How I Won in Small Claims Court Again and Again and Again!

By Allyson Holden, GSMOL VP of Zone D as told to Carol Brinkman, GSMOL Secretary

If your park owner is not following the law, there is an easy fix. **Go to Small Claims Court!** Allyson Holden, the feisty new GSMOL VP of Zone D in the San Diego and Inland Empire area speaks from first-hand experience; she has successfully done it eight times. And almost immediately, the gut reaction to her suggestion is the same . . .

BUT - I cannot afford it! ***Not true!*** *The cost is nominal and if you qualify, it can be free! Upon request, the court can waive the filing fees for a variety of simple reasons, such as low income, disability, being on social security, or "I make money but have lots of bills!" Small Claims Court is meant to be the lay man's court and affordability should not be a deterrent to fixing a wrong!*

BUT – I am no match against my park's corporate attorneys! ***Not a problem!*** *Because in Small Claims Court NO attorneys are allowed! There is no legalese gibberish! It is just you telling your story in your own words. And if you are too nervous, you can ask a friend to speak for you.*

BUT - I might get evicted. ***NO! NO! NO!*** *There are only seven specific reasons for eviction and taking your park manager or park owner to court is NOT one of them!*

BUT - Management might not renew my lease next year. ***No Way! They can't do that!*** *When you moved into your park, you signed a rental agreement or lease, after which you never have to sign anything ever again. When it expires, you automatically go on a month-to-month tenancy for as long as you live in the park!*

BUT - I fear retaliation. ***So what! So what if they are mad at you!*** *So what if they do not like you - but you end up liking yourself even more because you stood up for yourself. Ask yourself what can they <u>really</u> do? By now our skin is thick enough to deal with any nasty words or unfounded threats they might hurl! And we have the MRL to protect us!*

According to Allyson, such fears are all too common and often ingrained in residents who were brought up to not rock the boat. Management knows this and does not hesitate to stoke such fears with vague, unfounded threats meant to intimidate you into quiet submission. But when you know what your rights are, *when you know you are being taken advantage of,* you become more willing to stand up for yourself. And standing up in front of a judge in Small Claims Court is one easy way to right a wrong. Your rights are spelled out in the MRL, Mobilehome Residency Law.

Allyson knew that Section 798.43.1(b)(c) of the MRL states a park owner must pass on the utility discount called CARE (California Alternate Rate for Energy) to qualified residents in a master-metered park. A resident in her park qualified for the discount and repeatedly requested it but wasn't getting it! Management claimed they were deducting the credit and even pointed to the word CARE written on the bill - but their words did not match their actions; they were NOT giving the discount. At first the resident thought it was "no big deal." But the CARE discount is 25-40%. On an average bill of $150 a month, with a 30% CARE discount, that is $45/month which adds up to $540 at the end of the year. That is money that should be in your pocket – so,

yes, it is a big deal. It was a big enough deal that Allyson suggested they go to Small Claims Court to get what was rightfully theirs. The park owner tried to intimidate them by declaring they were right and boasting they had lots of big lawyers. Allyson quietly responded she would see them in Court – *without* their lawyers.

Small Claims Court provides Advisors and Self-Help resources offering guidance but the resident was still nervous so asked Allyson to be the spokesperson in court. In a move the park owner probably regrets, they refused pre-trial Court mediation (three times.)

In preparation for their appearance, Allyson did not leave it to chance that the judge would know the unique MRL law that applies to mobilehome issues so she prepared a copy of MRL Section 798.86 (a)(b) and submitted it to the court. It states that in addition to the damages afforded by law, in the discretion of the court, it may award an amount not to exceed $2000 for each willful violation. Furthermore, the prevailing party may be awarded punitive damages.

They went to court; they won! The park appealed; it lost! The park ignored the Court's decision and did not deduct the CARE discount the next two months. So, Allyson filed a second case and went to Court again. They won again. The park appealed; it lost again. Three months later, management still had not provided the discount, so Allyson filed in Court a third time. They won again. The park appealed again. This time the Appellate judge was firm with the defendant and told the Park's representative they "may want to settle this issue" and that "if they come back into court, the court will consider why the Park had not yet created a billing system that included the CARE discount as repeatedly promised in the prior hearings." The possibility of *punitive damages* was now on the table. A sizeable settlement and retroactive CARE reimbursement was negotiated. If it is not implemented by April 22, Allyson plans to go back to court on the 23rd.

Each court appearance, the judge awarded an extra $2000 for **"willful violation."** It was Einstein who is credited with saying, "Doing the same thing over and over again and expecting a different result is the definition of insanity." I guess this park owner hadn't heard. What could have been settled for $540 was now costing the park owner over $8000 (and that is for one resident only.)

And the story is not over yet! *41 other residents in the park were also eligible for the CARE discount and had not gotten it!* A willful violation by park management affecting 41 spaces in a park could expose management up to $82,000 in *penalties* in addition to the award! And, if $8000 is awarded to those 41 residents, it could cost the park over one-third million dollars! Hopefully this kind of lost money is a wake-up call to the park owner! All 41 residents are preparing to request their CARE discount and a retroactive refund. Should the park refuse to implement the negotiated settlement, Plan B is to have each of the 41 residents file their case in Small Claims Court, back-to-back, on the same day so their court dates will be consecutive. Which means the park owner will receive 41 summons at their place of business in a single day, then have to spend multiple days in court facing a judge who will see the Park's name over and over and over – for the same offense! This should not bode well when it comes time for the judge to issue 41 verdicts and then decide whether the violations are "willful" or even deserve "punitive damages." And all 42 decisions of the court become public information – for all to see!

It is up to the winner to collect the award since the court does not do it for you. According to Allyson, “that is the fun part!” First, you ask and hope they do the right thing. But if the debtor does not pay, she gleefully informed me you can call upon the “Till Sheriff” who will do a “till tap” at the park owner’s place of business and collect for you. Or you can place a sheriff “keeper” in the park owner’s business who will take all the money that comes in until the judgement is paid. You can garnish wages, execute a bank levy, place a lien on his property or hire a collection company. There are fees associated with these actions, but some can be waived.

In her long experience advocating for mobilehome residents, Allyson concluded, ***“Tenants have more power than they can ever imagine and a beautiful set of laws written just for them. And they don’t have to spend a dime.”***

Allyson Holden is a volunteer with GSMOL. Like all GSMOL leaders, she is unpaid; none of her time and expenses are reimbursed. Access to the expertise of GSMOL leaders is one of the benefits of your $25 annual membership in GSMOL. Explore more of what GSMOL does at gsmol.org then decide if the $25 to join GSMOL is worth it to you.