

THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

Karen Prive)	
Complainant)	Docket No. 019-99
)	
v.)	
)	
Lakeside Mobile Home Park)	
Walter Eberhardt)	
Respondent)	

Hearing held on January 10, 2000, 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. Karen Prive (Complainant) is and was at all times relevant to this matter, a lawful tenant of Lakeside Mobile Home Park, a manufactured housing community located in Manchester, New Hampshire.
2. Lakeside MHP (the park) is a manufactured housing community located in Manchester, New Hampshire. Walter Eberhardt of 749 Corning Drive, Manchester, New Hampshire 03103 is the owner and operator of the park. For convenience, Mr. Eberhardt and the park will be referred to as a unified entity by the term Respondent.

ISSUES PRESENTED

3. Complainants seek a determination by this Board with respect to the following issue:

4. Whether park management made or attempted to enforce any rule which requires a tenant to sell or otherwise dispose of any personal property, which the tenant had prior permission from the park owner or former owner to possess and use pursuant to RSA 205-A:2 VIII (d).

FINDINGS OF FACT

5. The Respondent has owned the park for about twenty years. The park consists of approximately 35 to 40 units.

6. On February 18, 1999, Mr. Eberhardt submitted a request for a variance to the Manchester Zoning Board of Adjustment to replace a 1965 mobile home (25' x 20') located on Lot # 10 with a 1988 mobile home (33' x 12') in an effort to upgrade the park. Lot # 10 was apparently the last unit to be upgraded and is adjacent to Lot # 7, which the subject of this complaint.

7. The application to the City of Manchester was originally denied by the City Building Commissioner on May 12, 1999.

8. The Zoning Board hearing was held on June 2, 1999. The Respondent was represented by his son-in-law, John, who explained to the zoning board (among other things) that: "It does cut off parking for Lot # 7 but they have parking on the other side"; "The road in the trailer park is actually a driveway, not a road"; and "Lot # 7 has no problem with discontinuing their driveway". The Manchester ZBA granted the variance unanimously.

9. Contemporaneously with the above, Karen Prive was apparently in the process of buying the home located on Lot # 7 in the park from Joyce Walsh, the former owner. The sale was completed and the Complainant moved in on or about June 1, 1999.

10. Karen Prive alleges that the former owner of Lot # 7 had four vehicles parked on the lot B two in front and the two behind the unit which are the subject of this dispute.

11. Karen Prive and her housemate, Allen Lavery, had four vehicles between them. They allege that the realtor involved in the purchase of the mobile home represented that four parking spaces were available for Lot # 7.

12. Paragraph 23 of the Park Rules of Lakeside Mobile Home Park, effective March 1, 1999, states, in relevant part, that:

Space constraints limit parking for each homesite to two vehicles. Parking for homesites numbered 7, 8, 27, 28, and 29 are designated with numbered painted spaces and are the exception to off-road parking requirements.

13. The Complainant used four parking spaces (two in front and two in back of her unit) for about two months.

14. On or about August 1, 1999 the Respondent installed a fence at the end of the road (driveway) behind Lot # 10 which effectively blocked the occupants of Lot # 7 from parking two of their vehicles in that area.

15. The Complainant never had permission, either expressly or impliedly, from the Respondent park owner to deviate from Park Rule 23 which allowed two vehicles to park in numbered painted spaces in front of her unit, Lot # 7.

RULINGS OF LAW

16. This matter is controlled by RSA 205-A:2, VIII (d) which provided that no manufactured housing park owner may make or attempt to enforce a rule which:

Requires 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.

17. Here, the Complainant has not met her burden of showing that that she had permission of the park owner to park additional vehicles beyond the two allowed in the Park Rules. Karen Prive initialed the Park Rules when she was approved as a tenant in the park. The area behind Lot # 7 does not include numbered painted spaces to qualify as an exception to the general rule of two parking spaces per lot as stated in Rule 23 of the Park Rules. Without this prior approval by the park owner or the exception, this Board cannot find a violation of RSA 205-A:2 VIII (d).

18. On the basis of the evidence presented, the Board finds that Respondent has established a reasonable basis to restrict the Complainants from parking two additional vehicles behind their unit. This is consistent with the representations before the Manchester Zoning Board and consistent with the reasonable Park Rule (Rule 23).

ORDER

Therefore, the Board **ORDERS** that Karen Prive refrain from parking any additional vehicles behind her unit unless she can demonstrate in good faith and on the basis of objective evidence that that she has obtained permission from the park owner to park said additional vehicles behind her unit.

The Requests of Findings of Fact and Rulings of Law submitted by Attorney Roy Tilsley on behalf of the Complainant are **GRANTED** for numbers: 1, 2, 3, and 8 and **DENIED** for all others.

Either party may appeal a decision of the Board 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

Date: _____

By: _____

Kenneth R. Nielsen, Esq., Chairman

Members participating in this action:

Stephen J. Baker
Richard R. Greenwood
Rep. Warren Henderson
Rep. Robert J. Letourneau
Kenneth R. Nielsen, Esq.
Linda J. Rogers
Jimmie D. Purselley
Florence E. Quast
Sherrie Babich-Strang

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to Karen Prive 794 Corning Rd # 7, Manchester, NH 03103; Roy Tilsley, Esq., Office of William Kelley, 282 River Rd., P.O. Box 3280, Manchester, NH 03105-3280; Mark Tay, Esq., 188 Water St., P.O. Box 391, Exeter, NH 03833; and Walter Eberhardt, 794 Corning Rd., Manchester, NH 03103

Dated: _____

Anna Mae Twigg, Clerk
Board of Manufactured Housing