THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

James E. Ferguson	)	
	)	Docket No. 006-96
v.	)	007-96
	)	012-96[1]
Cavalier Realty Corporation	)	
(Lord Cavalier Estates)	)	
(Edward A. Santoro)	)	

Hearing held on September 24, 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. James E. Ferguson ("Complainant") is, or was at all times relevant to this matter, a lawful tenant of the Lord Cavalier Estates MHP, a manufactured housing community located in Merrimack, New Hampshire.

2. Lord Cavalier Estates MHP ("the park") is a manufactured housing community located in Merrimack, New Hampshire. Cavalier Realty Corporation ("Cavalier Realty"), a New Hampshire corporation, is the owner and operator of Lord Cavalier Estates MHP. Edward A. Santoro is the President of Cavalier Realty. For all purposes, Mr. Santoro and Cavalier Realty and Lord

[1] This decision consolidates two complaints filed by Mr. Ferguson against Cavalier Realty (Docket nos. 006 and 007-96) and a cross complaint filed by Cavalier Realty Corp. against Mr. Ferguson (Docket no. 012-96).

Cavalier Estates MHP shall be treated in this Order as a unified entity and shall be identified as "Respondent." [2]

MATTERS AT ISSUE

In this matter, Mr. Ferguson raises a wide variety of claims against Cavalier Realty based on two sets of issues. First, Mr. Ferguson asserts that Cavalier Realty's rules and regulations ("the park rules") are imprecise, out of date and contain numerous provisions which violate specific provisions of RSA 205-A, 540-A or other applicable law; and that numerous "policies" announced by park management through letter or oral communication with tenants constitute de facto rules which should have been promulgated in conformity with RSA 205-A:2, and are, therefore, invalid. Second, Mr. Ferguson asks this Board to determine whether management may reasonably require him to remove a propane gas line running from an installed propane tank on his premises to a utility shed as a condition of approving the sale of his unit, when management had previously consented to the installation of that line. Mr. Ferguson also seeks an award of his costs of prosecuting this action from this Board. Third, Mr. Ferguson asks this Board to determine the propriety of his choice to erect a no trespassing sign on his leased lot for the purpose of asserting a purported right to bar entry by Mr. Santoro and Cavalier Realty employees to the lot except in conformity with RSA 540-A:3, IV.

In its cross complaint, Cavalier Realty asserts various violations of park rules by Mr. Ferguson. Cavalier also maintains that Mr. Ferguson's filing of complaints and an alleged refusal to negotiate with Cavalier's counsel are evidence of bad faith. Cavalier asks this Board to dismiss the complaints and to award it costs and attorney's fees.

[2] Mr. Santoro is a member of the Manufactured Housing Board. He appeared before the Board to give testimony in his capacity as President of Lord Cavalier Estates MHP. He has taken no part in the consideration of, nor has he

Specifically, Mr. Ferguson seeks the following determinations from this Board:

(a) That the Respondent has failed to comply with the prior order of this Board in the matter of Broussard v. Cavalier Realty, Docket No. 004-95, that it promulgate an updated and comprehensive set of rules governing the Park; or, alternatively, that the Board order Cavalier Realty to promulgate such rules within a reasonable period of time;

(b) That the Respondent may not enter his leased premises, i.e. his ground lot, except in conformity with RSA 540-A:3, IV (Supp. 1995); and that any rule or policy promulgated by Cavalier Realty to the contrary is unreasonable;

(c) That the Respondent may not require him to remove a propane gas line extending from an installed tank to his utility shed as a condition of sale of his manufactured housing unit. RSA 205-A: 2, III (1989);

(d) That Respondent's attempt to require removal or modification of the propane gas line to the utility shed violates RSA 205-A:2, VIII (d) which forbids MHP management from requiring "a tenant to sell or otherwise dispose of any personal property, fixture, or pet which the tenant had prior permission from the park owner ... to possess or use...."

(e) That Respondent may not impose a financial penalty in the form of a rent reduction for alleged violation of park rules without establishing the fact of, and criteria for, such rent reduction within the park rules;

(f) That the Board award him damages for various claimed injuries, including time materials and money spent in pursuing this matter;

Cavalier Realty seeks the following specific determinations:

(a) That Mr. Ferguson is himself in violation of valid park rules by (i) posting a "no trespassing" sign on his property in violation of a general ban on signage contained in Park Rules IA and IX; and (ii) by failing to notify Cavalier Realty in writing of his intention to sell his home before posting a for sale sign on his property. Park Rules IX. B,2; RSA 205-A:2, II.

(b) That the Board declare Mr. Ferguson's complaints frivolous and award it costs and attorney's fees; and further enjoin Mr. Ferguson from filing further frivolous complaints against Cavalier.

PRELIMINARY MATTERS

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voted with respect to, any matter presented by this case.

3. As a preliminary matter, the Board rules that it is without jurisdiction to award costs or fees with respect to Mr. Ferguson's and Cavalier's complaints. Therefore, to the extent that either complaint seeks a monetary award from the Board, each complaint is dismissed and the specific relief requested is DENIED.

4. As a further preliminary matter, the Board rules that it has inherent jurisdiction to find complaints filed before it to be frivolous; however, for the reasons set forth below, the Board sees no basis to make such a finding with respect to Mr. Ferguson's complaints against Cavalier Realty and therefore DENIES Cavalier Realty's request that it do so.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Due to the number and complexity of issues presented by this matter, the Board will set forth its findings of fact and conclusions of law separately by issue group.

I. Park Rules

The Board makes the following findings of fact with respect to the Park Rules:

Relevant Rules And Provisions

5. Cavalier Realty has promulgated a set of rules and regulations, dated October 1, 1993, which were received and signed for by Mr. Ferguson in connection with the inception of his tenancy on March 17, 1995.

6. Included with the park rules and physically attached to them as a cover page, was a schedule of fees and rental payments which established Mr. Ferguson's monthly rental fee as $330.00, with the proviso that "Each of the above rental fees are subject to a discount of $20.00 if the rent is received at the park office by the 3d." (emphasis in the original).

7. Section VIII.D of the Rules provides that "commercial signs of any type are not permitted in the Park."

8. Section IX.A of the Rules ("Rules and Regulations Governing Home Sales") explicitly permits the placement of "For Sale" signs in the park. Respondent testified that this provision is intended by implication to forbid the placement of any sign other than "For Sale" signs in lots within the park; however, the express language of the rule contains no such clear prohibition.

9. Section XI.B of the Rules provides that "Management reserves the right to do any work that it deems necessary on any lot when convenient to do it. Lots will be left in good condition upon completion."

10. Section II of the Rules provides that "Written authorization from the Park Owner is required for the construction of any addition, cabana, porch, awning, patio, or a change in the exterior of a home or appurtenant structure...."

11. Section IX of the Rules requires that, as a condition of selling their mobile home units, homeowners "shall be in compliance with all obligations of the Park Rules." Rules, Section IX.B.1; and that "Any addition or utility building shall conform to the rules or be removed." Rules, Section IX. B.3.b.

12. In addition, Section IX.B.4 of the Rules specifically provides that "The Park Owner may require as a precondition to allowing a Home to remain in the Park upon resale that the homeowner repair, change or modify the Home, any utility building, any addition or any other improvement which, in the opinion of the Park Owner, does not meet the resale standards set forth in IX,B.3."

Notices and Addenda

13. In addition to the formal Rules discussed above, Cavalier has also promulgated a vast number of informal, often multi-page notices to tenants, usually styled as "notices to tenants" or "general notice to all tenants," which purport to establish new policies and rules for park residents regarding such matters as occupancy limitations (Letter to tenants, 10/13/94), shrubbery maintenance (Id.), pet control (4/26/95); control of children and placement of play areas (undated); and, of particular relevance to this matter, a notice that rental deductions for timely payment of rent and a senior citizen discount established by the rental sheet attached to the original rules provided to Mr. Ferguson would be subject to forfeit for violation of the park's maintenance and aesthetic standards after inspection by management. (5/10/95).

Out Of Date, Inconsistent and Illegal Rules

14. In addition to the rules quoted above, Mr. Ferguson has noted a number of inconsistent, potentially illegal or out of date rules, provisions and charges established by the Rules or rate sheet. These include:

(a) Charges for pets in excess of those allowed by statute. Compare Rate Sheet, "Animals" to RSA 205-A:2, VIII(c);

(b) Charges for guests of less than thirty days duration in violation of statutory ban. Compare RSA 205-A:2, VIII,(b),(a) (no charge prior to thirty days; $10.00/month thereafter)with Park Rule VII, B. ($30.00 charge for extra persons for any month or part thereof; See also, Rent Sheet , "Additional Charges," ($50.00/month assessed for extra occupants who reside without permission; $10.00/month for extra residents with permission).

15. In addition, Cavalier Estates has issued Notices To Tenants *rescinding* rules or policies previously promulgated. See, Tenant Notice, 3/13/96 (rescinding previously announced ban on

evening dog walking in response to a decision of this Board; and rescinding illegal penalties on overnight guests of less than thirty days).

16. Respondent has testified that several of the Rules included in the formal Park rules are out of date and not enforced. However, it is not clear from the testimony in this matter that management has ever made any effort to distinguish for Mr. Ferguson or other tenants which of its rules are real and which are illusory.

17. As may be apparent from the above discussion, the Rules of Cavalier Estates are, in the Board's estimation, unnecessarily complex, and are not presently contained in anything like a coherent and readable format. Moreover, the Board finds that management's "Notices" to tenants tend to be prolix, confusing, and filled with unnecessary invective and cannot reasonably be found to constitute a valid method of communicating rules or rule changes to the tenants at the Park. Specifically, the Board finds that Cavalier Realty cannot reasonably maintain that it has provided to Mr. Ferguson or other tenants a full written copy of the rules of the park by providing them with admittedly out of date formal rules and a mass of confusing, contradictory notices which purport to establish new rules or policies on an ad hoc basis. RSA 205-A:2, X.

18. The Board further finds that, to the extent the "Notices" may involve rule changes, there is no showing that management has ever adhered to the statutory requirement of ninety day notice prior to establishing such rules as the policy of the park. See, RSA 205-A: XI.

19. The Board notes that Respondent has both testified and submitted an extensive letter from counsel setting forth its intentions to promulgate a single set of coherent rules. Unfortunately, Respondent made the same representation to this Board in a prior hearing in January and, though counsel's letter shows evidence of significant effort and some progress toward this end by

Respondent, the present state of the rules at Cavalier Estates remains both unchanged and unacceptable.

20. THEREFORE, The Board finds that Respondent is in continuing violation of RSA 205-A:2, XI until such time as it shall promulgate a single set of coherent, up-to-date rules for the park.

II. Specific Complaints

A. Entry Rights and Signage

21. The Board finds that, on or about May 24, 1996, Mr. Ferguson posted a no trespassing sign on his rented lot and notified Respondent by letter to Mr. Santoro that he would not agree to permit representatives of Cavalier to enter his lot, except by appointment or emergency. *Letter*, 5/24/95.

22. In essence, Respondent argues that the posting of the sign was in violation of Park rules VIII.D and IX.A, cited above, which respectively, ban commercial signage from the park and impose size and placement limitations on "for sale" signs.

23. Respondent further argues that Mr. Ferguson's attempt to limit entry to his leased property by Cavalier personnel to arranged appointments and emergencies violates Section XI.B of the Rules, which provides that "Management reserves the right to do any work that it deems necessary on any lot when convenient to do it...."

24. By contrast, Mr. Ferguson maintains that he was, and is, within his rights to assert a right to control entry to his leased property pursuant to RSA 540-A:3, IV (Supp. 1995), which provides that "No landlord shall willfully enter into the premises of a tenant without prior consent, other than to make emergency repairs."

25. In the Board's view, neither party is correct. First, the Board declines to follow Mr. Ferguson's implicit argument that a leased lot within a manufactured housing park is a "premises"

within the meaning of RSA 540-A: 1, III (Supp. 1995) and RSA 540-A:3, IV (Supp. 1995), subject to the rule that landlords may not generally enter those premises without prior consent. In the Board's view, the requirements of RSA 540-A:3, IV (Supp. 1995) are appropriate to rental housing, such as an apartment, where the limits of the rental space are clearly delineated and subject to closure by door or walls. Such a hard and fast statutory rule is not, in the Board's view, equally appropriate to a manufactured housing lot, in which occasional entry for maintenance, inspection, landscaping, or simple access to the tenant's front door, may be a necessary and accepted part of the landlord-tenant relationship. Thus, the Board finds that Mr. Ferguson was not justified in asserting a blanket right to bar entry to his lot by management as expressed by his "No Trespassing" sign and letter dated 5/24/96.

26. Nevertheless, the Board does find some real merit in Mr. Ferguson's argument that, as a lessee for value of his lot, he is entitled to a reasonable measure of protection from intrusive entry onto his lot by management. The problem here is that Park Rule Section XI.B, which provides that "Management reserves the right to do any work that it deems necessary on any lot when convenient to do it." essentially establishes the free right of management to enter onto tenant's lots whenever convenient and for whatever reason. The Board finds that rule unreasonable and unenforceable to the extent that it fails to establish any criteria beyond management's convenience for such entry. [3]

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[3] On the limited facts before it, the Board does not purport to rule on what may or may not constitute a reasonable right to entry by management onto a leased lot in a manufactured housing park. Clearly, the Board acknowledges that some level of general permission to enter for periodic inspections, scheduled maintenance, or simple access to the tenant's front door may, under appropriate circumstances, be deemed reasonable by the Board. Rather the Board only rules that a park rule establishing a general right of management to enter a leased lot "when convenient" is unreasonable.

Similarly, the Board makes no finding as to whether Mr. Ferguson or any other tenant may reasonably refuse consent to periodic, scheduled or requested entry by Respondent, except to note that, as above, the Board may deem various forms of occasional routine entry onto leased lots in a manufactured housing park reasonable and would

27. As a related matter, the Board finds that no existing park rule limits Mr. Ferguson's ability to post a non-commercial warning sign on his leased property. The Board rejects Respondent's argument that either of the cited provisions of the park rules constitutes such a ban. Thus, although Mr. Ferguson's sign may have constituted provocative overkill, it did not violate any existing park rule.

28. THEREFORE, the Board rules:

(i) That Section XI.B of the Park Rules is unreasonable and unenforceable;

(ii) That Mr. Ferguson may not properly limit entry to his leased property by Cavalier personnel to arranged appointments and emergencies; but that

(iii) Mr. Ferguson was not in violation of any specific park rule by posting his "no trespassing" sign on his leased property..

B. *Propane Gas Line Removal*

29. The Board finds it irrefutable that, in or about May 27, 1996, Mr. Ferguson applied for and was granted written permission by Respondent to construct a shed, and, in connection with that construction to place a propane tank in his leased lot.

30. Mr. Santoro contends that, notwithstanding his permission to construct a shed, he was unaware until at least partway through the construction project that Mr. Ferguson intended to heat the shed by propane. Mr. Ferguson, on the other hand, insists that he verbally informed Mr. Santoro of his intent to operate computer equipment in the shed and that "any idiot would know" that such equipment required heating.

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view action by landlords for violation or refusals to cooperate with such reasonable provisions as presumptively appropriate.

31. The Board need not resolve this factual dispute. The plain fact is that there is no documentary evidence supporting Mr. Ferguson's position that he did inform management that the shed was to be heated by propane, or requested and received such permission.

32. In view of the lack of documentary evidence, the Board is constrained to find that, to the extent that Mr. Santoro agreed to accommodate Mr. Ferguson's needs to the aesthetic requirements of the park by permitting him to install a propane tank behind his home and to run a gas line underground to his shed, he did so on an ad hoc basis without demonstrating a clear intent to permit the installation as a permanent feature of the lot.

33. The Board further finds that a letter to Mr. Ferguson dated June 4, 1996 from counsel for Cavalier Realty's counsel does recite permission to run an underground line from the propane tank to the shed for the purpose of heating it. However, the Board also finds that the letter, on its face, constitutes an offer of settlement of a wide variety of issues between Mr. Ferguson and Cavalier Realty; and that Mr. Ferguson's response to the letter, which included an extensive cavil about a typographical misstatement of his first name and repeated demands that Attorney Braun demonstrate his legal capacity to represent his own client, can hardly be termed a clear acceptance of the offer of settlement.

34. Moreover, the potential hazards to park residents which could arise over time from an open-ended permission to maintain an underground gas line on a single lot in the park argues against construing Cavalier Realty's permission to install the line as open ended and transferable.

35. On balance, therefore, the Board finds that Mr. Ferguson did have permission from Cavalier Realty to run an underground line from his propane tank to his shed for the purpose of heating his shed but that permission to run an underground line did not extend to any future purchaser of the lot.

Accordingly, Respondent may require removal of the gas line upon sale of the home. See, Ruta v. Cavalier Realty , Docket No. 004-96**.**

36. At the same time, the Board finds that Cavalier Realty failed to clearly establish in writing the limited scope of its permission to heat the shed in writing; and that Mr. Ferguson may have relied on his understanding of Mr. Santoro's oral statements in installing a propane tank for the purpose of heating his shed. Therefore, the Board finds that Mr. Ferguson is entitled to maintain a propane tank on the lot for the purpose of heating his shed; but that Cavalier may require that the propane tank be placed behind the home or otherwise properly screened from view and that its mode of connection to any heating unit within the shed be direct, overground and visible.

C. ***Denial of Rent Reduction*****.**

37. Finally, Mr. Ferguson questions whether Respondent may (i) alter the conditions of granting rent reductions from those stated in the initial rate sheet attached to the park rules by a "notice to tenants" dated 5/10/95; and (ii) whether the denial of his deduction based on the new criteria was reasonable and enforceable.

38. The Board finds that a provision in the rate sheet attached to rules provided to Mr. Ferguson at the inception of his tenancy established a $20.00 deduction from rental payments for timely payment of rent. See, *Rate Sheet, "Monthly Rental Charges*."

39. The Board further finds that, by a "General Notice To All Tenants" dated May 10, 1995, Respondent announced a change in policy regarding rent reductions, under which the rent reduction would be further conditioned on compliance with the park's maintenance and aesthetic standards.

40. The Board further finds that, by notices provided on or about May 15, 1996, Cavalier Realty informed Mr. Ferguson that he would lose his right to deduct $20.00 from his rent beginning July 1,

1996 for two specified rules and standards violations. These alleged violations were: (i) an unstained or painted planter and deck; and (ii) the propane gas line.[4]

41. As an initial matter, the Board notes that it has no jurisdiction over issues relating to rent or rent increases. RSA 205-A:27, II (Supp. 1995). Notwithstanding that statutory ban, the Board rules that it has jurisdiction to address issues relating to rules and rule enforcement. RSA 205-A:27, I (Supp. 1995).

42. In that narrow context, the Board notes that it has decided in this matter that the existence of Mr. Ferguson's gas line was not in violation of any valid park rule and therefore rules that any financial penalty assessed against him by reason of the gas line was unreasonable and should be refunded. The Board is not divested of jurisdiction to so rule simply because the penalty is couched in terms of denial of a rental reduction.

43. Moreover, the Board views it as inappropriate and unreasonable per se to establish a system of financial penalties, whether couched as direct penalties or as denial of rent reduction, for rules violations without establishing within the park rules the existence of, and criteria for such penalties. To do otherwise -- particularly by a notice format which does not purport to be controlled by the statutory requirement of a sixty day notice for rule changes -- exposes tenants to the threat of arbitrary enforcement and imposition of penalties which is directly contrary to the basic requirements of RSA 205-A:2. (1989 and Supp. 1995).

[4] It is the Board's understanding that Mr. Ferguson has corrected any alleged deficiency in his deck and planter to the satisfaction of management and has not been subject to a denial of rent reduction for this issue.

44. THEREFORE, the Board rules that Respondent may not subject Mr. Ferguson to any financial penalty based on the existence of his gas line and that Mr. Ferguson is entitled to reimbursement for any such penalty imposed by park management prior to the date of this ruling.

D. Notice Regarding Sale

45. Finally, the Board notes that Respondent has failed to demonstrate that Mr. Ferguson was or is in violation of any park rule with respect to provision of notice to park management that he intended to sell his home.

ORDER

WHEREFORE, the Board makes the following Order:

A. Within no less than 60 days of the date of this Order, Respondent shall promulgate to all tenants at Lord Cavalier Estates a comprehensive, up-to-date set of rules for the Park.

B. Respondent shall amend Section XI.B of the present rules to establish reasonable criteria for entry onto leased premises consistent with this Order; and shall otherwise conform the Park rules with applicable law.

C. Respondent shall include in newly promulgated rules a statement of all financial or other penalties, including the loss of rent reductions, which may be assessed against tenants for violation of any park rule.

D. Respondent is enjoined from announcing or imposing new penalties, including the loss of rent reductions, which may be assessed against tenants for violation of any park rule except by amendment of park rules in conformity with RSA 205-A.

E. Respondent may require Mr. Ferguson to remove the propane gas line connecting his propane tank to his shed as a condition of permitting his manufactured housing unit to remain in the park

upon sale; except that Mr. Ferguson may retain his propane tank, subject to placement and screening approval by management, such approval not to be unreasonably withheld; and provided that the propane tank's connection to the shed is direct, overground and visible.

F. Respondent is enjoined from imposing any financial penalty on Mr. Ferguson with respect to the gas line and is ordered to reimburse him any amount collected as penalty, including any amount paid as additional (or non-deductible) rent on or after July 1, 1996.

G. Respondent's Complaint against Mr. Ferguson is DISMISSED in its entirety.

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:

BOARD OF MANUFACTURED HOUSING

By: _____
Beverly A. Gage, Chairman

Members participating in this action:

Beverly A. Gage
Stephen J. Baker
Leon Calawa, Jr.
Rosalie F. Hanson
Kenneth R. Nielsen, Esq.
Jimmie D. Purselley
Florence E. Quast
Eric Rodgers

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to James E. Ferguson and Cavalier Realty Corp., (Lord Cavalier Estates) (Edward A. Santoro).

Dated:_____ _____
Anna Mae Mosley Twigg, Clerk
Board of Manufactured Housing