estimate of nine hours daily use of the street lamps may not have accurately reflected actual use, particularly during winter months, but was intended as an estimate of average yearly usage patterns. He could not, however, provide any statistical basis for either that usage estimate or the later estimate of thirteen hours daily use; rather, these estimates were clearly presented to the Board as a rough guess.
18. Moreover, the estimation method adopted does not account for variations in usage pattern affecting individual lights. For example, Mr. Nealon acknowledged that at least one of the thirteen lights -- not the light at issue in Ms. Wheadon's complaints -- may be positioned in a sufficiently shady area that its light-sensitive switching mechanism could cause it to be on for most, if not all, of a twenty four hour period.
19. In addition, the estimation method adopted does not account for any addition to ancillary PSNH charges appearing on tenants' bills which may be based on a percentage of total monthly use, such as the nuclear decommissioning charge.
20. Finally, the Board notes that the level of the metering allowance does not appear to have been adjusted since at least 1993 (and possibly earlier). Nevertheless, the Board takes notice of the fact that electric rates have risen from time to time since 1993. As a result, the "cushion amount" relied on by park management to ensure that tenants affected by the street lamp issue, including Ms. Wheadon, are more than fully compensated for their additional expenses, has in fact been diminishing over the years, until increased by park management in February 1996.

CONCLUSIONS OF LAW

21. The Board finds that the fact that certain street lamps are connected to tenants' residential electric meters is a term or condition of tenancy, which park management must disclose to all prospective tenants prior to the commencement of their tenancies.
22. The Board finds that, in general, park management has failed to adopt procedures which ensure that all prospective tenants affected by the street lamp issue receive certain and verifiable disclosure of the fact that a street lamp is connected to their residential meter.
23. The Board further finds that Ms. Wheadon did not receive such notice prior to the commencement of her tenancy.
24. The Board further finds that the metering allowance adopted by park to compensate affected tenants for any added costs they may incur from the operation of a street lamp through their meter box, while clearly well-intentioned, and in principle a reasonable approach to the issue, is not sufficiently tailored to ensure that tenants affected by the street lamp issue do not suffer monetary damage.
25. Moreover, the Board finds that the currently effective \$8.00 metering allowance is not demonstrably sufficient to ensure that tenants affected by the street lamp issue do not suffer monetary damage now and in the future.
26. Notwithstanding this finding, the Board is unable to conclude from the evidence presented that this Complainant has suffered any quantifiable monetary damage from the connection of a street lamp to her residential meter for which she has not been adequately compensated by the metering allowance.

ORDER

THEREFORE, and in view of the above, the Board makes the following ORDER:

- A. Park Management shall adopt a rule which specifically identifies all lots on which a street lamp is connected to the residential electric meter; and shall further set out the amount and method of computing any metering allowance

- B. Park Management shall immediately establish a metering allowance sufficient to ensure that all affected tenants are held harmless as to any additional costs imposed on them by connection of a street lamp to their residential meter. The Board rules that a metering allowance of at least \$5.00 above the average monthly cost of operating the street lamp, under the methodology and assumptions used in the January 10, 1996 PSNH letter is an appropriate level at which to set the allowance to achieve this result.
- C. The Board further orders Park Management to adjust the metering allowance annually in January of each calendar year by seeking a written determination from PSNH (or any other supplier with whom the park may do business) of the average monthly cost of operating street lamps, under the methodology and assumptions used in the January 10, 1996 PSNH letter.³

A decision of the Board may be appealed, by either party, by first applying for a rehearing with the board within twenty (20) business days of the clerk's date below, not the date this decision is received, in accordance with Man 201.27 Decisions and Rehearings. The board shall grant a rehearing when: (1) there is new evidence not available at the time of the hearing; (2) the board's decision was unreasonable or unlawful.

SO ORDERED THIS _____ DAY OF JULY, 1996
BOARD OF MANUFACTURED HOUSING

By: _____
Beverly A. Gage, Chairman

³ The Board notes that Park Management has submitted a draft amendment to its park rules (a copy of which is attached hereto) which satisfactorily addresses Paragraphs A, B and C of this Order.

Members participating in this action:

Beverly A. Gage
Rosalie F. Hanson
Kenneth R. Nielsen, Esq.
Jimmie D. Purselley
Florence E. Quast
Eric Rodgers
Edward A. Santoro

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Claire E. Wheadon and James Nealon.

Dated: _____

Anna Mae Mosley, Clerk
Board of Manufactured Housing

002-96.