

THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

Christine LaValley)	
Complainant)	Docket No. 007-98
v.)	
James R. Grappone and)	
Green Meadows Mobile Home Park,)	
Respondents)	

Hearing held on September 14, 1998, 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. Christine LaValley (“Complainant”) is, or was at all times relevant to this matter, a lawful tenant of the Green Meadows Mobile Home Park MHP, a manufactured housing community located in Concord, New Hampshire.
2. Green Meadows Mobile Home Park (“the park”) is a manufactured housing community located in Concord, New Hampshire. James R. Grappone is the owner and operator of Green Meadows Mobile Home Park, by and through Green Meadows Mobile Homes, Inc., a New Hampshire corporation. For purposes of clarity, Mr. Grappone, the park and Green Meadows Mobile Homes, Inc. shall be treated in this Order as a unified entity and shall be identified as “Respondent.”

ISSUES PRESENTED

3. Complainant seek a determination by this Board with respect to the following issues:
 - a) That Respondent's refusal to approve her application to admit Michael Mills, a member of her household, as a resident of the park is unreasonable;
 - b) That Respondent has unreasonably denied her permission to allow Mr. Mills to remain as a guest in her household for a period of more than 30 days in violation of RSA 205-A:2, VIII(b);
 - c) That Respondent has unreasonably issued a notice to quit in violation of RSA 205-A, which notice cites the following alleged violations of park rules: (i) allowing others to stay for more than 30 days without the landlord's prior written permission; (ii) conduct disturbing the peace and quiet of other tenants; (iii) causing excessive noise, disturbance or nuisance; and (iv) repairing and reconditioning of vehicles.

JURISDICTIONAL STATEMENT

4. As a preliminary matter, the Board notes that it is without clear jurisdiction to address parks right to evict Ms. LaValley for the alleged rules violations recited in paragraphs 3 and 3(c)(ii), (iii) and (iv) above. RSA 205-A:27, II. Thus the Board's ruling in this matter should be viewed as controlling only the issues of (a) whether Respondent has unreasonably withheld his permission for Mr. Mills to remain as a guest within the park for an extended period of time; and (b) whether Respondent has unreasonably withheld permission for Mr. Mills to become a resident of the park. However, Mr. Grappone has testified that the same issues alleged in the notice to quit also underlay his refusal to permit Mr. Mills either guest or resident status in the park. Accordingly, the Board will address its findings of fact to all matters raised by Respondent with respect to Mr. Mills, notwithstanding the fact that those issues have been cited as grounds for an eviction action.

FINDINGS OF FACT

5. Complainant has owned her home in the park since approximately 1996, and currently resides at 24 Americana Drive with her two minor children since February 1998.
6. In or about February of this year, Mr. Mills, a friend of the family, began to remain in Respondent's home for extended periods of time.
7. By letter dated July 3, 1998, Complainant notified Mr. Grappone that "Michael S. Mills" has become a member of our immediate Family." *Respondent's Exhibit A.*
8. Mr. Grappone construed the July 3, 1998 letter as a request that Mr. Mills be admitted to the park as a resident. He replied by letter dated July 9, 1998 in which he stated that Mr. Mills was not welcome to join the Green Meadows residents list for the following reasons:

"1) A complaint was filed because Mr. Mills drained his car's radiator on the Park street, antifreeze is a hazardous liquid (sic).

2) In your absence, Mr. Mills has numerous "individuals" who visit, and on these occasions they frequent the right, front corner of your utility shed (underneath) and retrieve a plastic bag, after which the music inside your home is cranked up."¹

Respondent's Exhibit B.

9. On July 14, 1998, Respondent served a notice to quit on Complainant, which notice cited the following alleged violations of park rules: (i) allowing others to stay for more than 30 days without the landlord's prior written permission; (ii) conduct disturbing the peace and quiet of other tenants;

¹ The letter also contained the following observation:

"Christine, it is your business who you wish to welcome into your family and what type of activities you wish you and your family to be involved with, however, it is my business what type of activities are welcome in Green Meadows, and I can assure you that the above mentioned is not. Therefore your household remains as yourself and two children, if you wish to add Mr. Mills, you may certainly do that outside of Green Meadows.

Please advise if you will be placing your home for sale or moving the unit to another location."

(iii) causing excessive noise, disturbance or nuisance; and (iv) repairing and reconditioning of vehicles.

10. Both Mr. Mills and Ms. LaValley admitted in testimony that, consistent with her characterization of him as a member of her immediate family, Mr. Mills has been a consistent visitor at Ms. Laval's home for extended periods of time during the spring and summer of this year; and has stayed there on occasions when she has been on vacation. However, both maintained that Mr. Mills stays have all been of less than 30 days duration.
11. Mr. Grappone was unable to provide evidence establishing that Mr. Mills has ever spent 30 or more consecutive days as Ms. LaValley's guest.
12. Mr. Mills also testified that he currently maintains his own residence at 55 Washington Street in Pennacook.
13. With respect to the other issues raised by Respondent regarding Mr. Mills' conduct, the Board notes first that Respondent failed to introduce any evidence whatsoever regarding the alleged presence of visitors picking up plastic bags from a corner shed on Complainant's property, except to make an inspecified allegation that a neighbor of Ms. LaValley's, Mr. William Stetson, had complained to him on one occasion regarding this alleged activity. He further testified that he had no first-hand knowledge of the veracity or accuracy of this supposed complaint.
14. With respect to the alleged antifreeze incident, Respondent testified that he had received a complaint from the same neighbor referred to in paragraph 13 that Mr. Mills had spilled antifreeze onto the roadway beside Ms. LaValley's lot while working on his car.
15. Respondent further testified that he investigated the complaint and found a significant spill of antifreeze in the roadway and roadside dirt just outside Ms. LaValley's lot.

16. Respondent introduced considerable evidence in the form of EPA manuals and other technical material establishing the fact that antifreeze may be considered a hazardous substance and is subject to special handling precautions.
17. It is Respondent's contention that any spill of antifreeze may subject him to liability for clean-up costs and other insurance problems.
18. Respondent further contends that the spill he observed was of such magnitude as to suggest a clear violation of Rule 18 of the park rules which bars the "repairing or reconditioning of vehicles" within the park.
19. However, Respondent also testified that he took no immediate action to address the spill which he claims to have discovered. He did not cause any dirt to be dug up from the roadside; nor did he make any effort to speak to Mr. Mills regarding the alleged problem.
20. Mr. Mills, by contrast, testified that he had been loading branches onto this pickup truck on the day in question, and that he noticed a puddle under the truck. After looking under the hood, he found that the lug on the radiator was not tight causing the radiator to leak. While he was adding water to the radiator he had been called away to tend to one of Ms. LaValley's children and that the radiator had overflowed causing a minor leakage of antifreeze and water onto the roadway. He then rinsed the ground with water from a hose. He denied that he had emptied the radiator onto the roadway.
21. On balance, the Board finds Mr. Mills' testimony on this point more credible than that of the Respondent. In particular, the Board notes that Mr. Grappone's failure to take any step to remediate an antifreeze spill of the magnitude he claims to have observed, or to address the

apparent rule violation at the time of its occurrence are inconsistent with his current view of the gravity of the conduct complained of.

CONCLUSIONS OF LAW

1. First, the Board notes that the issues of Mr. Mill's guest or resident status are controlled by the language of park rule no. 5. which reads:

The composition of the household (persons and pets) shall be listed on the rental agreement. Inaccurate information on the rental agreement is cause for eviction. Any and all changes (except for overnight guests) must be promptly reported to and approved by the landlord. Tenant must notify the landlord in writing of any persons staying in said unit for more than thirty days and shall obtain the landlord's prior permission. All visitors or tenants shall abide by park rules and regulations.

2. The issue of Mr. Mills guest status is further controlled by RSA 205-A:2, VIII(b), which forbids park owners from making or enforcing any rule which :

Requires a tenant to get prior permission of the park owner or operator before an overnight guest can stay in the park; provided, however, a park owner or operator may require prior permission for any guest who stays longer than 30 days, which permission shall not be unreasonably withheld.

3. Mr. Grappone contends that, because Mr. Mills has been a guest at Ms. LaValley's home for considerably in excess of thirty days over a period of several months, he is a de facto resident of the park. Therefore, the park is entitled to written notice and approval rights for his visits, notwithstanding the fact that the record in this case does not establish any single visit of 30 or more days duration.

4. The Board rules that the language of RSA 205-A:2, VIII (b) regarding visitors of more than 30 days applies specifically to visits of 30 or more consecutive days; accordingly, the Board

rules that Respondent has not established either that Ms. LaValley is in violation of Park Rule 5 or of RSA 205-A:2, VIII (b) with respect to visits by Mr. Mills to her home.

5. At the same time, the Board rules that Mr. Mills' extended and recurrent visits to Ms. LaValley's home and Ms. LaValley's notice to park management of her intent to include Mr. Mills within her family constitute unambiguous evidence that Mr. Mills intends to become a resident of the park. Therefore, the park and rules that the park is entitled under its rule no. 5 to notice and an application by Ms. LaValley to add Mr. Mills to her lease agreement resident listing as a new resident and member of her household.

6. The Board rules that Ms. LaValley's letter of July 3, 1998 to Respondent noting Mr. Mills' changed status within her household constitutes such a notice and application.

7. The Board further notes that the sole criterion recited in rule 5 for approval of such a change is that all residents, including, new residents, must abide by the rules and regulations of the park.²

8. As noted above, Respondent's evidence that Mr. Mills has engaged in unruly, loud or otherwise suspicious behavior as a guest of Ms. LaValley is all but non-existent; and the Board has found Respondent's claims that Mr. Mills has violated Rules 5 or 18 of the Park Rules in connection with the alleged antifreeze incident to be unpersuasive.

9. For these reasons, the Board finds that Complainant was and is under no obligation to inform Respondent of, or seek Respondent's permission for, Mr. Mills' visits to the park; and

² The Board notes that the park may also be entitled to receive references for, and information sufficient to perform a credit check on, Mr. Mills. Park Rule 1, 2. However, the Board further notes that the references submitted as Complainant's exhibit 2 appears reasonably sufficient and positive as to satisfy this requirement for entry.

that Ms. LaValley has not violated Rule 5 of the park rules or any provision of RSA 205-A in connection with such visits.

10. The Board further finds that Complainant has substantially complied with Rule 5 of the Park Rules by notifying park management on July 3, 1998 of Mr. Mills' changed status within her household and seeking to set into motion a resident application for him.

11. Finally, the Board rules that Respondent has failed to demonstrate any factually supportable reason for denying Mr. Mills admission to the park as a resident and member of Ms. Laval's household.

ORDER

THEREFORE, the Board enters the following ORDER:

- A. Respondent is ENJOINED from taking any action against Ms. LaValley based on any visit by Mr. Mills to Ms. LaValley's home at any time from January 1, 1998 through the date of this order; and
- B. Respondent is ORDERED to receive and review the application by Ms. LaValley to add Mr. Mills to her lease agreement as a resident and member of her household; and is further ORDERED not to unreasonably withhold such permission. The Board notes in this context that any denial of resident status to Mr. Mills based on the allegations of suspicious behavior, disturbance or with respect to the antifreeze incident, as recited in the pending notice to quit would be viewed by the Board as presumptively unreasonable.

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.

ORDERED, this day of , 1998

BOARD OF MANUFACTURED HOUSING

By: _____
Ken Nielsen, Esq., Chairman

Members participating in this action:

Richard R. Greenwood
Hon. Warren Henderson
Hon. Robert J. Letourneau
Kenneth R. Nielsen, Esq.
Jimmie D. Purselley
Florence E. Quast
Linda J. Rogers

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Christine LaValley and Mark H. Puffer, Esq., counsel for James R. Grappone, Green Meadows Mobile Home Park.

Dated: _____

Anna Mae Twigg, Clerk
Board of Manufactured Housing