

Purpose Review administrative penalty framework and identify opportunities for improvement.

Background

- MRC committed to publicly release the review of the administrative penalty framework by end of November 2015.
- The *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* (the Legislation) allows the RTB to levy an administrative penalty if a person contravenes those Acts, their regulations or fails to comply with a decision or order.
- The RTB has had an assessment process in place since 2008 to determine whether to proceed to the investigation stage.
- The Legislation sets out criteria that must be considered before an administrative penalty is imposed, however the criteria are subjective and interpretive.
- The Legislation provides authority for the director to conduct investigations to ensure compliance but the investigative powers are limited.

Objectives

- To review the director's legislative authority for assessing and investigating administrative penalty request.
- To identify strengths and limitations in the administrative penalty process.
- To clarify the goals and purpose of administrative penalties.

Issues:

- Opposition Party members have raised the issue of administrative penalties.
- Advocates are calling for increases administrative penalties against tenants and landlords who repeatedly contravene the legislation.
- The RTB has levied one administrative penalty to date.
- There are limited administrative procedures and legislative powers for investigation.

Workplan Overview

Deliverable/Milestone	Targeted Completion
Review Legislative framework	
Inter-jurisdictional Scan	
Review of other BC admin penalty framework	
Review reports	
Consultation with Team Leads	
Stakeholder Consultation	
Completed Report	November 2, 2015

Stakeholders (Internal & External)

Name
RTB HQ
RTB Team Leads/Supervisors
Legal Counsel
Executive Director/Director
Stakeholders (TRAC/LLBC/Municipal)

Beattie, Michelle OHCS:EX

From: Donald, Janet OHCS:EX
Sent: Wednesday, May 13, 2015 9:35 PM
To: Panter, Audrey OHCS:EX; Gordon, Alexis M OHCS:EX
Cc: Letain, Edmond OHCS:EX
Subject: administrative penalties

Hello, in estimates tonight the minister committed to having the completed review report on administrative penalties completed and made public in 6 months. We will need to put together some parameters for the report and figure out a timeline and work plan!

Audrey and Alexis - let's meet on this early next week please.

Janet

DRAFT Research Proposal
Administrative Penalty Review

Project Name: Administrative Penalty Review

Project Sponsors: Greg Steves, Executive Director, Residential Tenancy Branch
Janet Donald, Policy Director, Residential Tenancy Branch

Project Manager: Audrey Panter, Senior Policy Analyst, Residential Tenancy Branch
Alexis Gordon, Policy Analyst, Residential Tenancy Branch

Draft Date: June 15, 2015

Background: In 2015, the Minister Responsible of Housing committed to publicly release a review of the administrative penalty framework, outlined in the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* (the legislation), by early 2016. The Residential Tenancy Branch, Office of Housing and Construction Standards has committed to complete this review.

Advocacy groups have expressed concern that the administrative penalty provisions, brought into force in 2008, are inadequate in deterring tenants and landlords from contravening legislation and/or failing to comply with Residential Tenancy Branch orders. Recent media attention has garnered interest in reviewing the administrative penalty framework. The legislation sets out criteria that must be considered before an administrative penalty is imposed, however, the criteria are subjective and interpretive. In addition, the investigative powers under the legislation are limited. Advocacy groups have expressed concern that the Residential Tenancy Branch does not adequately exercise its powers to investigate or levy administrative penalties. The Residential Tenancy Branch reserves investigations into alleged contraventions for serious, repeated breaches – the original intention of the legislation – however, the interpretation of “serious” and “repeated” is subjective. To date, the Residential Tenancy Branch has levied one administrative penalty against a landlord which was later withdrawn under mutual agreement. To fully understand these issues, the Office of Housing and Construction Standards needs to undertake further research and consult with stakeholders in order to improve the efficacy of administrative penalties prior to proposing any changes to legislation, regulation or policy.

Project Purpose: To improve our understanding of administrative penalties as a means to deter landlords and tenants from breaching legislation or failing to comply with an order. Analysis of research and stakeholder discussions will inform policies, regulation and legislation and may result in recommendations for amendments.

Research Questions:

1. What is the goal and purpose of administrative penalties?
2. Under what circumstances are landlords and tenants requesting administrative penalties?

Research Proposal
Administrative Penalty Review

3. How are landlords and tenants currently addressing “problem” landlords/tenants? How is the Residential Tenancy Branch addressing “problem” landlords/tenants?
4. Should administrative penalties for commercial landlords differ from private landlords? Should social inequalities be considered when reviewing a request to investigate?
5. What is the current policy and legal framework for conducting investigations and levying administrative penalties?
6. What criteria should be considered when reviewing a request for investigation?
7. What recommendations for improvements have advocacy groups proposed?

Project Objectives:

- To identify the goal and purpose of administrative penalties.
- To define key challenges with the current process and identify public expectation of administrative penalties.
- To review investigative/enforcement provisions and identify areas for improvement.
- To conduct research on the issues raised by advocacy groups in their reports for changes to policy and legislation.
- To confer with stakeholders; to facilitate discussions on the Province’s role in deterring problematic landlords/tenants and to understand stakeholders’ position on administrative penalties.
- To conduct research other jurisdictions’ effective examples of administrative penalties.

Deliverables:

- Review of applicable reports and recommendations, including: *On Shaky Ground; BC’s Residential Tenancy System: 13 Recommendations for Positive Change* (the “Pivot Report”); and *CLAS Report: Suggested Amendments to the Residential Tenancy Act*
- Review of policy and legal framework for investigations and administrative penalties
- Jurisdictional scan
- Consultation (plan, analysis of findings)
- Final Report by early 2016.

Key stakeholders:

Discussions with stakeholder groups including, tenant, landlord and advocacy groups are needed in order to improve our understanding of administrative penalties as a means to deter landlords and tenants from breaching legislation or failing to comply with an order. Stakeholder discussion with the following organizations may be required:

External:

- BC Housing
- BC Non-Profit Housing Association
- Tenant Resource and Advisory Centre
- LandlordBC
- Pivot Legal Society

Research Proposal
Administrative Penalty Review

- Community Legal Assistance Society (CLAS)
- Together Against Poverty Society (TAPS)

Internal:

Internal stakeholders such as Residential Tenancy Branch arbitrators and information officers have front-line interaction with tenants and landlords and may offer valuable anecdotal information on serious or repeat offenders. Representatives from RTB and HPB may also offer useful policy history and information on the evolution of social housing in BC.

- Directors of Operations, Residential Tenancy Branch
- Dispute Resolution Arbitrators, Residential Tenancy Branch
- Information Officers, Residential Tenancy Branch
- Policy analysts, Residential Tenancy Branch and Housing Policy Branch

Out of Scope: Executive support and additional resources will be required if the following items are to be explored:

- Implementation strategy (e.g., development of documents in relation to changes in legislation such as such as cabinet submission, Requests for Legislation, etc.)
- Financial impact / recommendations (e.g., identification of costs related to implementing changes as a result of legislative or policy changes such as training and education costs, printed materials, contractors, etc.).
- Operational consequences of any recommendations made based on the project (e.g., staff training on new policies, development of materials such as guidelines and fact sheets, public education of changes made as result of changes to legislation, regulation or policy).

DRAFT Research Proposal
Administrative Penalties Policy Review

Project Name: Administrative Penalties Policy Review

Project Sponsors: Greg Steves, Executive Director, Residential Tenancy Branch
Janet Donald, Policy Director, Residential Tenancy Branch

Project Manager: Audrey Panter, Senior Policy Analyst, Residential Tenancy Branch
Alexis Gordon, Policy Analyst, Residential Tenancy Branch

Draft Date: July 13, 2015

Reason for Policy Review:

In May 2015, the Minister Responsible of Housing, the Honourable Rich Coleman, committed to publicly release a review of the administrative penalties framework, outlined in the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* (the legislation), in the fall of 2015. The Residential Tenancy Branch, Office of Housing a Construction Standards, has committed to completing this review.

Background:

Advocacy groups have expressed concern that the enforcement provisions in the legislation, and in particular the administrative penalties provisions, are not effective at deterring non-compliance with the legislation and that the Residential Tenancy Branch does not adequately exercise its powers to investigate or levy administrative penalties. Recent media attention also increased public interest in the administrative penalties legislative and policy framework.

The administrative penalty provisions were brought into force in 2008. The legislation sets out criteria that must be considered before an administrative penalty is imposed and internal procedures are in place for assessing requests for administrative penalties. To date, the Residential Tenancy Branch has levied one administrative penalty against a landlord which was later withdrawn under mutual agreement. To fully understand these issues, the Office of Housing and Construction Standards needs to undertake further research and engage with stakeholders in order to improve the efficacy of administrative penalties prior to proposing any changes to legislation, regulation or policy.

Project Purpose:

To consider options to enhance the effectiveness of the administrative penalty framework set out in the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act*

Project Objectives:

- To clarify the purpose and intent of the administrative penalties framework.
- To determine if the administrative penalties framework is having the intended impact.
- To identify best practices in the application of administrative penalties in other jurisdictions and sectors.

- To engage stakeholders and staff in identifying challenges and opportunities for improvement.
- To identify other avenues to address problematic rental tenancy matters in the province.
- To identify options to improve the administrative penalties framework and other enforcement provisions in the legislation.
- To identify areas that could be strengthened and ensure administrative penalties are applied consistently, fairly and appropriately.

Research and Policy Questions:

1. What is the goal and intent of the Residential Tenancy Branch's administrative penalties provisions?
2. What is the Branch's current legal, policy and procedural framework for assessing requests, conducting investigations and levying administrative penalties?
3. Under what circumstances are landlords and tenants requesting administrative penalties?
4. How are landlords and tenants currently addressing "problem" landlords/tenants?
5. How is the Residential Tenancy Branch addressing "problem" landlords/tenants?
6. What mechanisms/options/compliance tools are currently in place in the province to address significant maintenance and repair issues in residential properties and manufactured home parks?
7. What are common elements of an effective administrative penalties framework?
8. Should administrative penalties for commercial landlords differ from private landlords?
9. Should social inequalities be considered when reviewing a request to investigate? What criteria should be considered when reviewing a request for investigation?
10. What challenges and opportunities for improvement have been identified by advocacy groups?

Deliverables:

- Review of applicable reports and recommendations, including: *On Shaky Ground; BC's Residential Tenancy System: 13 Recommendations for Positive Change* (the "Pivot Report"); and *CLAS Report: Suggested Amendments to the Residential Tenancy Act*
- Review of policy and legal framework for investigations and administrative penalties
- Cross-jurisdictional scan
- Consultation (plan, analysis of findings)
- Draft Report by October 2015. Final Report by November 2015.

Key stakeholders:

Discussions with key stakeholders, including tenant, landlord and advocacy groups and Residential Tenancy Branch staff, will be undertaken in order to develop a common understanding of the purpose and intent of administrative penalties, clarify common elements of an administrative penalties framework and identify opportunities for improvement. Key stakeholders may include:

- External: Tenant Resource and Advisory Centre (TRAC)
- LandlordBC
- Manufactured Home Park Owners Alliance
- BC Housing

- BC Non-Profit Housing Association
- Active Manufactured Homeowners Association
- Pivot Legal Society
- Community Legal Assistance Society (CLAS)
- BC Public Interest Advocacy Centre
- West Coast LEAF
- Together Against Poverty Society (TAPS)

Internal:

Internal stakeholders such as Residential Tenancy Branch arbitrators and information officers have front-line interaction with tenants and landlords. Representatives from RTB and HPB may also offer useful policy history and information on the evolution of social housing in BC.

- Directors of Operations, Residential Tenancy Branch
- Dispute Resolution Team Leads and Arbitrators, Residential Tenancy Branch
- Supervisors and Information Officers, Residential Tenancy Branch
- Policy Analysts, Residential Tenancy Branch and Housing Policy Branch

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Project Manager: Audrey Panter, Senior Policy Analyst, Residential Tenancy Branch
Alexis Gordon, Policy Analyst, Residential Tenancy Branch

Draft Date: July 13, 2015

Reason for Policy Review:

In May 2015, the Minister Responsible of Housing, the Honourable Rich Coleman, committed to publicly release a review of the administrative penalties framework, outlined in the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* (the legislation), in the winter of 2015. The Residential Tenancy Branch, Office of Housing a Construction Standards, has committed to completing this review.

Background:

Advocacy groups have expressed concern that the enforcement provisions in the legislation, and in particular the administrative penalties provisions, are not effective at deterring non-compliance with the legislation and that the Residential Tenancy Branch does not adequately exercise its powers to investigate or levy administrative penalties. Recent media attention also increased public interest in the administrative penalties legislative and policy framework.

The administrative penalty provisions were brought into force in 2008. The legislation sets out criteria that must be considered before an administrative penalty is imposed and internal procedures are in place for assessing requests for administrative penalties. To date, the Residential Tenancy Branch has levied one administrative penalty against a landlord which was later withdrawn under mutual agreement. To fully understand these issues, the Office of Housing and Construction Standards needs to undertake further research and engage with stakeholders to inform the review.

Project Purpose:

Recommend options to increase the understanding of the administrative penalty framework set out in the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* and to explore possibilities for improvement.

Project Objectives:

1. To clarify the intent and process of the administrative penalties framework and inform stakeholders and the public.
2. To identify options to improve the administrative penalties framework and other enforcement provisions in the legislation.

- To identify best practices in the application of administrative penalties in other jurisdictions and sectors.
- To identify other avenues to address problematic rental tenancy matters in the province.

Policy Questions:

1. What is the intent of the Residential Tenancy Branch's administrative penalties provisions?
2. What is the Branch's current legal, policy and procedural framework for assessing requests, conducting investigations and levying administrative penalties?
3. Under what circumstances are landlords and tenants requesting administrative penalties?
 - a. How are landlords and tenants currently addressing problematic landlords/tenants?
 - b. What mechanisms/options/compliance tools are currently in place in the province to address significant maintenance and repair issues in residential properties and manufactured home parks?
 - c. How is the Residential Tenancy Branch addressing problematic landlords/tenants?
4. What are the best practices for an effective administrative penalties framework?
5. Should administrative penalties for commercial landlords differ from private landlords? If so, how?
6. What public interest considerations should be taking into account when reviewing a request to investigate?

Deliverables:

- Final report with recommendations to the Minister by December 2015.

Key stakeholders:

Discussions with key stakeholders, including tenant, landlord and advocacy groups and Residential Tenancy Branch staff, will be undertaken in order to develop a common understanding of the purpose and intent of administrative penalties, clarify common elements of an administrative penalties framework and identify opportunities for improvement. Key stakeholders may include:

External:

- Tenant Resource and Advisory Centre (TRAC)
- LandlordBC
- Manufactured Home Park Owners Alliance
- BC Housing
- BC Non-Profit Housing Association
- Active Manufactured Homeowners Association
- Pivot Legal Society
- Community Legal Assistance Society (CLAS)
- BC Public Interest Advocacy Centre
- Together Against Poverty Society (TAPS)

Internal:

- Directors of Operations, Residential Tenancy Branch
- Dispute Resolution Team Leads and Arbitrators, Residential Tenancy Branch
- Supervisors and Information Officers, Residential Tenancy Branch
- Policy Analysts, Residential Tenancy Branch and Housing Policy Branch, Building and Safety Standards Branch

Last updated: July 28

Ju					
Week 3					
Mon	Tues	Wed	Thurs	Fri	
	20	21	22	23	24

Holidays

Tasks & Responsibility

Jurisdictional scan - RTA 's

1st draft
Feedback
Final draft
Approval

Other Admin Penalty Framework

1st draft
Final

Review of Relevant Documents

RTB decisions
Judicial Reviews
Stakeholder Reports

Consultations

HPO (Wendy Acheson, VP and Registrar)
Fire Chief
Local Government

Meetings with Stakeholders

Tenant Groups

PIVOT
CLAS
Westcoast Leaf (K. Milne)
TRAC

Landlord Groups

LandlordBC

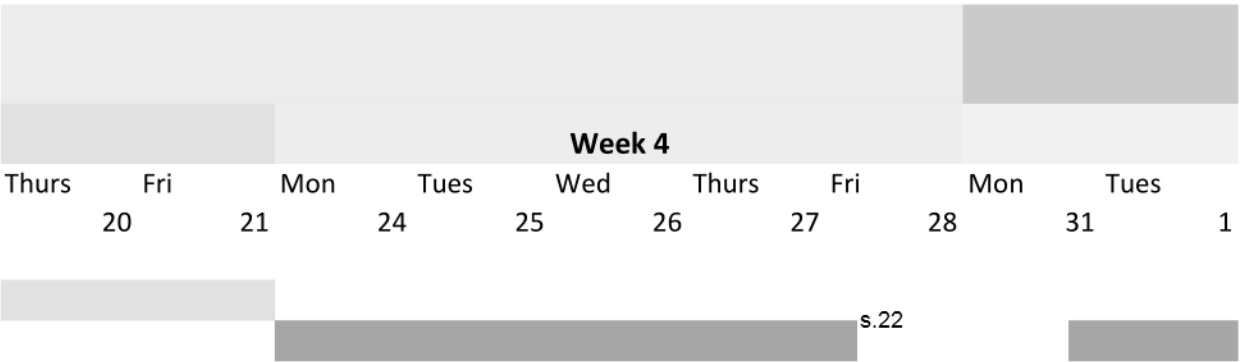
Decision Briefing Note
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Week 4						Week 1				
Mon	Tues	Wed	Thurs	Fri		Mon	Tues	Wed	Thurs	
	27	28	29	30	31		3	4	5	6



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August									
	Week 2					Week 3			
Fri	Mon	Tues	Wed	Thurs	Fri	Mon	Tues	Wed	
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September

Week 1

Week 2

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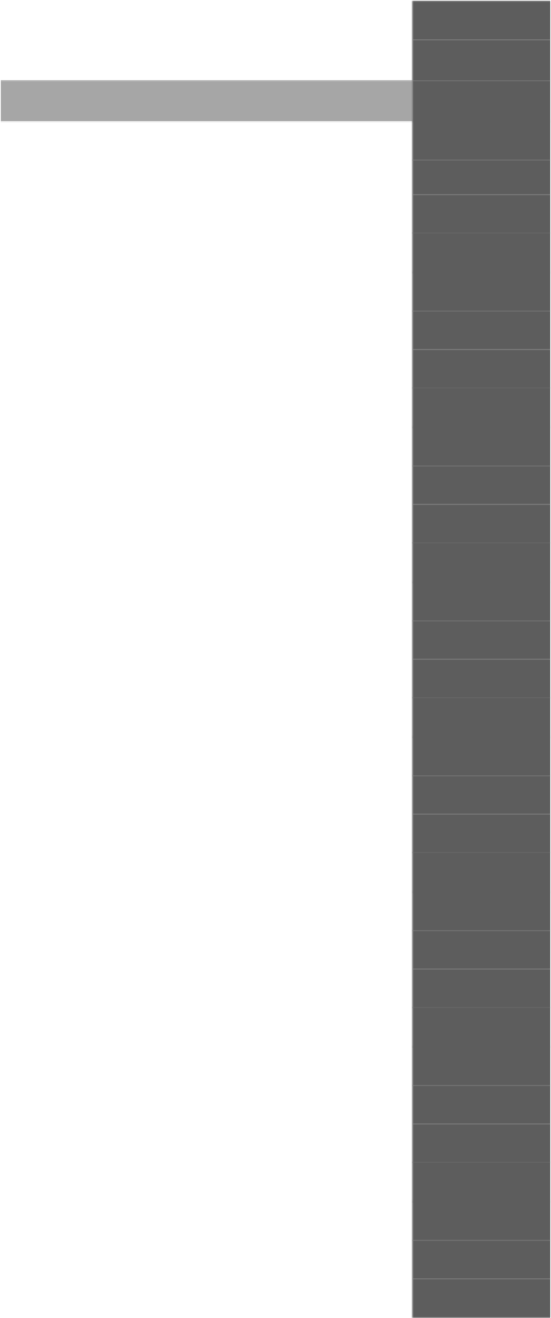
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Week 3					Week 4						
Tues	Wed	Thurs	Fri	Mon	Tues	Wed	Thurs	Fri			
15	16	17	18	21	22	23	24	25			

ADMINISTRATIVE PENALTIES

REVIEW

PURPOSE

- Review the administrative penalties framework with the following objectives:
 - Clarify the intent and efficacy of administrative penalties as an enforcement tool
 - Examine the review process prior to levying an administrative penalty
 - Identify alternative processes to problematic residential tenancy matters
 - Develop recommendations for improving the administrative penalty process, and other tools for compliance

LEGISLATIVE FRAMEWORK

- **Administrative Penalties**
 - Discretionary
 - Balance of probabilities
 - Contravention of provision of legislation or regulation
 - Failure to comply with RTB decision or order
 - Opportunity to be heard
 - Seven mandatory criteria
 - Time-bound agreement
 - Cancel or reduce penalty for action
 - Max \$5,000 monetary penalty (multiplied per day of contravention)
 - Notice, review and recovery of administrative penalty

LEGISLATIVE FRAMEWORK

- **Offences and Penalties**
 - Chargeable offences under legislation and regulation

LEGISLATIVE FRAMEWORK

- **Investigation**

INTENT OF ADMINISTRATIVE PENALTIES

- Mechanism for enforcing compliance
- Discretionary
- Between government and non-compliant person
- Serious repeated contravention, or significant in magnitude
- Anticipated resolution through assessment process or negotiated settlement to correct contravention
- Did not intend to take many actions, in part by using offence provisions for one offs

STAKEHOLDER REPORTS

April 2013, Coalition of Legal Organizations “BC’s Residential Tenancy System: Recommendations for Change”

Recommendations:

- Fund and mandate the Residential Tenancy Branch to fully exercise its investigation and administrative powers.
- Remove the provisions in s. 94.1(4), (5), (6) of the RTA that allow agreements in lieu of enforcement of administrative penalties.

STAKEHOLDER REPORTS

April 2013 CLAS

“On Shaky Ground”

Recommendations:

- Advertise the possibility of Administrative Penalties more widely.
- Hear from affected tenants when deciding on an administrative penalty case, sharing the investigation report with affected tenants and inviting them to send in written submissions.
- When an administrative penalty is unpaid by the due date, the Branch should commence enforcement proceedings to collect the debt or impose a second administrative penalty.
- Help to resolve disputes at an early stage by training Information Officers to intervene in appropriate cases by telephoning parties to inform them about the law.

STAKEHOLDER REPORTS

May 2014, CLAS

“Suggested Amendments to the RTA”

Recommendations:

- **Administrative penalties related to significant maintenance and repairs must:**
 1. **Be mandatory so they are actively used;**
 2. **Be streamlined and incorporated into existing Branch processes so the dedication of additional resources is not required; and**
 3. **Maintain a consequence for non-compliance even if the Branch reaches a negotiated resolution.**

PROCEDURAL FAIRNESS

Principles of Natural Justice

- Reasonable notice of intention to impose and administrative penalty;
- An opportunity for the subject of the complaint to be heard and to make a written statement before an administrative penalty is imposed;
- An impartial decision maker; and
- Reasons for the decision when an administrative penalty is imposed.

BEST PRACTICES

Principles

- **Deterrence**
 - Aim to deter people from violating the law through threat of administrative penalty and deter future non-compliance by removing any financial gain or benefit from non-compliance.
- **Responsiveness**
 - Act promptly and effectively.
- **Proportionality**
 - Be proportionate to the nature of the alleged contravention and the harm caused.
- **Fairness and equity**
 - Ensure fair and equitable treatment of the regulated community. Be consistent and flexible in the assessment of penalties.
- **Transparency**
 - Be transparent about the mechanisms and processes for determining administrative penalties.

BEST PRACTICES

Factors to Consider when Exercising Discretion

- The nature of the contravention.
- The seriousness of the risk or harm of non-compliance.
- The contravention and compliance history of the party.
- Whether the contravention was repeated or continuous.
- Any economic benefit that the party would have derived either directly or indirectly from the contravention, wilfulness or lack of care in causing the contravention.
- Whether the party exercised due diligence to prevent the contravention.
- Efforts the party made to correct the contravention or prevent future occurrences.
- Any efforts undertaken to mitigate or reduce the harm

BEST PRACTICES

Essential Elements of an Administrative Penalty System

- Making a range of enforcement options available.
- A clear indication of the amount of discretion and how to exercise this discretion.
- Limits on the penalty amount that can be levied.
- Notice, including the amounts, reasons, due date, any appeals or reviews.
- Separation of inspection and enforcement roles.
- Sentencing guidelines for criminal prosecution.
- Communication of penalties to the regulated community at large.
- Provisions for the penalization of directors and/or officers of corporations.
- Provisions for appeals of administrative penalties to specialized agencies, if practical.
- That penalty funds collected should not be directed to the benefit of the regulator.

ADMIN PENALTIES IN BC

- **Progressive enforcement, ranging from:**
 - Warnings/advisories
 - Fines/tickets
 - Compliance orders
 - Revocation of license/permit
 - Monetary penalty
 - Conviction
- **Used primarily for licensing or permits**
- **Inspector/Enforcement Officer/Compliance Investigator**

ADMIN PENALTIES OTHER JURISDICTIONS

- **Manitoba**
 - Enforcement Officers (Manitoba RTB)
 - Housing Standards (Public Health)
- **Ontario**
 - Investigation and Enforcement Unit (not RTB)
 - Responds to complaints from landlords or tenants about alleged offences
 - Provincial Standards of Maintenance

OFFENCES/PENALTIES OTHER JURISDICTIONS

- **Alberta**
 - **Investigators (Service Alberta)**

INVESTIGATIONS IN OTHER JURISDICTIONS

- Saskatchewan Section 87

LOCAL GOVERNMENT

CURRENT PROCESS

BC RTB Admin Penalty Process

1. Complaint intake
2. Complaint assessment and disposition
3. Investigation
4. Hearing
5. Decision
6. Review

COMPLAINTS

- 2012 to 2015
 - 24 complaints
- 2012: 7 complaints
- 2013: 7 complaints
- 2014: 6 complaints
- 2015 (to October 13): 4 complaints

CURRENT CHALLENGES

- Availability and transparency of information
- Alternative tools for compliance
- Residential Tenancy Branch Resources
- Legislative constraints
- Policy constraints

RECOMMENDATIONS

Information

- What
 - How decisions are made
 - Processes and procedures
- How

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RECOMMENDATIONS

Compliance Tools

- What
 - Range of enforcement options
- How

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RECOMMENDATIONS

Resources

- What
 - Trained, available staff and contractors for assessment, investigation and adjudication
- How

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RECOMMENDATIONS

- **Legislation**
- **What**
 - Implement mechanism to enforce offence and penalty provisions in RTA (tickets)
 - Enable RTB authority to conduct formal inspections
- **How**
 -

REGULATORY COMPLIANCE TOOLKIT

EDUCATION

- Website
- Guides
- Public education sessions
- Information Officers
- Expert System/Solution Explorer
- Stakeholder Information

WARNING

- Decisions and Orders
- Held on File Letter
- Warning Letter
- Warnings in Decisions
- Compliance Agreement

PENALTY

- Where non-compliance is not remedied or continues) (not punitive)
- Discretion
 - Assessment (seven mandatory criteria)
 - Assessment→Investigation→Penalty
 - Assessment→Penalty
 - Negotiated settlement

NEXT STEPS

ADMINISTRATIVE PENALTIES REVIEW

RESIDENTIAL TENANCY BRANCH

October 2015

PURPOSE

- Review the administrative penalties framework with the following objectives:
 - Clarify the intent and efficacy of administrative penalties as an enforcement tool
 - Examine the review process undertaken prior to levying an administrative penalty
 - Identify alternative processes to problematic residential tenancy matters
 - Develop recommendations for improving the administrative penalty process, and other tools for compliance

LEGISLATIVE FRAMEWORK

- **Administrative Penalties**
 - Discretionary
 - Balance of probabilities
 - Contravention of provision of legislation or regulation
 - Failure to comply with RTB decision or order
 - Seven mandatory criteria outlined in Legislation
 - Opportunity to be heard
 - Time-bound agreement (cancel or reduce penalty for action)
 - Max \$5,000 monetary penalty (multiplied per day of contravention)
 - Notice, right of review and recovery of administrative penalty
 - May pursue either administrative penalty or offence
 - Does not require an investigation

LEGISLATIVE FRAMEWORK

- **Investigation**
 - Discretionary
 - To ensure compliance
 - Opportunity to respond
 - May conduct investigation regardless of whether an application for dispute resolution has been made
 - Cannot delegate same person to conduct investigation and impose administrative penalty

LEGISLATIVE FRAMEWORK

- **Offences and Penalties**

- Chargeable offences under legislation and regulation
- *The Offence Act:*
 - Violation ticket must be issued by an enforcement officer
 - Enforcement officers and related enactments must be referred to in *Violation and Ticket Administration and Fines Regulation*
 - Disputes through Provincial Court
- The RTB does not have authority through *Offence Act*
 - Section 95 of RTA sets out offences, but no authority to enforce
 - Can take action by laying an information before a Justice.

INTENT OF ADMINISTRATIVE PENALTIES

- Mechanism for enforcing compliance
- Discretionary
- Between government and non-compliant person
- Serious repeated contravention, or significant in magnitude
- Anticipated resolution through assessment process or negotiated settlement to correct contravention
- Did not intend to take many actions, in part by using offence provisions for one offs
- Less onerous than court prosecution

STAKEHOLDER REPORTS

April 2013, Coalition of Legal Organizations “BC’s Residential Tenancy System: Recommendations for Change”

Recommendations:

- Fund and mandate the Residential Tenancy Branch to fully exercise its investigation and administrative powers.
- Remove the provisions in s. 94.1(4), (5), (6) of the RTA that allow agreements in lieu of enforcement of administrative penalties.

STAKEHOLDER REPORTS

April 2013 CLAS “On Shaky Ground”

Recommendations:

- Advertise the possibility of Administrative Penalties more widely.
- Hear from affected tenants when deciding on an administrative penalty case, sharing the investigation report with affected tenants and inviting them to send in written submissions.
- When an administrative penalty is unpaid by the due date, the Branch should commence enforcement proceedings to collect the debt or impose a second administrative penalty.
- Help to resolve disputes at an early stage by training Information Officers to intervene in appropriate cases by telephoning parties to inform them about the law.

STAKEHOLDER REPORTS

May 2014, CLAS

“Suggested Amendments to the RTA”

Recommendations:

- Administrative penalties related to significant maintenance and repairs must:
 - Be mandatory so they are actively used;
 - Be streamlined and incorporated into existing Branch processes so the dedication of additional resources is not required; and
 - Maintain a consequence for non-compliance even if the Branch reaches a negotiated resolution.

PROCEDURAL FAIRNESS

- Reasonable notice of intention to impose an administrative penalty;
- An opportunity for the subject of the complaint to be heard and to make a written statement before an administrative penalty is imposed;
- An impartial decision maker; and
- Reasons for the decision when an administrative penalty is imposed.

BEST PRACTICES

Principles

- **Deterrence**
 - Aim to deter people from violating the law through threat of administrative penalty and deter future non-compliance by removing any financial gain or benefit from non-compliance.
- **Responsiveness**
 - Act promptly and effectively.
- **Proportionality**
 - Be proportionate to the nature of the alleged contravention and the harm caused.
- **Fairness and equity**
 - Ensure fair and equitable treatment of the regulated community. Be consistent and flexible in the assessment of penalties.
- **Transparency**
 - Be transparent about the mechanisms and processes for determining administrative penalties.

BEST PRACTICES

Factors to Consider when Exercising Discretion

- The nature of the contravention.
- The seriousness of the risk or harm of non-compliance.
- The contravention and compliance history of the party.
- Whether the contravention was repeated or continuous.
- Any economic benefit that the party would have derived either directly or indirectly from the contravention, wilfulness or lack of care in causing the contravention.
- Whether the party exercised due diligence to prevent the contravention.
- Efforts the party made to correct the contravention or prevent future occurrences.
- Any efforts undertaken to mitigate or reduce the harm.

BEST PRACTICES

Essential Elements of an Administrative Penalty System

- Making a range of enforcement options available.
- A clear indication of the amount of discretion and how to exercise this discretion.
- Limits on the penalty amount that can be levied.
- Notice, including the amounts, reasons, due date, any appeals or reviews.
- Separation of inspection and enforcement roles.
- Sentencing guidelines for criminal prosecution.
- Communication of penalties to the regulated community at large.
- Provisions for the penalization of directors and/or officers of corporations.
- Provisions for appeals of administrative penalties to specialized agencies, if practical.
- That penalty funds collected should not be directed to the benefit of the regulator.

ADMIN PENALTIES IN BC

- Extensively used tool among regulatory bodies
- Two types of administrative penalties:
 - Financial (fines or tickets), and
 - Sanctions (revocation of licences and permits).
- Progressive enforcement, ranging from:
 - Warnings and/or advisories
 - Fines or tickets
 - Compliance orders and monetary penalties
 - Revocation of license/permit
 - Conviction
- Enforced by dedicated inspectors and investigators

ADMIN PENALTIES IN TENANCY MATTERS

Other Jurisdictions:

- **Manitoba**
 - Housing Standards (Public Health)
 - Residential Tenancies Repair Program / Rent redirect
 - Enforcement Officers (Manitoba RTB)
- **Ontario**
 - Investigation and Enforcement Unit (not RTB)
 - Responds to complaints from landlords or tenants about alleged offences
 - Provincial Standards of Maintenance
 - Majority of cases resolved by IEU explaining the law and potential penalties

OFFENCES IN TENANCY MATTERS

Other Jurisdictions:

- **Alberta**
 - Consumer Investigations Unit
 - Investigators (Service Alberta)
 - Violation tickets from \$150 to \$400 (no court appearance)
 - Mandatory court appearances with fines on conviction of up to \$5 000 and \$10 000
 - Health standards outlined in *Public Health Act* and enforced by health authorities/inspectors

INVESTIGATIONS IN OTHER JURISDICTIONS

- Saskatchewan Section 87

RESIDENTIAL TENANCY RENT REDIRECT

- **Manitoba**
 - Redirect rent and contract for repairs
- **New Brunswick**
 - Redirect rent and contract for repairs
- **Newfoundland and Labrador**
 - Redirect rent and hold in trust until repairs complete
- **Yukon (pending)**

LOCAL GOVERNMENT

CURRENT PROCESS

BC RTB Admin Penalty Process

1. Complaint intake
2. Complaint assessment and disposition
3. Investigation
4. Hearing
5. Decision
6. Review

ADMIN PENALTY COMPLAINT HISTORY

- 2012 to 2015
 - 24 complaints
- 2012: 7 complaints
- 2013: 7 complaints
- 2014: 6 complaints
- 2015 (to October 13): 4 complaints

CURRENT CHALLENGES

- Availability and transparency of information
- Alternative tools for compliance
- Residential Tenancy Branch Resources
- Policy constraints
- Legislative constraints
- Lack of stakeholder confidence
- Inability to measure deterrence

RECOMMENDATIONS

Information

- What
 - How decisions are made
 - Processes and procedures
- How

s.13

RECOMMENDATIONS

Compliance Tools

- What
 - Range of enforcement options
- How

s.13

RECOMMENDATIONS

Resources

- **What**
 - Trained, available staff and contractors for assessment, investigation and adjudication
- **How**

s.13

RECOMMENDATIONS

Legislation

- What
 - Implement mechanism to enforce offence and penalty provisions
 - Enable RTB authority to conduct formal inspections
- How

s.13

RECOMMENDATIONS

Policy Constraints

s.13

COMPLIANCE TOOLKIT

EDUCATION

- Website
- Guides
- Public education sessions
- Information Officers
- Expert System/Solution Explorer
- Stakeholder Information

WARNING

- Decisions and Orders
- Held on File Letter
- Warning Letter / Contacting non-compliant party
- Warnings in Decisions
- Compliance Agreement

PENALTY

- Where non-compliance is not remedied or continues) (not punitive)
- Discretion
 - Assessment (seven mandatory criteria)
 - Assessment→Investigation→Penalty
 - Assessment→Penalty
 - Negotiated settlement

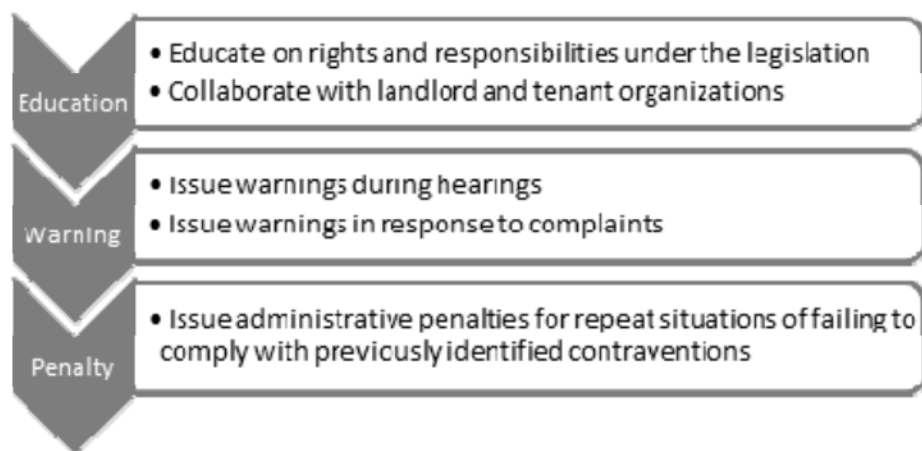
NEXT STEPS

Beattie, Michelle OHCS:EX

From: Panter, Audrey OHCS:EX
Sent: Wednesday, July 22, 2015 11:41 AM
To: Gordon, Alexis M OHCS:EX
Cc: Donald, Janet OHCS:EX
Subject: Briefing

For our meeting with Greg

1. Context:
Minister's commitment, stakeholder reports, media
2. Deliverable:
Final report with recommendations to the Minister by December 2015.
3. Objectives:
 - a. To clarify the intent and process of the administrative penalties framework and inform stakeholders and the public.
 - b. To identify options to improve the administrative penalties framework and other enforcement provisions in the legislation.
 - c. To identify best practices in the application of administrative penalties in other jurisdictions and sectors.
 - d. To identify other avenues to address problematic rental tenancy matters in the province.
4. Work underway:
 - a. Cross-jurisdictional review
 - b. Best practices research
 - c. Enforcement mechanisms
 - d. Process map
5. Framework



6. Stakeholder Engagement:

Undertake discussions with key stakeholders to develop a common understanding of the purpose and intent of administrative penalties, clarify common elements of an administrative penalties framework and identify opportunities for improvement.

Administrative Penalties – Review of the *Residential Tenancy Act*

Stakeholder Discussion

Project Name: Administrative Penalties Review

Residential Tenancy Branch Attendees:

Stakeholder Attendees:

Meeting Date:

Background: The Residential Tenancy Branch, Office of Housing and Construction standards has committed to conducting a review of the administrative penalty framework outlined in the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* (legislation). Administrative Penalties are an enforcement tool intended to promote compliance with the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the legislation).

Administrative Penalties are considered when a tenant or landlord repeatedly or contravenes the legislation or where contravention is significant in its magnitude. Before administrative penalties are applied, the Residential Tenancy Branch will consider the seriousness of the infraction, how often it happened, what efforts were made to correct it and any financial benefit gained from the infraction. The maximum penalty is \$5000 per day. Those facing administrative penalties will have an opportunity to review evidence against them and respond before a decision is made. As with dispute resolution decisions, those who receive an administrative penalty have the option of applying for a review of the penalty. It is important to note that administrative penalties are not a substitute for the dispute resolution or judicial review processes.

Purpose of Consultation: The Residential Tenancy Branch is seeking to improve its understanding of stakeholders' viewpoint on administrative penalties as a tool to promote compliance with the legislation and Residential Tenancy Branch orders.

Research Questions:

1. What criteria should the Residential Tenancy Branch consider when reviewing a request to investigate a tenant or landlord?
2. How are landlords and tenants currently addressing problematic landlords/tenants?
3. Is the monetary penalty framework for non-compliance sufficient?
4. What role should local government play in deterring non-compliance with legislation or orders? For example, many municipalities do not have standards of maintenance by-laws.

Contact:

If you have any further comments or questions, please forward them to Audrey Panter, Senior Policy Analyst, Residential Tenancy Branch at Audrey.Panter@gov.bc.ca or Alexis Gordon, Policy Analyst, Residential Tenancy Branch at Alexis.Gordon@gov.bc.ca.

Administrative Penalties Policy Review
Residential Tenancy Act/Manufactured Home Park Tenancy Act
Stakeholder Discussion

Project Name: Administrative Penalties Policy Review

Residential Tenancy Branch Attendees:

Stakeholder Attendees:

Meeting Date:

Purpose of Meeting: The Residential Tenancy Branch is seeking to improve its understanding of stakeholders' viewpoint on administrative penalties as a tool to deter non-compliance ~~promote compliance~~ with the legislation and Residential Tenancy Branch orders.

Background: The Residential Tenancy Branch, Office of Housing and Construction Standards, has committed to conducting a review of the administrative penalty framework outlined in the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* (legislation). Administrative Penalties are an enforcement tool intended to promote compliance with the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the legislation).

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Purpose and Intent of Administrative Penalties

Key

Research Questions:

1. What criteria should the Residential Tenancy Branch consider when reviewing a request to investigate a tenant or landlord?
2. How are landlords and tenants currently addressing problematic landlords/tenants?
3. Is the monetary penalty framework for non-compliance sufficient?
4. What role should local government play in deterring non-compliance with legislation or orders? For example, many municipalities do not have standards of maintenance by-laws.

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Administrative Penalties Policy Review
Residential Tenancy Act/Manufactured Home Park Tenancy Act
Stakeholder Discussion

Contact:

If you have any further comments or questions, please forward them to Audrey Panter, Senior Policy Analyst, Residential Tenancy Branch at Audrey.Panter@gov.bc.ca or Alexis Gordon, Policy Analyst, Residential Tenancy Branch at Alexis.Gordon@gov.bc.ca.

Beattie, Michelle OHCS:EX

From: Gordon, Alexis M OHCS:EX
Sent: Tuesday, July 14, 2015 10:38 AM
To: Donald, Janet OHCS:EX
Cc: Panter, Audrey OHCS:EX
Subject: For review/discussion: Draft AP Research Proposal
Attachments: Administrative Penalty Research Proposal - DRAFT - AMPG_AP edits.docx

Hello Janet,

Please find attached the draft research proposal for discussion at today's AP meeting.

Thanks,

Alexis

Alexis Gordon
Policy Analyst, Residential Tenancy Branch

Office of Housing and Construction Standards
Ministry of Natural Gas Development and Minister Responsible for Housing
250.812.2675
Alexis.Gordon@gov.bc.ca
www.gov.bc.ca/landlordtenant



Beattie, Michelle OHCS:EX

From: Gordon, Alexis M OHCS:EX
Sent: Tuesday, July 14, 2015 10:38 AM
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Alexis.Gordon@gov.bc.ca
www.gov.bc.ca/landlordtenant



From: [Gordon, Alexis M OHCS:EX](#)
To: [Donald, Janet OHCS:EX](#)
Cc: [Panter, Audrey OHCS:EX](#)
Subject: For Review: Administrative Penalty Research Proposal - DRAFT - AMPG_AP edits
Date: Tuesday, July 14, 2015 2:17:43 PM
Attachments: [image001.wmz](#)
[image002.png](#)
[Administrative Penalty Research Proposal - DRAFT - AMPG AP edits.docx](#)

Alexis Gordon

Policy Analyst, Residential Tenancy Branch

Office of Housing and Construction Standards
Ministry of Natural Gas Development and Minister Responsible for Housing
250.812.2675
Alexis.Gordon@gov.bc.ca
www.gov.bc.ca/landlordtenant

Options and Recommendations

s.13

1. Overview
 - a. Overview: Basic Elements of Administrative Justice (e.g., duty to inform, opportunity to respond, etc.)
 - b. Purposes and key features of administrative penalties
 - c. If possible, look at research done and choices made as part of 2006 introduction.
2. Administrative Penalties as Used Elsewhere
 - a. As used by other BC government units: goals, context (licensing?), basic features, process¹
 - b. As used by other provinces for rental tenancy or manufactured home park tenancy matters (Ontario and Manitoba as examples, perhaps others): goals, basic features, process
 - c. As used by other jurisdictions for residential tenancy matters or manufactured home park tenancy matters.
3. Defining Current Challenges
 - a. Issuing Penalties: Should RTB be issuing penalties at all? What if it didn't?
 - b. Adequacy of current legislative basis
 - c. Penalties for What: What should RTB issue penalties for – just repairs as currently is the case? Look at requests for penalties received so far.
 - d. Process: What are the key challenges with the current process?
 - e. Enforcement: How can RTB issue/enforce penalties if there is no enforcement ability?
 - f. Public expectations and current dispute resolution options
 - g. Other TBD
4. An Ideal Administrative Penalty Process – review other effective examples
5. Other Considerations
 - a. Working with municipal government to achieve better rental tenancy outcomes – e.g., Local Governments' Standards of Maintenance Bylaws
 - b. Other TBD
6. Options for the Administrative Penalty Legislation and Framework: Based on previous sections, what could RTB consider doing differently?
s.13,s.14
7. Conclusions

Other:

See On Shaky Ground Report (recommendations, re: admin penalties)

See Rec #5 in CLAS Report

¹ For example, labour relations penalties; the newly released administrative penalties to encourage compliance with the Environmental Management Act (EMA) and the Integrated Pest Management Act (IPMA); other TBD.

Beattie, Michelle OHCS:EX

From: Panter, Audrey OHCS:EX
Sent: Saturday, October 17, 2015 1:03 PM
To: Donald, Janet OHCS:EX
Cc: Gordon, Alexis M OHCS:EX
Subject: RE: First draft of report
Attachments: Review Report_First Cutv4.docx

Here you go

From: Donald, Janet OHCS:EX
Sent: Saturday, October 17, 2015 8:12 AM
To: Panter, Audrey OHCS:EX
Subject: Re: First draft of report

Thx can you send it as an attachment too please?

Sent from my iPad

On Oct 17, 2015, at 8:09 AM, Panter, Audrey OHCS:EX <Audrey.Panter@gov.bc.ca> wrote:

Hi Janet,
As requested, here is the first draft. We are still working on the end – challenges and recommendations.

G:\X_RTO\RT_RTBDirectors\1. ADMINISTRATION (100 - 499)\400 PLANNING, PERFORMANCE, PROJECTS\20 Ministry\Administrative Penalties\APReview2015\Draft Report\Review Report First Cutv4.docx

Audrey Panter
Senior Policy Analyst
Residential Tenancy Branch
Office of Housing and Construction Standards
Phone: (250) 818-5749

Beattie, Michelle OHCS:EX

From: Donald, Janet OHCS:EX
Sent: Friday, July 3, 2015 4:37 PM
To: Gordon, Alexis M OHCS:EX
Subject: Re: For Review: Draft Admin Penalty doc's
Attachments: image002.png

s.22

Sent from my iPhone

On Jul 3, 2015, at 4:24 PM, Gordon, Alexis M OHCS:EX <Alexis.Gordon@gov.bc.ca> wrote:

Hi Janet and Audrey,

For your review, attached are the following draft documents:

- Administrative Penalty Research Proposal – DRAFT
- Consultation – one page overview to provide to stakeholders - DRAFT
- List of potential stakeholders

Your input is encouraged and appreciated.

Thanks,

Alexis

Alexis Gordon

Policy Analyst, Residential Tenancy Branch

Office of Housing and Construction Standards

Ministry of Natural Gas Development and Minister Responsible for Housing

250.812.2675

Alexis.Gordon@gov.bc.ca

www.gov.bc.ca/landlordtenant



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Audrey Panter

Senior Policy Analyst

Residential Tenancy Branch

Office of Housing and Construction Standards

Phone: (250) 818-5749

Beattie, Michelle OHCS:EX

From: Donald, Janet OHCS:EX
Sent: Thursday, October 8, 2015 10:03 AM
To: Panter, Audrey OHCS:EX
Cc: Beattie, Michelle OHCS:EX
Subject: RE: information BN for MRC

This is all I got – don't think anything is started in cliff – Greg will be attending

J

Delete	Respond	Calendar	Quick Steps	Move
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Please respond.

From: ☐ Steves, Gregory OHCS:EX on behalf of ☐ Symes, Leslie MEM:EX
Required: ☒ Donald, Janet OHCS:EX; ☐ Steves, Gregory OHCS:EX
Optional:
Subject: Fwd: Minister Coleman's meeting with BC Real Estate Association


Location: s.15
When: Tuesday, November 3, 2015 11:30 AM-12:00 PM

Tuesday, November 3

11 am	Fwd: Minister Coleman's meeting with BC Real Estate Association ; s.15 Symes, Leslie MEM:EX
12 pm	
1 00	

Housing will provide BN by October 27.
Greg Steves to attend

Re: British Columbia Real Estate Association CEO Robert Laing is interested in meeting to discuss mandate
Attendees:
Damian Stathonikos, Director of Communications and Public Affairs


ATT00001.htm

Janet Donald
Policy Director, Residential Tenancy Branch
Office of Housing and Construction Standards

From: Panter, Audrey OHCS:EX
Sent: Thursday, October 8, 2015 9:51 AM
To: Donald, Janet OHCS:EX
Cc: Beattie, Michelle OHCS:EX
Subject: RE: information BN for MRC

Hi Janet,

Not a problem. Do you know if this has been started in CLIFF/eApprovals, and if there is a written meeting request?

Thanks,
Audrey

From: Donald, Janet OHCS:EX
Sent: Thursday, October 8, 2015 9:17 AM
To: Panter, Audrey OHCS:EX
Subject: information BN for MRC

Hi could you please do an information BN for MRC – he is meeting with the British Columbia Real Estate Association CEO Robert Laing is interested in to discuss mandated review of the Residential Tenancy Act.

Could the note focus on the admin penalty review as well as business transformation. The mandate letter talks about red tape reduction so we should try to link the work we are doing on that in.

Could you please have the note to me by October 23rd

Thanks and let me know if you want to chat about this!

Janet

Janet Donald
Policy Director, Residential Tenancy Branch
Office of Housing and Construction Standards
250-415-7647

Report Outline

1. Intent of Administrative Penalties
2. Current authority under the Residential Tenancy Act/Manufactured Home Park Tenancy Act
 - a. Administrative Penalties
 - b. Investigation
 - c. Offences
3. Considerations in determining the amount of an administrative penalty
4. Current process
5. Use of Administrative Penalties in BC
 - a. Securities Regulation
 - b. Consumer Protection
 - i. Consumer Protection BC
 - ii. Homeowner Protection Office (licensing)
 - c. Environmental Protection
6. Use of Administrative Penalties in other Jurisdictions
7. Compliance Tools
 - a. Education
 - b. Warnings
 - c. Penalties
 - i. Offences
 1. Violation ticket with specified penalty (no court app
8. Principles
9. Best practice
10. Framework/Options
 - a. Education: Promote voluntary compliance through education and awareness
 - b. Warnings
 - i. Warning letter
 - ii. Compliance order
 - c. Penalties
 - i. Offences
 1. Violation ticket with specified penalty (no court appearance required)
 2. Mandatory court appearance
11. Appendices
 - a. Table of residential tenancy compliance tools in other provinces
 - i. Compliance tools
 - ii. Penalties
 - iii. Provisions in legislation
 - iv. Delivery mechanism

Residential Tenancy Branch Administrative Penalties Review

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Introduction

Administrative penalties are a mechanism for enforcing compliance with regulatory requirements. They allow for a monetary penalty to be imposed by government in proportion to the type, frequency, and severity of the infraction.¹ Most penalties are graduated and will take the compliance history of the client into consideration.²

In 2006, the British Columbia government passed legislation to add administrative penalty provisions to the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. The provisions were brought into force in March 2008.

Discretionary administrative penalties are not automatic, but require a decision on whether a penalty should be imposed or not, and the amount of the penalty. The standard of proof used to make this decision is the balance of probability.³

The Residential Tenancy Branch, a branch of the Office of Housing and Construction Standards, Ministry of Natural Gas Development and Responsible for Housing. The Residential Tenancy Branch is a neutral agency that provides information to landlords and tenants to help them have successful tenancies. The Residential Tenancy Branch's primary roles are to provide information so that landlords and tenants are informed of their rights and responsibilities under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* and to provide dispute resolution services when tenants and landlords are unable to resolve disputes themselves.

Although the Residential Tenancy Branch has provisions for applying administrative penalties, ~~it~~ the RTB has come under criticism for not acting on this authority.

The purpose of this paper is to review the administrative penalties framework with the following objectives:

- Clarify the intent and efficacy of administrative penalties as an enforcement tool
- Examine the review process prior to levying an administrative penalty
- Identify alternative processes to problematic residential tenancy matters

Legislative Framework

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation) allows the Residential Tenancy Branch to levy administrative penalties when a landlord or tenant has contravened a provision of the Legislation or its regulations, or if the landlord or tenant has failed to comply with a decision or order of the Residential Tenancy Branch.

The Legislation⁴ sets out seven mandatory criteria to be considered in the application of administrative penalties. These are:

¹ <http://www.piac.ca/wp-content/uploads/2014/11/amps.pdf>

² <http://www.piac.ca/wp-content/uploads/2014/11/amps.pdf>

³ <http://www.consumerprotectionbc.ca/hfb-help-for-businesses/compliance-and-enforcement/enforcement/administrative-penalties>

⁴ RTA s. 94.1 (2); MHPTA s. 86.1 (2)XXXX

- Previous enforcement actions for similar contraventions
- Gravity and magnitude of the contravention
- Extent of harm to other resulting from the contravention
- Whether the contravention was repeated or continuous
- Whether the contravention was deliberate
- Whether any economic benefit was derived from the contravention
- The person's efforts to correct the contravention

The Legislation provides discretion to the director to negotiate a settlement and cancel or reduce the size of the administrative penalty in return for specific actions, such as building repairs.

The maximum amount that may be imposed under the administrative penalty provision is \$5,000 for each day the contravention or failure continues⁵.

The Legislation also contains sets out offences and penalties...

Investigation...the director may initiate an investigation to ensure compliance with the legislation whether or no the director has received an application for dispute resolution.

The Regulations...

A Policy Guideline outlines considerations for levying an administrative penalty and, if one is to be levied, how to determine the size of the penalty and whether the penalty should be repeated on each day the contravention continues.

Authority delegated to the Director of Policy.... (see delegation matrix)

Compliance and Enforcement Tools

- Residential Tenancy Branch decisions and orders;
- Court enforcement of Monetary Orders and Orders of Possession made by an arbitrator;
- Administrative penalties under *Residential Tenancy Act* s. 94.1 and *Manufactured Home Park Tenancy Act* s. 86.1; and
- Penalties, under *Residential Tenancy Act* s. 95 and *Manufactured Home Park Tenancy Act* s. 87.

Residential Tenancy Branch Decisions and Orders

When there is a dispute between a landlord and tenant that they are not able to resolve on their own, one of the parties to the dispute may apply to the Residential Tenancy Branch for resolution. An independent decision maker (arbitrator) assesses the information and evidence presented and makes a decision. If appropriate, the arbitrator makes an order to correct the matter. The arbitrator's decision and order is final and binding.

⁵ RTA s. 94.2; MHPTA s. 86.2

Court Enforcement of Orders

If the respondent fails to comply with an order of the Residential Tenancy Branch, the other party may seek court enforcement. However, court enforcement actions are effectively limited to monetary orders (e.g. collection of unpaid rent, return of security deposits) which are filed in Small Claims Court and to orders of possession which are filed in BC Supreme Court and enable a bailiff to remove personal effects from a rental unit following an eviction.

Some matters, such as orders to repair a rental unit, cannot effectively be enforced through existing mechanisms. Because of this, some people do not comply with a dispute resolution order.

Administrative Penalties

Administrative penalties allow the provincial government to take action against a person who repeatedly or continuously contravenes the legislation or fails to comply with decisions or orders of an arbitrator. The legislation sets out criteria that must be considered and allows for administrative penalties up to \$5,000, which may be applied each day a contravention continues. The amount of the penalty will be based on the evidence presented to the decision maker. The maximum administrative penalty (\$5,000) is the same as fines levied by Small Claims Court. Unlike Offences, to be considered for contravention of the entire range of requirements of the tenancy statutes and regulations

Penalties and Offences Provision

The *Residential Tenancy Act* s. 95 and *Manufactured Home Park Tenancy Act* s. 87 allow a person to be fined up to \$5,000 upon conviction for failing to comply with specified provisions of the Acts. The Residential Tenancy Branch does not currently have procedures or mechanisms in place to act on this provision. The onus is currently on a participant to request that the Crown proceed, through Crown Counsel rarely proceeds on matters where there is an administrative dispute resolution mechanism.

Role and Policy Objectives of Administrative Penalties

An Administrative Penalty matter is different from Residential Tenancy Branch dispute resolution processes in a very important way. Dispute resolution hearings are between a landlord and a tenant. Administrative Penalty matters are between the provincial government and the person who is thought to have broken the law or failed to comply with a decision or order of the Residential Tenancy Branch.

Administrative Penalties are intended to act as a deterrent, discouraging people from failing to comply with the legislation or decisions and orders.

When the Administrative Penalty provisions in BC's tenancy legislation were brought into effect, the policy intent was that only complaints about serious or repeated contravention of the legislation or failure to comply with dispute resolution orders would be considered for an administrative penalty. They were intended to be levied when there was a pattern of contraventions, or where the contravention was significant in its magnitude.

The Residential Tenancy Branch intended to impose fines in only the most serious matters as it anticipated that most matters would be resolved either through the assessment process or a negotiated settlement to correct the contravention, such as a repair to a rental unit. It was also anticipated that, for example, a single contravention could be pursued under the Offence provisions of the Act, and under the Administrative Penalties provisions if done many times on various rental units. The Residential Tenancy Branch did not anticipate taking many actions under the administrative penalty system. *Anticipated three to five actions a year, resulting in APs of \$3000 to \$5000*

Current Process – Disposition of complaints

When the Administrative Penalty provisions were brought into effect, authority was given for the [Registrar] [Director of Policy?] of the Residential Tenancy Branch to consider all administrative penalty matters, to provide consistency in application of criteria and decision making. Written criteria were developed to promote transparency and consistency.

The following process was established for considering complaints and requests for Administrative Penalties:

- A. Complaint intake
- B. Complaint assessment and disposition
- C. Investigation
- D. Hearing

A. Complaint intake

Complaints may be initiated by anyone such as a landlord or tenant, members of the public or organizations. The Residential Tenancy Branch may also consider matters at its own initiative. Once an issue is raised, it is assessed and a decision is made as to whether or not further action is necessary and advisable. Complaints, which must be in writing, are referred to a delegate of the Director of Policy for assessment.

B. Complaint assessment and disposition

The information provided in the complaint is assessed to decide on a recommendation for disposition. The legislative and policy criteria are used to complete the initial assessment. The complainant may be contacted for further information. A Triage Checklist (Appendix I) is completed by the Residential Tenancy Branch to determine if an investigation is warranted. The Triage Checklist considers the seven criteria outlined in the Legislation, and Gravity Scale (PG??) are used to determine how much weight to give the contravention in each of the seven required elements to be considered when levying an administrative penalty.

Complaints may be dismissed if they:

- Do not involve an offence under the legislation or failure to comply with an order
- Are not considered serious or repeat contraventions
- Involve a matter that is, or could be before an arbitrator

- Involve an individual circumstance that could be resolved through dispute resolution, court action or other authorities (e.g. police, local government)
- Involve a matter before the courts
- Are frivolous

Based on the assessment, the “delegate” may recommend that:

- ◆1. The complaint be dismissed,
- ◆2. The complaint be held on file for possible future action,
- ◆3. A warning letter be issued, or
- ◆4. Investigation:

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1.9 cm + Indent at: 2.54 cm

The Director reviews the materials and decides on disposition.

1. If the complaint is dismissed, a letter is sent to the complainant stating that the complaint has been dismissed, with reasons and any other relevant advice (e.g., the complainant may submit an application for dispute resolution).
2. If it is decided that the complaint will be held on file, a letter is sent to the complainant stating that the complaint is not being investigated but will be held on file in the event that further complaints about the same matter are received. A letter is also sent to the person who is the subject of the complaint, informing them that a complaint has been made, providing a copy of the letter of complaint, and informing them that the complaint will be held on file.
3. If it is decided that a warning letter will be issued, a letter is sent to the complainant stating that a warning letter is being issued and compliance will be monitored. A letter is sent to the person who is the subject of the complaint, informing them that a complaint has been made, providing a copy of the letter of complaint, and warning the person to comply or an investigation for possible administrative penalties will be initiated. The letter provides information about the relevant provisions of the legislation related to the complaint and an administrative penalties fact sheet (*do we still send given that it is no longer on the website.* was intended that at this stage a settlement agreement may be negotiated

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Those facing administrative penalties will have the opportunity to review evidence against them and respond before a decision is made.

C. Investigation

Original intent:

The director may initiate an investigation if the person

- Fails to comply with a warning letter, or
- Continues to re-offend after receiving the warning letter.

If the director decides to initiate an investigation, the Director will send a letter to the complainant stating action is being initiated on the complaint, the complainant may be contacted to provide more information, and that the complainant will be informed of the outcome of the complaint.

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- The Director will then provide copies of all relevant documentation to the investigator. The investigator will collect information relevant to the case and prepare a report for the Director with recommendations for applying an administrative penalty. The director will decide whether to proceed with a hearing for an administrative penalty. If the Director decides to proceed with a hearing, a hearing date will be scheduled.

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D. Hearing

-If it has been decided that there will be a hearing, the Respondent will be notified by the Residential Tenancy Branch, given a copy of the evidence gathered by the Investigator and be given a hearing date. The hearing will be held 21 days after the notice and the evidence are sent to the Respondent. The Respondent submits any evidence in his or her defence to the RTB during this time. The Respondent may be fined for failing to submit evidence. The hearing will be a review of written evidence and submissions rather than oral evidence. The Registrar of the Residential Tenancy Branch will conduct the hearing by reviewing the evidence gathered by the Investigator, the relevant laws, regulations and guidelines, as well as any other submissions.

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Comment [AP1]: From Fact Sheet. Where is the authority to fine?

- In practice, a monetary penalty is assessed and imposed in the form of a notice with a prescribed date and time for payment.

Enforcement for Repairs

- Order for repairs
- Rent abatement (small cost vs big cost for significant repairs – see CLAS 14 suggested amendments)
- Stakeholders have recommended that administrative penalties for significant maintenance and repairs be 1) mandatory 2) streamlined and incorporated into existing branch process so that dedication of additional resources is not required 3) maintain a consequence for non-compliance even if the Branch reaches a negotiated settlement

Use of Administrative Penalties in BC

Administrative penalties are an extensively used enforcement tool among regulatory agencies within BC. For example, the Ministry of Environment, the Ministry of Transportation and Infrastructure and Consumer Protection BC have the ability to levy administrative penalties. Because administrative penalties can be administered with less onerous procedural and legal requirements than a court prosecution, they are an effective and efficient enforcement option.

In addition to financial penalties, many agencies levy administrative sanctions which can include the revocation or suspension of permits, licences or other administrative instruments.

Ministry of Environment

The Ministry of Environment have very robust compliance and enforcement policies and procedures to protect the environment and human health and safety. Failure to comply with regulatory requirements, even in the absence of environmental damage, may result in a penalty. Many other steps are taken before an administrative penalty or sanction is levied. These steps include:

- **Advisory:** often the first enforcement response taken in cases of minor to moderate non-compliance when there is a high likelihood of achieving compliance.
- **Warning:** differs from an advisory in that it warns of the possibility of an escalating response should non-compliance continue.
- **Orders:** requires parties to address noncompliance issues or take proactive measures. Orders are effective in: ensuring that no party benefits from not complying; deterring other potential violators; and responding quickly to prevent or stop actual or potential negative impact.
- **Ticket:** among other considerations, a ticket may be issued where there has been non-compliance with a regulatory requirement or an advisory or warning is not appropriate.

The Ministry of Environment employs inspectors (primarily Conservation Officers), to verify compliance with regulatory requirements. Inspections may be followed by an investigation if non-compliance is suspected. Investigators collect information and evidence that may be required to support enforcement and are conducted by designated ministry staff.

Ministry of Transportation and Infrastructure

The Ministry of Transportation and Infrastructure employs several mechanisms for compliance and enforcement for transportation safety, including administrative penalties. However, proactive tools are also used, including:

- **Audits:** focus on education and consultation to assist the licensee with complying with their licence obligations. If a licensee is deemed in non-compliance, it may necessitate the issuance of notice, orders and/or violation tickets against the licensee.
- **Fines/tickets:** a set fine is imposed for each infraction and increase for each offence. At the first offence, a warning is letter sent to the licensee to indicate subsequent infractions will result in additional administrative penalties.

Consumer Protection BC

Consumer Protection BC is a non-profit organization that promotes a fair marketplace for BC consumers and businesses.

Consumer Protection BC uses administrative penalties to promote compliance with legislation. They also have the ability to inspect businesses for potential violations and to providing the businesses opportunities to remedy the violations. These inspections have focused on drawing violations to the

attention of the business. Where non-compliance was not remedied or continued, inspectors will escalate the issue for further enforcement action, including:

- **Warning Letters:** enforcement inspectors routinely meet with business owners to discuss compliance-related issues and complaints. If warranted, they may send warning letters to business owners.
- **Voluntary Compliance/Undertakings:** seek voluntary compliance with the legislation through education and awareness. If the Director has reason to believe that a person is violating, is about to violate or has violated the Act or the Regulations, the Director may accept from the person a written undertaking (promise) that contains the terms and conditions the Director determines are appropriate in the circumstances.
- **Compliance Orders:** if the business does not voluntarily comply with the legislation, the Director may issue a Compliance Order, which forces the business to comply with legislation. If the Compliance Order is filed in the BC Supreme Court, it is enforceable as an order of the court.
- **Direct Sales Prohibition Order:** order a supplier engaging in “direct sales” to cease operating if there are grounds to believe that the conduct of the supplier is contrary to the public interest or if the supplier has violated the legislation.
- **Property Freezing Orders:** the Director can issue a property freezing order for a person under inspection if the Director believes the order is advisable for the protection of those dealing with the person under inspection.

A commonality between these organizations is the ability for inspectors to investigate a licensee - a provision that is less robust in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act*. These organizations may also revoke licenses or permits; neither landlords nor tenants are licensed in British Columbia.

Use of Administrative Penalties in Other Provinces and Territories

Each province and territory addresses its compliance and enforcement regime for residential tenancy matters in a different way:

- Alberta has a system of offences in its legislation with enforcement actions for contraventions that include warning letters, violation tickets with fines ranging from \$150 to \$400, and mandatory court appearances with fines on conviction of up to \$5,000 and \$10,000. The offence sections are enforced by Service Alberta. The Consumer Investigations Unit reviews a range of consumer complaints to determine if an offence has occurred and if an investigation is warranted, considering factors such whether a business has a prior complaint history, the number of people affected, and the vulnerability of the consumers. Chargeable offences do not include maintenance and repairs; however, a monetary order made be made through dispute resolution requiring the landlord to pay the tenant for work that the landlord promised to do but never did. Alberta’s tenancy legislation requires adherence to minimum standards prescribed for housing premises established under the *Public Health Act* and regulations which

are enforced by Public Health Inspectors/Executive Officers of Regional Health Authorities on a systematic or complaint basis.

- Saskatchewan...
- Manitoba has the authority to issue a notice of administrative penalty for serious or repeated failures to follow the *Residential Tenancies Act* or the *Life Leases Act*, including for non-compliance with orders or for contraventions. Administrative penalties can be levied for breaches of any provisions of the legislation; however, certain provisions are specifically listed within the legislation such as the duty to not withhold essential services. The regulations set out the associated penalties for contraventions of the legislation and of orders. A person required to pay an administrative penalty may appeal the matter to the Residential Tenancies Commission. The Commission is established as a specialist tribunal to hear appeals from decisions and orders of the director under the Act. The Act gives the Commission authority to investigate, although the definition of investigate seems unclear (see section 167).
- Where there are contraventions of the landlord's obligation to repair that are substantial to occupancy of the unit, the director may order that the landlord be prohibited from renting the unit until the repairs are complete. The director may also order to redirect the tenant's rent payments to the director and, for urgent repairs, use monies from the Residential Tenancies Repair Program to pay for the repairs (established under clause 44(k) of *The Housing and Renewal Corporation Act*).
 - ~~If the failure to follow either Act is serious or repeated, the branch can charge the person responsible an administrative penalty (or fee). right to appeal to The Residential Tenancies Commission~~
- Ontario – a corporation convicted of an offense under the Act is liable for a fine of up to \$25,000. The Act provides more than 37 different offenses, including contravening a repair or compliance order
- Ontario has an enforcement and investigations unit in its Residential Tenancy Branch, with staff in each of its eight offices. The Ontario enforcement process is part of its criminal proceedings. Upon conviction, an individual can face an administrative penalty up to \$25,000, and a corporation can face an administrative penalty up to \$100,000.

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Local Jurisdiction/Enforcement/Bylaws

Best Practice in Administrative Penalties

Principles

Transparency

Be transparent about the mechanisms and processes for determining administrative penalties

Responsiveness

Act promptly and efficiently

Be responsive and consider what is appropriate for the particular issue

Proportionality (magnitude)

Be proportionate to the nature of the offence and the harm caused. In quantifying the seriousness of the violation in a penalty consider:

- Actual or possible harm; and
- Regulatory importance of the violated requirement.

Procedural Fairness

Process for imposing a penalty must be fair and in accordance with the principles of natural justice. Ensure fairness by following minimum procedural rules that provide:

- Reasonable notice of intention to impose an administrative penalty;
- An opportunity for the subject of the complaint to be heard and to make a written statement before an administrative penalty is imposed;
- An impartial decision maker; and
- Reasons for the decision when an administrative penalty is imposed.

Equity

Consistent but flexible application

Deterrence

Deter future non-compliance by removing any financial gain or benefit from non-compliance

Factors to Consider when Exercising Discretion

Most discretionary administrative penalty provisions in statutes identify factors to be considered in deciding whether to impose an Administrative Penalty and/or deciding on the amount to be imposed.

Those factors may include: the nature of the contravention, the seriousness of the risk or harm of non-compliance, the contravention and compliance history of the party, whether the contravention was repeated or continuous, any economic benefit that the party would have derived either directly or indirectly from the contravention, wilfulness or lack of care in causing the contravention, whether the party exercised due diligence to prevent the contravention, efforts the party made to correct the contravention or prevent future occurrences, any efforts undertaken to mitigate or reduce the harm.

Common elements of an AMP scheme

- Making a range of enforcement options available
- Clear indication of the amount of discretion and how to exercise this discretion
- Limits on the penalty amount that can be levied
- Notice, including the amounts, reasons, due date, any appeals or reviews
- Separation of inspection and enforcement roles

- Sentencing guidelines for criminal prosecution
- Communication of penalties to the regulated community at large
- Provisions for the penalization of directors and/or officers of corporations
- Provisions for appeals of AMPs to specialized agencies, if practical; and
- Penalty funds collected should not be directed to the benefit of the regulator

Residential Tenancy Branch Regulatory Compliance Toolkit



1. Education

- a. Website (*Fact Sheets removed; PG only speaks to weighting for \$\$ amounts*)
- b. Guides
- c. Public education
- d. Information Officers
- e. Expert system/solution explorer
- f. Stakeholder information
- g. Information on administrative penalty process

2. Dispute Resolution
 - a. Settlement
 - b. Decisions
 - c. Orders
3. Warning
 - a. Warnings in decisions
 - b. Warning letters in response to AP requests (opportunity to remedy the violation)
(The purpose of a warning letter is to educate the respondent, encourage compliance, and establish a record of the respondent's non-compliance history. Where a warning letter is not appropriate, the natural progression of discipline would involve a financial sanction – an administrative penalty)
 - c. Warning follow-up
4. Penalty (where non-compliance is not remedied or continues) (not punitive)
 - a. Discretion
 - i. Assessment (seven mandatory criteria)
 - ii. Assessment→Investigation→Penalty
 - iii. Assessment→Penalty
 - iv. Negotiated settlement

<http://www.consumerprotectionbc.ca/hfb-help-for-businesses/compliance-and-enforcement/enforcement/administrative-penalties>

http://www.consumerprotectionbc.ca/images/content/law/policies/inspection_adminpen_policy.pdf

The decision maker will give the licensee subject to an administrative penalty a notice imposing the administrative penalty that specifies the following:

- the contravention;
- the amount of the penalty;
- the date by which the penalty must be paid;
- the person's right to have this decision reconsidered;
- an address to which a request for reconsideration may be given.

Compliance inspection

Post Inspection Letter

<https://globalcompliancenews.com/canada-the-constitutionality-of-administrative-monetary-penalties-defining-the-punitive-paradigm-20150809/>

The amount of the penalty should reflect the objective of deterring non-compliance with the administrative or regulatory scheme.”

There are five essential elements of internal compliance programs that can be applied in the AMPs context:^[23]

1. The compliance program must be founded upon strong leadership

The tone from the top should signal the importance of compliance regimes and that these will include the wider administrative ambit now recognized by the Supreme Court of Canada.

2. A proper risk assessment should be completed

Risk management techniques are central to establishing a defence of due diligence and rebutting any suggestion of wilful blindness.

3. Sufficient standards and controls should be developed and carefully implemented

In the past, organizations may have focused on financial regulatory requirements or the avoidance of criminal sanctions. Further standards and controls must now be developed in areas that may be subject to AMPs.

4. Timely training and communication protocols ought to be rolled-out

Training must now include education about administrative regimes and penalties.

5. The program must be properly monitored, audited, and updated as necessary

The level of monitoring and auditing will be linked to the risk assessment conducted under step 2

Recommendations

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Consultation Questions

1. Do you consider that there are other roles or objectives that should be taken into account when consider the RTB's approach to administrative penalties? Please give reasons for your views?

DRAFT

Appendix I: Administrative Penalties Initial Checklist

Person at centre of matter _____ AP# _____

Primary address of matter _____

- ☐ More than one address (list on reverse or a separate sheet)

First consideration: scope

Administrative Penalties are allowed through the RTA or MHPTA in very limited circumstances. The first consideration is whether Administrative Penalties apply to the matter being raised.

- ☐ Contravened Residential Tenancy Act, section _____ Regulation, s.: _____
- ☐ Contravened MHP Tenancy Act, section _____ Regulation, s.: _____
- ☐ Failed to comply with an Order: file #s _____
Dates: _____
- ☐ Other relevant details: _____

Second consideration: scale

Documentation or statements should be provided on following issues, as applicable:

- ☐ Previous enforcement actions _____
- ☐ Gravity and magnitude _____
How is safety compromised? (e.g., locks removed) _____
How is health compromised? (e.g., no windows, exposing residents to harsh weather) _____
How is economic viability compromised? (e.g., repeated non-payment of rent results in mortgage foreclosure) _____
- ☐ Extent of harm to others _____
- ☐ Repeated or continuous offence(s)
Type of order(s)/ contraventions outside of orders (list on separate sheet)
Number of Orders Against in past year _____ in past 2 years _____
- ☐ Evidence that it was deliberate
- ☐ Evidence of economic benefit to contravening party

Third consideration: Previous Practices

Documentation or statements should be provided on following issues. This information may not be available from the person raising the matter.

- ☐ Is there a history of compliance without court-ordered enforcement? _____
- ☐ Is there a history of correspondence or communications with RTB? _____

Fourth consideration: T3 – Triggers, Turf & Talk

- ☐ Trigger: what triggered this complaint? _____
- ☐ Turf: whose responsibility is it, and why is RTB involved? _____
- ☐ Talk: have attempts have been made to resolve the situation? _____

Contact information

- ☐ Person at centre of the matter: name _____
Address: _____
Daytime phone number: _____
Other contact information: _____
- ☐ Person bringing matter to RTB: name _____
Organization/Affiliation: _____
Address: _____
Daytime phone number: _____
Other contact information: _____
- ☐ Second person bringing matter to RTB: name _____
Organization/Affiliation: _____
Address: _____
Daytime phone number: _____
Other contact information: _____

Additional information

Residential Tenancy Branch Administrative Penalties Review

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Introduction

The Residential Tenancy Branch is a branch of the Office of Housing and Construction Standards under the Ministry of Natural Gas Development and Responsible for Housing. The Residential Tenancy Branch is a neutral agency that provides information to landlords and tenants to help them have successful tenancies. The Residential Tenancy Branch's primary roles are to provide information so that landlords and tenants are informed of their rights and responsibilities under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation) and to provide dispute resolution services when tenants and landlords are unable to resolve disputes themselves.

In 2006, the British Columbia government passed legislation to add administrative penalty provisions to the Residential Tenancy Act and the Manufactured Home Park Tenancy Act. Legislation. The provisions were brought into force in March 2008.

Administrative penalties are a mechanism for enforcing compliance with regulatory requirements. They allow for a monetary penalty to be imposed by government in proportion to the type, frequency, and severity of the infraction.¹ Most penalties are graduated and will take the compliance history of the client into consideration.²

~~In 2006, the British Columbia government passed legislation to add administrative penalty provisions to the Residential Tenancy Act and the Manufactured Home Park Tenancy Act. The provisions were brought into force in March 2008.~~

Discretionary administrative penalties are not automatic, but require a decision on whether a penalty should be imposed or not, and the amount of the penalty. The standard of proof used to make this decision is the balance of probability.³

Although the Residential Tenancy Branch has provisions for applying administrative penalties, it the RTB has come under criticism for not acting on this authority.

The purpose of this paper is to review the administrative penalties framework with the following objectives:

- Clarify the intent and efficacy of administrative penalties as an enforcement tool
- Examine the review process prior to levying an administrative penalty
- Identify alternative processes to problematic residential tenancy matters
- Develop recommendations for improving the administrative penalty process, and other tools for compliance
-

¹ <http://www.piac.ca/wp-content/uploads/2014/11/amps.pdf>

² <http://www.piac.ca/wp-content/uploads/2014/11/amps.pdf>

³ <http://www.consumerprotectionbc.ca/hfb-help-for-businesses/compliance-and-enforcement/enforcement/administrative-penalties>

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Legislative Framework

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation) allows the Residential Tenancy Branch to levy administrative penalties when a landlord or tenant has contravened a provision of the Legislation or its regulations, or if the landlord or tenant has failed to comply with a decision or order of the Residential Tenancy Branch.

The Legislation⁴ sets out seven mandatory criteria to be considered in the application of administrative penalties. These are:

- Previous enforcement actions for similar contraventions
- Gravity and magnitude of the contravention
- Extent of harm to other resulting from the contravention
- Whether the contravention was repeated or continuous
- Whether the contravention was deliberate
- Whether any economic benefit was derived from the contravention
- The person's efforts to correct the contravention

The Legislation provides discretion to the director to negotiate a settlement and cancel or reduce the size of the administrative penalty in return for specific actions, such as building repairs.

The maximum amount that may be imposed under the administrative penalty provision is \$5,000 for each day the contravention or failure continues⁵.

The Legislation also contains sets out offences and penalties...

Investigation...the director may initiate an investigation to ensure compliance with the legislation whether or not the director has received an application for dispute resolution.

The Regulations...

A Policy Guideline outlines considerations for levying an administrative penalty and, if one is to be levied, how to determine the size of the penalty and whether the penalty should be repeated on each day the contravention continues.

The Director is responsible for the administration and management of all matters and persons appointed or retained under the Legislation⁶. The Legislation allows the Director to delegate certain powers, duties and functions, however, the Director may not assign or delegate to the same person both the function of conducting investigations into a matter and the power to impose administrative penalties in relation to that matter⁷.

⁴ RTA s. 94.1 (2); MHPTA s. 86.1 (2)XXXX

⁵ RTA s. 94.2; MHPTA s. 86.2

⁶ RTA s. 9 (1); MHPTA s. 9 (1)

⁷ RTA s. 9 (4); MHPTA s. 9 (4)

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Authority delegated to the Director of Policy.... (see delegation matrix)

Compliance and Enforcement Tools

- Residential Tenancy Branch decisions and orders;
- Court enforcement of Monetary Orders and Orders of Possession made by an arbitrator;
- Administrative penalties under *Residential Tenancy Act* s. 94.1 and *Manufactured Home Park Tenancy Act* s. 86.1; and
- Penalties, under *Residential Tenancy Act* s. 95 and *Manufactured Home Park Tenancy Act* s. 87.

Residential Tenancy Branch Decisions and Orders

When there is a dispute between a landlord and tenant that they are not able to resolve on their own, one of the parties to the dispute may apply to the Residential Tenancy Branch for resolution. An independent decision maker (arbitrator) assesses the information and evidence presented and makes a decision. If appropriate, the arbitrator makes an order to correct the matter. The arbitrator's decision and order is final and binding.

Court Enforcement of Orders

If the respondent fails to comply with an order of the Residential Tenancy Branch, the other party may seek court enforcement. However, court enforcement actions are effectively limited to monetary orders (e.g. collection of unpaid rent, return of security deposits) which are filed in Small Claims Court and to orders of possession which are filed in BC Supreme Court and enable a bailiff to remove personal effects from a rental unit following an eviction.

Some matters, such as orders to repair a rental unit, cannot effectively be enforced through existing mechanisms. Because of this, some people do not comply with a dispute resolution order.

Administrative Penalties

Administrative penalties allow the provincial government to take action against a person who repeatedly or continuously contravenes the legislation or fails to comply with decisions or orders of an arbitrator. The legislation sets out criteria that must be considered and allows for administrative penalties up to \$5,000, which may be applied each day a contravention continues. The amount of the penalty will be based on the evidence presented to the decision maker. The maximum administrative penalty (\$5,000) is the same as fines levied by Small Claims Court. Unlike Offences, to be considered for contravention of the entire range of requirements of the tenancy statutes and regulations

Penalties and Offences Provision

The *Residential Tenancy Act* s. 95 and *Manufactured Home Park Tenancy Act* s. 87 allow a person to be fined up to \$5,000 upon conviction for failing to comply with specified provisions of the Acts. The Residential Tenancy Branch does not currently have procedures or mechanisms in place to act on this provision. The onus is currently on a participant to request that the Crown proceed, through Crown Counsel rarely proceeds on matters where there is an administrative dispute resolution mechanism.

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Role and Policy Objectives of Administrative Penalties

An Administrative Penalty matter is different from Residential Tenancy Branch dispute resolution processes in a very important way. Dispute resolution hearings are between a landlord and a tenant. Administrative Penalty matters are between the provincial government and the person who is thought to have broken the law or failed to comply with a decision or order of the Residential Tenancy Branch.

Administrative Penalties are intended to act as a deterrent, discouraging people from failing to comply with the legislation or decisions and orders.

When the Administrative Penalty provisions in BC's tenancy legislation were brought into effect, the policy intent was that only complaints about serious or repeated contravention of the legislation or failure to comply with dispute resolution orders would be considered for an administrative penalty. They were intended to be levied when there was a pattern of contraventions, or where the contravention was significant in its magnitude.

The Residential Tenancy Branch intended to impose fines in only the most serious matters as it anticipated that most matters would be resolved either through the assessment process or a negotiated settlement to correct the contravention, such as a repair to a rental unit. It was also anticipated that, for example, a single contravention could be pursued under the Offence provisions of the Act, and under the Administrative Penalties provisions if done many times on various rental units. The Residential Tenancy Branch did not anticipate taking many actions under the administrative penalty system.

Anticipated three to five actions a year, resulting in APs of \$3000 to \$5000

Current Process – Disposition of complaints

When the Administrative Penalty provisions were brought into effect, authority was given for the [Registrar] [Director of Policy?] of the Residential Tenancy Branch to consider all administrative penalty matters, to provide consistency in application of criteria and decision making. Written criteria were developed to promote transparency and consistency.

The Administrative Penalty process occurs outside of the Residential Tenancy Branch's usual dispute resolution process. This requires the use of additional staff resources to carry out the processes for addressing complaints and requests for Administrative Penalties.

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The following process was established for considering complaints and requests for Administrative Penalties:

- A. Complaint intake
- B. Complaint assessment and disposition
- C. Investigation
- D. Hearing
- ~~D-E.~~ Decision

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Comment [AP1]: Per AG comment: May want to include a paragraph stating that the admin penalty process occurs outside of the Branch's usual dispute resolution process, additional resources are required, etc.

A. Complaint intake

Complaints may initiated by anyone such as a landlord or tenant, members of the public or organizations. The Residential Tenancy Branch may also consider matters at its own initiative. Once an issue is raised, it is assessed and a decision is made as to whether or not further action is necessary and advisable. Complaints, which must be in writing, are referred to a delegate of the Director of Policy for assessment.

B. Complaint assessment and disposition

The information provided in the complaint is assessed to decide on a recommendation for disposition. The legislative and policy criteria are used to complete the initial assessment. The complainant may be contacted for further information. A *Triage Checklist* (Appendix I) is completed by the Residential Tenancy Branch to determine if an investigation is warranted. The *Triage Checklist* considers the seven criteria outlined in the Legislation, and *Gravity Scale* (PG??) are used to determine how much weight to give the contravention in each of the seven required elements to be considered when levying an administrative penalty.

Complaints may be dismissed if they:

- Do not involve an offence under the legislation or failure to comply with an order
- Are not considered serious or repeat contraventions
- Involve a matter that is, or could be before an arbitrator
- Involve an individual circumstance that could be resolved through dispute resolution, court action or other authorities (e.g. police, local government)
- Involve a matter before the courts
- Are frivolous

Based on the assessment, the “delegate” may recommend that:

- 1. The complaint be dismissed,
- 2. The complaint be held on file for possible future action,
- 3. A warning letter be issued, or
- 4. Investigation-

The Director reviews the materials and decides on disposition.

1. If the complaint is dismissed, a letter is sent to the complainant stating that the complaint has been dismissed, with reasons and any other relevant advice (e.g., the complainant may submit an application for dispute resolution).
2. If it is decided that the complaint will be held on file, a letter is sent to the complainant stating that the complaint is not being investigated but will be held on file in the event that further complaints about the same matter are received. A letter is also sent to the person who is the subject of the complaint, informing them that a complaint has been

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made, providing a copy of the letter of complaint, and informing them that the complaint will be held on file.

3. If it is decided that a warning letter will be issued, a letter is sent to the complainant stating that a warning letter is being issued and compliance will be monitored. A letter is sent to the person who is the subject of the complaint, informing them that a complaint has been made, providing a copy of the letter of complaint, and warning the person to comply or an investigation for possible administrative penalties will be initiated. The letter provides information about the relevant provisions of the legislation related to the complaint and an administrative penalties fact sheet *(do we still send given that it is no longer on the website.* was intended that at this stage a settlement agreement may be negotiated

Those facing administrative penalties will have the opportunity to review evidence against them and respond before a decision is made.

C. Investigation

Original intent:

The director may initiate an investigation if the person

- Fails to comply with a warning letter, or
- Continues to re-offend after receiving the warning letter.

If the director decides to initiate an investigation, the Director will send a letter to the complainant stating action is being initiated on the complaint, the complainant may be contacted to provide more information, and that the complainant will be informed of the outcome of the complaint.

- The Director will then provide copies of all relevant documentation to the investigator. The investigator will collect information relevant to the case and prepare a report for the Director with recommendations for applying an administrative penalty. The director will decide whether to proceed with a hearing for an administrative penalty. If the Director decides to proceed with a hearing, a hearing date will be scheduled.

D. Hearing

If it has been decided that there will be a hearing, the Respondent will be notified by the Residential Tenancy Branch, given a copy of the evidence gathered by the Investigator and be given a hearing date. The hearing will be held 21 days after the notice and the evidence are sent to the Respondent. The Respondent submits any evidence in his or her defence to the RTB during this time. The Respondent may be fined for failing to submit evidence. The hearing will be a review of written evidence and submissions rather than oral evidence. The Registrar of the Residential Tenancy Branch will conduct the hearing by reviewing the evidence gathered by the Investigator, the relevant laws, regulations and guidelines, as well as any other submissions.

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E. Decision

In practice, a monetary penalty is assessed and imposed in the form of a notice with a prescribed date and time for payment.

Enforcement for Repairs

- Order for repairs
- Rent abatement (small cost vs big cost for significant repairs – see CLAS 14 suggested amendments)
- Stakeholders have recommended that administrative penalties for significant maintenance and repairs be 1) mandatory 2) streamlined and incorporated into existing branch process so that dedication of additional resources is not required 3) maintain a consequence for non-compliance even if the Branch reaches a negotiated settlement

Stakeholder Reports

Landlord and tenant organizations and advocacy agencies have proposed recommendations to improve the Residential Tenancy Branch's administrative penalty legislation and/or process.

Community Legal Assistance Society

In a report dated May 2014, the Community Legal Assistance Society (CLAS), a non-profit law office that provides legal assistance to tenancy in disputes concerning rental housing, provided a series of recommendations for improving the *Residential Tenancy Act*. The report, titled *Suggested Amendments to BC's Residential Tenancy Act*, sets out recommended amendments to the *Residential Tenancy Act* to ensure that the administrative penalty provisions are effective at deterring non-compliance with the Act or Residential Tenancy Branch orders related to significant maintenance and repair issues. The report recommends that administrative penalties related to significant maintenance and repairs must:

1. Be mandatory so they are actively used;
2. Be streamlined and incorporated into existing Branch processes so the dedicated of additional resources is not required; and
3. Maintain a consequence for non-compliance even if the Branch reaches a negotiated resolution.

A coalition of legal organizations

In [DATE], a coalition of legal organizations working with people affected by residential tenancy issues published a report titled *BC's Residential Tenancy System: Recommendations for Change*. This report contains recommended changes to the *Residential Tenancy Act* and sets out that the Residential Tenancy Branch should be mandated to make more extensive use of financial penalties as a deterrent, especially against landlords who consistently defy the law. The recommendations include:

1. Fund and mandate the Residential Tenancy Branch to fully exercise its investigation and administrative powers; and
2. Remove the provisions in s. 94.1(4), (5), (6) of the RTA that allow agreements in lieu of enforcement of administrative penalties.

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Use of Administrative Penalties in BC

Administrative penalties are an extensively used enforcement tool among regulatory agencies within BC. For example, the Ministry of Environment, the Ministry of Transportation and Infrastructure, and Consumer Protection BC and the Homeowner Protection Office, to name a few, have the ability to levy administrative penalties. Because administrative penalties can be administered with less onerous procedural and legal requirements than a court prosecution, they are an effective and efficient enforcement option.

In addition to financial penalties, many agencies levy administrative sanctions which can include the revocation or suspension of permits, licences or other administrative instruments.

Ministry of Environment

The Ministry of Environment have very robust compliance and enforcement policies and procedures to protect the environment and human health and safety. Failure to comply with regulatory requirements, even in the absence of environmental damage, may result in a penalty. Many other steps are taken before an administrative penalty or sanction is levied. These steps include:

- **Advisory:** often the first enforcement response taken in cases of minor to moderate non-compliance when there is a high likelihood of achieving compliance.
- **Warning:** differs from an advisory in that it warns of the possibility of an escalating response should non-compliance continue.
- **Orders:** requires parties to address noncompliance issues or take proactive measures. Orders are effective in: ensuring that no party benefits from not complying; deterring other potential violators; and responding quickly to prevent or stop actual or potential negative impact.
- **Ticket:** among other considerations, a ticket may be issued where there has been non-compliance with a regulatory requirement or an advisory or warning is not appropriate.

The Ministry of Environment employs inspectors (primarily Conservation Officers), to verify compliance with regulatory requirements. Inspections may be followed by an investigation if non-compliance is suspected. Investigators collect information and evidence that may be required to support enforcement and are conducted by designated ministry staff.

Ministry of Transportation and Infrastructure

The Ministry of Transportation and Infrastructure employs several mechanisms for compliance and enforcement for transportation safety, including administrative penalties. However, proactive tools are also used, including:

- **Audits:** focus on education and consultation to assist the licensee with complying with their licence obligations. If a licensee is deemed in non-compliance, it may necessitate the issuance of notice, orders and/or violation tickets against the licensee.

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- Fines/tickets: a set fine is imposed for each infraction and increase for each offence. At the first offence, a warning is letter sent to the licensee to indicate subsequent infractions will result in additional administrative penalties.

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Consumer Protection BC

Consumer Protection BC is a non-profit organization that promotes a fair marketplace for BC consumers and businesses.

Consumer Protection BC uses administrative penalties to promote compliance with legislation. They also have the ability to inspect businesses for potential violations and to providing the businesses opportunities to remedy the violations. These inspections have focused on drawing violations to the attention of the business. Where non-compliance was not remedied or has continued, inspectors will escalate the issue for further enforcement action, including:

- Warning Letters: enforcement inspectors routinely meet with business owners to discuss compliance-related issues and complaints. If warranted, they may send warning letters to business owners.
- Voluntary Compliance/Undertakings: seek voluntary compliance with the legislation through education and awareness. If the Director has reason to believe that a person is violating, is about to violate or has violated the Act or the Regulations, the Director may accept from the person a written undertaking (promise) that contains the terms and conditions the Director determines are appropriate in the circumstances.
- Compliance Orders: if the business does not voluntarily comply with the legislation, the Director may issue a Compliance Order, which forces the business to comply with legislation. If the Compliance Order is filed in the BC Supreme Court, it is enforceable as an order of the court.
- Direct Sales Prohibition Order: order a supplier engaging in “direct sales” to cease operating if there are grounds to believe that the conduct of the supplier is contrary to the public interest or if the supplier has violated the legislation.
- Property Freezing Orders: the Director can issue a property freezing order for a person under inspection if the Director believes the order is advisable for the protection of those dealing with the person under inspection.

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Homeowner Protection Office

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The Homeowner Protection Office (HPO) encourages voluntary compliance to the legislation through education and awareness initiatives. When voluntary compliance can't be achieved, the HPO's enforcement tools include Compliance Orders and Monetary Penalties (including court-ordered enforcement of both), and submitting reports to Crown Counsel recommending charges be laid under the Homeowner Protection Act.

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Compliance Orders: The purpose of a Compliance Order is to remedy non-compliant behaviour (such as building without a licence or selling a home that is not covered by home warranty insurance when required). A person may request that the HPO Registrar review a Compliance Order and may appeal the decision of the Registrar's review.

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Monetary Orders: The HPO Registrar may impose a Monetary Penalty of up to \$25,000 if a person fails to comply with a Compliance Order, a condition of a licence or of an authorization, or certain provisions of the *Homeowner Protection Act* or its regulations. A person may request that the HPO Registrar review a Monetary Penalty and may appeal the decision of the Registrar's review.

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Convictions: In the most serious cases of non-compliance, the HPO Registrar can recommend to Crown Counsel that charges be laid against an individual or corporation. Crown Counsel would then prosecute through the courts. Individuals who are convicted may be fined up to \$25,000, imprisoned for up to one year, or both. If a corporation commits an offence, every director, officer or other person who authorized, permitted or acquiesced in the offence may be fined up to \$25,000, imprisoned for up to one year, or both. A corporation may be fined up to \$100,000 if convicted.

A commonality between these organizations is the ability for inspectors to investigate a licensee - a provision that is less robust in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act*. These organizations may also revoke licenses or permits; neither landlords nor tenants are licensed in British Columbia.

Use of Administrative Penalties in Other Provinces and Territories

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Each province and territory addresses its compliance and enforcement regime for residential tenancy matters in a different way:

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- Alberta has a system of offences in its legislation with enforcement actions for contraventions that include warning letters, violation tickets with fines ranging from \$150 to \$400, and mandatory court appearances with fines on conviction of up to \$5,000 and \$10,000. The offence sections are enforced by Service Alberta. The Consumer Investigations Unit reviews a range of consumer complaints to determine if an offence has occurred and if an investigation is warranted, considering factors such as whether a business has a prior complaint history, the number of people affected, and the vulnerability of the consumers. Chargeable offences do not include maintenance and repairs; however, a monetary order made be made through dispute resolution requiring the landlord to pay the tenant for work that the landlord promised to do but never did. Alberta's tenancy legislation requires adherence to minimum standards prescribed for housing premises established under the *Public Health Act* and regulations which are enforced by Public Health Inspectors/Executive Officers of Regional Health Authorities on a systematic or complaint basis.
- Saskatchewan...
- Manitoba has the authority to issue a notice of administrative penalty for serious or repeated failures to follow the *Residential Tenancies Act* or the *Life Leases Act*, including for non-compliance with orders or for contraventions. Administrative penalties can be levied for breaches of any provisions of the legislation; however, certain provisions are specifically listed within the legislation such as the duty to not withhold essential services. The regulations set out the associated penalties for contraventions of the legislation and of orders. A person required to pay an administrative penalty may appeal the matter to the Residential Tenancies Commission. The Commission is established as a specialist tribunal to hear appeals from

decisions and orders of the director under the Act. The Act gives the Commission authority to investigate, although the definition of investigate seems unclear (see section 167).

- Where there are contraventions of the landlord's obligation to repair that are substantial to occupancy of the unit, the director may order that the landlord be prohibited from renting the unit until the repairs are complete. The director may also order to redirect the tenant's rent payments to the director and, for urgent repairs, use monies from the Residential Tenancies Repair Program to pay for the repairs (established under clause 44(k) of *The Housing and Renewal Corporation Act*).
- **Manitoba**
 - If the failure to follow either Act is serious or repeated, the branch can charge the person responsible an administrative penalty (or fee). right to appeal to The Residential Tenancies Commission
- Ontario – a corporation convicted of an offense under the Act is liable for a fine of up to \$25,000. The Act provides more than 37 different offenses, including contravening a repair or compliance order
- Ontario has an enforcement and investigations unit in its Residential Tenancy Branch, with staff in each of its eight offices. The Ontario enforcement process is part of its criminal proceedings. Upon conviction, an individual can face an administrative penalty up to \$25,000, and a corporation can face an administrative penalty up to \$100,000.
 - Provincial Standards of Maintenance Bylaw

Local Jurisdiction/Enforcement/Bylaws

British Columbia

Best Practice in Administrative Penalties

Principles

Transparency

Be transparent about the mechanisms and processes for determining administrative penalties

Responsiveness

Act promptly and efficiently

Be responsive and consider what is appropriate for the particular issue

Proportionality (magnitude)

Be proportionate to the nature of the offence and the harm caused. In quantifying the seriousness of the violation in a penalty consider:

- Actual or possible harm; and
- Regulatory importance of the violated requirement.

Procedural Fairness

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Process for imposing a penalty must be fair and in accordance with the principles of natural justice. Ensure fairness by following minimum procedural rules that provide:

- Reasonable notice of intention to impose and administrative penalty;
- An opportunity for the subject of the complaint to be heard and to make a written statement before an administrative penalty is imposed;
- An impartial decision maker; and
- Reasons for the decision when an administrative penalty is imposed.

Equity

Consistent but flexible application

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Deterrence

Deter future non-compliance by removing any financial gain or benefit from non-compliance

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Factors to Consider when Exercising Discretion

Most discretionary administrative penalty provisions in statutes identify factors to be considered in deciding whether to impose an Administrative Penalty and/or deciding on the amount to be imposed.

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Those factors may include: the nature of the contravention, the seriousness of the risk or harm of non-compliance, the contravention and compliance history of the party, whether the contravention was repeated or continuous, any economic benefit that the party would have derived either directly or indirectly from the contravention, wilfulness or lack of care in causing the contravention, whether the party exercised due diligence to prevent the contravention, efforts the party made to correct the contravention or prevent future occurrences, any efforts undertaken to mitigate or reduce the harm.

Common elements of an AMP scheme

- Making a range of enforcement options available
- Clear indication of the amount of discretion and how to exercise this discretion
- Limits on the penalty amount that can be levied
- Notice, including the amounts, reasons, due date, any appeals or reviews
- Separation of inspection and enforcement roles
- Sentencing guidelines for criminal prosecution
- Communication of penalties to the regulated community at large
- Provisions for the penalization of directors and/or officers of corporations
- Provisions for appeals of AMPs to specialized agencies, if practical; and
- Penalty funds collected should not be directed to the benefit of the regulator

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Residential Tenancy Branch Regulatory Compliance Toolkit

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EDUCATION

- Website
- Guides
- Public education sessions
- Information Officers
- Expert System/Solution Explorer
- Stakeholder Information

WARNING

- Decisions and Orders
- Held on File Letter
- Warning Letter
- Compliance Agreement

PENALTY

1. Education

- Website (*Fact Sheets removed; PG only speaks to weighting for \$\$ amounts*)
- Guides
- Public education
- Information Officers
- Expert system/solution explorer
- Stakeholder information
- Information on administrative penalty process

2. Dispute Resolution

- Settlement
- Decisions
- Orders

3. Warning

- Warnings in decisions
- Warning letters in response to AP requests (opportunity to remedy the violation)
(The purpose of a warning letter is to educate the respondent, encourage compliance, and establish a record of the respondent's non-compliance history. Where a warning letter is not appropriate, the natural progression of discipline would involve a financial sanction – an administrative penalty)
- Warning follow-up

4. Penalty (where non-compliance is not remedied or continues) (not punitive)

a. Discretion

- i. Assessment (seven mandatory criteria)
- ii. Assessment→Investigation→Penalty
- iii. Assessment→Penalty
- iv. Negotiated settlement

<http://www.consumerprotectionbc.ca/hfb-help-for-businesses/compliance-and-enforcement/enforcement/administrative-penalties>

Field Code Changed

http://www.consumerprotectionbc.ca/images/content/law/policies/inspection_adminpen_policy.pdf

Field Code Changed

The decision maker will give the licensee subject to an administrative penalty a notice imposing the administrative penalty that specifies the following:

- the contravention;
- the amount of the penalty;
- the date by which the penalty must be paid;
- the person's right to have this decision reconsidered;
- an address to which a request for reconsideration may be given.

Compliance inspection

Post Inspection Letter

<https://globalcompliancenews.com/canada-the-constitutionality-of-administrative-monetary-penalties-defining-the-punitive-paradigm-20150809/>

Field Code Changed

The amount of the penalty should reflect the objective of deterring non-compliance with the administrative or regulatory scheme.”

There are five essential elements of internal compliance programs that can be applied in the AMPs context:^[23]

Field Code Changed

1. The compliance program must be founded upon strong leadership

The tone from the top should signal the importance of compliance regimes and that these will include the wider administrative ambit now recognized by the Supreme Court of Canada.

2. A proper risk assessment should be completed

Risk management techniques are central to establishing a defence of due diligence and rebutting any suggestion of wilful blindness.

3. Sufficient standards and controls should be developed and carefully implemented

In the past, organizations may have focused on financial regulatory requirements or the avoidance of criminal sanctions. Further standards and controls must now be developed in areas that may be subject to AMPs.

4. Timely training and communication protocols ought to be rolled-out

Training must now include education about administrative regimes and penalties.

5. The program must be properly monitored, audited, and updated as necessary

The level of monitoring and auditing will be linked to the risk assessment conducted under step 2

Recommendations

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Consultation Questions

1. Do you consider that there are other roles or objectives that should be taken into account when consider the RTB's approach to administrative penalties? Please give reasons for your views?

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Appendix I: Administrative Penalties Initial Checklist

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Person at centre of matter _____ AP# _____

Primary address of matter _____

☐ More than one address (list on reverse or a separate sheet)

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First consideration: scope

Administrative Penalties are allowed through the RTA or MHPTA in very limited circumstances. The first consideration is whether Administrative Penalties apply to the matter being raised.

☐ Contravened Residential Tenancy Act, section _____ Regulation, s.: _____

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☐ Contravened MHP Tenancy Act, section _____ Regulation, s.: _____

☐ Failed to comply with an Order: file #s _____
Dates: _____

☐ Other relevant details: _____

Second consideration: scale

Documentation or statements should be provided on following issues, as applicable:

☐ Previous enforcement actions _____

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☐ Gravity and magnitude _____

How is safety compromised? (e.g., locks removed) _____

How is health compromised? (e.g., no windows, exposing residents to harsh weather) _____

How is economic viability compromised? (e.g., repeated non-payment of rent results in mortgage foreclosure) _____

☐ Extent of harm to others _____

☐ Repeated or continuous offence(s) _____

Type of order(s)/ contraventions outside of orders (list on separate sheet)

Number of Orders Against in past year _____ in past 2 years _____

☐ Evidence that it was deliberate

☐ Evidence of economic benefit to contravening party

Third consideration: Previous Practices

Documentation or statements should be provided on following issues. This information may not be available from the person raising the matter.

☐ Is there a history of compliance without court-ordered enforcement? _____

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☐ Is there a history of correspondence or communications with RTB? _____

Fourth consideration: T3 – Triggers, Turf & Talk

- ☐ Trigger: what triggered this complaint? _____
- ☐ Turf: whose responsibility is it, and why is RTB involved? _____
- ☐ Talk: have attempts have been made to resolve the situation? _____

Contact information

- ☐ Person at centre of the matter: name _____
Address: _____
Daytime phone number: _____
Other contact information: _____
- ☐ Person bringing matter to RTB: name _____
Organization/Affiliation: _____
Address: _____
Daytime phone number: _____
Other contact information: _____
- ☐ Second person bringing matter to RTB: name _____
Organization/Affiliation: _____
Address: _____
Daytime phone number: _____
Other contact information: _____

Additional information

Residential Tenancy Branch Administrative Penalties Review

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Introduction

The Residential Tenancy Branch is a branch of the Office of Housing and Construction Standards under the Ministry of Natural Gas Development and Responsible for Housing. The Residential Tenancy Branch is a neutral agency that provides information to landlords and tenants to help them have successful tenancies. The Residential Tenancy Branch's primary roles are to provide information so that landlords and tenants are informed of their rights and responsibilities under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation) and to provide dispute resolution services when tenants and landlords are unable to resolve disputes themselves.

In 2006, the British Columbia government passed legislation to add administrative penalty provisions to the Residential Tenancy Act and the Manufactured Home Park Tenancy Act. Legislation. The provisions were brought into force in March 2008.

Administrative penalties are a mechanism for enforcing compliance with regulatory requirements. They allow for a monetary penalty to be imposed by government in proportion to the type, frequency, and severity of the infraction.¹ Most penalties are graduated and will take the compliance history of the client into consideration.² ~~In 2006, the British Columbia government passed legislation to add administrative penalty provisions to the Residential Tenancy Act and the Manufactured Home Park Tenancy Act. The provisions were brought into force in March 2008.~~

Discretionary administrative penalties are not automatic, but require a decision on whether a penalty should be imposed or not, and the amount of the penalty. The standard of proof used to make this decision is the balance of probability.³

Although the Residential Tenancy Branch has provisions for applying administrative penalties, it the RTB has come under criticism for not acting on this authority.

The purpose of this paper is to review the administrative penalties framework with the following objectives:

- Clarify the intent and efficacy of administrative penalties as an enforcement tool
- Examine the review process prior to levying an administrative penalty
- Identify alternative processes to problematic residential tenancy matters
- Develop recommendations for improving the administrative penalty process, and other tools for compliance
-

Legislative Framework

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation) allows the Residential Tenancy Branch to levy administrative penalties when a landlord or tenant has contravened a provision of the Legislation or its regulations, or if the landlord or tenant has failed to comply with a decision or order of the Residential Tenancy Branch.

¹ <http://www.piac.ca/wp-content/uploads/2014/11/amps.pdf>

² <http://www.piac.ca/wp-content/uploads/2014/11/amps.pdf>

³ <http://www.consumerprotectionbc.ca/hfb-help-for-businesses/compliance-and-enforcement/enforcement/administrative-penalties>

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The Legislation⁴ sets out seven mandatory criteria to be considered in the application of administrative penalties. These are:

- Previous enforcement actions for similar contraventions
- Gravity and magnitude of the contravention
- Extent of harm to other resulting from the contravention
- Whether the contravention was repeated or continuous
- Whether the contravention was deliberate
- Whether any economic benefit was derived from the contravention
- The person's efforts to correct the contravention

The Legislation provides discretion to the director to negotiate a settlement and cancel or reduce the size of the administrative penalty in return for specific actions, such as building repairs.

The maximum amount that may be imposed under the administrative penalty provision is \$5,000 for each day the contravention or failure continues⁵.

The Legislation also contains sets out offences and penalties...

Investigation...the director may initiate an investigation to ensure compliance with the legislation whether or not the director has received an application for dispute resolution.

The Regulations...

A Policy Guideline outlines considerations for levying an administrative penalty and, if one is to be levied, how to determine the size of the penalty and whether the penalty should be repeated on each day the contravention continues.

The Director is responsible for the administration and management of all matters and persons appointed or retained under the Legislation⁶. The Legislation allows the Director to delegate certain powers, duties and functions, however, the Director may not assign or delegate to the same person both the function of conducting investigations into a matter and the power to impose administrative penalties in relation to that matter⁷.

Authority delegated to the Director of Policy.... (see delegation matrix)

Compliance and Enforcement Tools

- Residential Tenancy Branch decisions and orders;
- Court enforcement of Monetary Orders and Orders of Possession made by an arbitrator;

⁴ RTA s. 94.1 (2); MHPTA s. 86.1 (2)XXXX

⁵ RTA s. 94.2; MHPTA s. 86.2

⁶ RTA s. 9 (1); MHPTA s. 9 (1)

⁷ RTA s. 9 (4); MHPTA s. 9 (4)

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- Administrative penalties under *Residential Tenancy Act* s. 94.1 and *Manufactured Home Park Tenancy Act* s. 86.1; and
- Penalties, under *Residential Tenancy Act* s. 95 and *Manufactured Home Park Tenancy Act* s. 87.

Residential Tenancy Branch Decisions and Orders

When there is a dispute between a landlord and tenant that they are not able to resolve on their own, one of the parties to the dispute may apply to the Residential Tenancy Branch for resolution. An independent decision maker (arbitrator) assesses the information and evidence presented and makes a decision. If appropriate, the arbitrator makes an order to correct the matter. The arbitrator's decision and order is final and binding.

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Court Enforcement of Orders

If the respondent fails to comply with an order of the Residential Tenancy Branch, the other party may seek court enforcement. However, court enforcement actions are effectively limited to monetary orders (e.g. collection of unpaid rent, return of security deposits) which are filed in Small Claims Court and to orders of possession which are filed in BC Supreme Court and enable a bailiff to remove personal effects from a rental unit following an eviction.

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Some matters, such as orders to repair a rental unit, cannot effectively be enforced through existing mechanisms. Because of this, some people do not comply with a dispute resolution order.

Administrative Penalties

Administrative penalties allow the provincial government to take action against a person who repeatedly or continuously contravenes the legislation or fails to comply with decisions or orders of an arbitrator. The legislation sets out criteria that must be considered and allows for administrative penalties up to \$5,000, which may be applied each day a contravention continues. The amount of the penalty will be based on the evidence presented to the decision maker. The maximum administrative penalty (\$5,000) is the same as fines levied by Small Claims Court. Unlike Offences, to be considered for contravention of the entire range of requirements of the tenancy statutes and regulations

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Penalties and Offences Provision

The *Residential Tenancy Act* s. 95 and *Manufactured Home Park Tenancy Act* s. 87 allow a person to be fined up to \$5,000 upon conviction for failing to comply with specified provisions of the Acts. The Residential Tenancy Branch does not currently have procedures or mechanisms in place to act on this provision. The onus is currently on a participant to request that the Crown proceed, through Crown Counsel rarely proceeds on matters where there is an administrative dispute resolution mechanism.

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Role and Policy Objectives of Administrative Penalties

An Administrative Penalty matter is different from Residential Tenancy Branch dispute resolution processes in a very important way. Dispute resolution hearings are between a landlord and a tenant.

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Administrative Penalty matters are between the provincial government and the person who is thought to have broken the law or failed to comply with a decision or order of the Residential Tenancy Branch.

Administrative Penalties are intended to act as a deterrent, discouraging people from failing to comply with the legislation or decisions and orders.

When the Administrative Penalty provisions in BC's tenancy legislation were brought into effect, the policy intent was that only complaints about serious or repeated contravention of the legislation or failure to comply with dispute resolution orders would be considered for an administrative penalty. They were intended to be levied when there was a pattern of contraventions, or where the contravention was significant in its magnitude.

The Residential Tenancy Branch intended to impose fines in only the most serious matters as it anticipated that most matters would be resolved either through the assessment process or a negotiated settlement to correction the contravention, such as a repair to a rental unit. It was also anticipated that, for example, a single contravention could be pursued under the Offence provisions of the Act, and under the Administrative Penalties provisions if done many times on various rental units. The Residential Tenancy Branch did not anticipate taking many actions under the administrative penalty system. *Anticipated three to five actions a year, resulting in APs of \$3000 to \$5000*

Current Process – Disposition of complaints

When the Administrative Penalty provisions were brought into effect, authority was given for the [Registrar] [Director of Policy?] of the Residential Tenancy Branch to consider all administrative penalty matters, to provide consistency in application of criteria and decision making. Written criteria were developed to promote transparency and consistency.

The Administrative Penalty process occurs outside of the Residential Tenancy Branch's usual dispute resolution process. This requires the use of additional staff resources to carry out the processes for addressing complaints and requests for Administrative Penalties.

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The following process was established for considering complaints and requests for Administrative Penalties:

- A. Complaint intake
- B. Complaint assessment and disposition
- C. Investigation
- D. Hearing
- D.E. Decision

A. Complaint intake

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Comment [AP1]: Per AG comment: May want to include a paragraph stating that the admin penalty process occurs outside of the Branch's usual dispute resolution process, additional resources are required, etc.

Complaints may initiated by anyone such as a landlord or tenant, members of the public or organizations. The Residential Tenancy Branch may also consider matters at its own initiative. Once an issue is raised, it is assessed and a decision is made as to whether or not further action is necessary and advisable. Complaints, which must be in writing, are referred to a delegate of the Director of Policy for assessment.

B. Complaint assessment and disposition

The information provided in the complaint is assessed to decide on a recommendation for disposition. The legislative and policy criteria are used to complete the initial assessment. The complainant may be contacted for further information. A Triage Checklist (Appendix I) is completed by the Residential Tenancy Branch to determine if an investigation is warranted. The Triage Checklist considers the seven criteria outlined in the Legislation, and Gravity Scale (PG??) are used to determine how much weight to give the contravention in each of the seven required elements to be considered when levying an administrative penalty.

Complaints may be dismissed if they:

- Do not involve an offence under the legislation or failure to comply with an order
- Are not considered serious or repeat contraventions
- Involve a matter that is, or could be before an arbitrator
- Involve an individual circumstance that could be resolved through dispute resolution, court action or other authorities (e.g. police, local government)
- Involve a matter before the courts
- Are frivolous

Based on the assessment, the “delegate” may recommend that:

- 1. The complaint be dismissed,
- 2. The complaint be held on file for possible future action,
- 3. A warning letter be issued, or
- 4. Investigation.

The Director reviews the materials and decides on disposition.

1. If the complaint is dismissed, a letter is sent to the complainant stating that the complaint has been dismissed, with reasons and any other relevant advice (e.g., the complainant may submit an application for dispute resolution).
2. If it is decided that the complaint will be held on file, a letter is sent to the complainant stating that the complaint is not being investigated but will be held on file in the event that further complaints about the same matter are received. A letter is also sent to the person who is the subject of the complaint, informing them that a complaint has been made, providing a copy of the letter of complaint, and informing them that the complaint will be held on file.

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3. If it is decided that a warning letter will be issued, a letter is sent to the complainant stating that a warning letter is being issued and compliance will be monitored. A letter is sent to the person who is the subject of the complaint, informing them that a complaint has been made, providing a copy of the letter of complaint, and warning the person to comply or an investigation for possible administrative penalties will be initiated. The letter provides information about the relevant provisions of the legislation related to the complaint and an administrative penalties fact sheet *(do we still send given that it is no longer on the website)*. was intended that at this stage a settlement agreement may be negotiated

Those facing administrative penalties will have the opportunity to review evidence against them and respond before a decision is made.

C. Investigation

Original intent:

The director may initiate an investigation if the person

- Fails to comply with a warning letter, or
- Continues to re-offend after receiving the warning letter.

If the director decides to initiate an investigation, the Director will send a letter to the complainant stating action is being initiated on the complaint, the complainant may be contacted to provide more information, and that the complainant will be informed of the outcome of the complaint.

- The Director will then provide copies of all relevant documentation to the investigator. The investigator will collect information relevant to the case and prepare a report for the Director with recommendations for applying an administrative penalty. The director will decide whether to proceed with a hearing for an administrative penalty. If the Director decides to proceed with a hearing, a hearing date will be scheduled.

D. Hearing

If it has been decided that there will be a hearing, the Respondent will be notified by the Residential Tenancy Branch, given a copy of the evidence gathered by the Investigator and be given a hearing date. The hearing will be held 21 days after the notice and the evidence are sent to the Respondent. The Respondent submits any evidence in his or her defence to the RTB during this time. The Respondent may be fined for failing to submit evidence. The hearing will be a review of written evidence and submissions rather than oral evidence. The Registrar of the Residential Tenancy Branch will conduct the hearing by reviewing the evidence gathered by the Investigator, the relevant laws, regulations and guidelines, as well as any other submissions.

E. Decision

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In practice, a monetary penalty is assessed and imposed in the form of a notice with a prescribed date and time for payment.

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Enforcement for Repairs

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- Order for repairs
- Rent abatement (small cost vs big cost for significant repairs – see CLAS 14 suggested amendments)
- Stakeholders have recommended that administrative penalties for significant maintenance and repairs be 1) mandatory 2) streamlined and incorporated into existing branch process so that dedication of additional resources is not required 3) maintain a consequence for non-compliance even if the Branch reaches a negotiated settlement

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Administrative Penalty Complaint History

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2012: 7 complaints

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2013: 7 complaints

2014: 6 complaints

2015 (to October 13): 4 complaints

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Stakeholder Reports

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Landlord and tenant organizations and advocacy agencies have proposed recommendations to improve the Residential Tenancy Branch's administrative penalty legislation and/or process.

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Community Legal Assistance Society

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On Shaky Ground

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- Advertise the possibility of Administrative Penalties more widely.
- Hear from affected tenants when deciding on an administrative penalty case, sharing the investigation report with affected tenants and inviting them to send in written submissions.
- When an administrative penalty is unpaid by the due date, the Branch should commence enforcement proceedings to collect the debt or impose a second administrative penalty.

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In a report dated May 2014, the Community Legal Assistance Society (CLAS), a non-profit law office that provides legal assistance to tenancy in disputes concerning rental housing, provided a series of recommendations for improving the Residential Tenancy Act. The document report, titled Suggested Amendments to BC's Residential Tenancy Act, sets out recommended amendments to the Residential Tenancy Act to ensure that the administrative penalty provisions are effective at deterring non-compliance with the Act or Residential Tenancy Branch orders related to significant maintenance and repair issues. The report recommends that administrative penalties related to significant maintenance and repairs must:

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1. Be mandatory so they are actively used;
2. Be streamlined and incorporated into existing Branch processes so the dedicated of additional resources is not required; and
3. Maintain a consequence for non-compliance even if the Branch reaches a negotiated resolution.

A coalition of legal organizations

In [DATE], a coalition of legal organizations working with people affected by residential tenancy issues published a report titled BC's Residential Tenancy System: Recommendations for Change. This report contains recommended changes to the Residential Tenancy Act and sets out that the Residential Tenancy Branch should be mandated to make more extensive use of financial penalties as a deterrent, especially against landlords who consistently defy the law. The recommendations include:

1. Fund and mandate the Residential Tenancy Branch to fully exercise its investigation and administrative powers; and
2. Remove the provisions in s. 94.1(4), (5), (6) of the RTA that allow agreements in lieu of enforcement of administrative penalties.

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Best Practice in Administrative Penalties

Principles

Transparency

Be transparent about the mechanisms and processes for determining administrative penalties

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Responsiveness

Act promptly and efficiently

Be responsive and consider what is appropriate for the particular issue

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Proportionality (magnitude)

Be proportionate to the nature of the offence and the harm caused. In quantifying the seriousness of the violation in a penalty consider:

- o Actual or possible harm; and
- o Regulatory importance of the violated requirement.

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Procedural Fairness

Process for imposing a penalty must be fair and in accordance with the principles of natural justice. Ensure fairness by following minimum procedural rules that provide:

- o Reasonable notice of intention to impose and administrative penalty;
- o An opportunity for the subject of the complaint to be heard and to make a written statement before an administrative penalty is imposed;
- o An impartial decision maker; and
- o Reasons for the decision when an administrative penalty is imposed.

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Equity

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Consistent but flexible application

Deterrence

Deter future non-compliance by removing any financial gain or benefit from non-compliance

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Factors to Consider when Exercising Discretion

Most discretionary administrative penalty provisions in statutes identify factors to be considered in deciding whether to impose an Administrative Penalty and/or deciding on the amount to be imposed.

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Those factors may include: the nature of the contravention, the seriousness of the risk or harm of non-compliance, the contravention and compliance history of the party, whether the contravention was repeated or continuous, any economic benefit that the party would have derived either directly or indirectly from the contravention, wilfulness or lack of care in causing the contravention, whether the party exercised due diligence to prevent the contravention, efforts the party made to correct the contravention or prevent future occurrences, any efforts undertaken to mitigate or reduce the harm.

Common elements of an AMP scheme

- Making a range of enforcement options available
- Clear indication of the amount of discretion and how to exercise this discretion
- Limits on the penalty amount that can be levied
- Notice, including the amounts, reasons, due date, any appeals or reviews
- Separation of inspection and enforcement roles
- Sentencing guidelines for criminal prosecution
- Communication of penalties to the regulated community at large
- Provisions for the penalization of directors and/or officers of corporations
- Provisions for appeals of AMPs to specialized agencies, if practical; and
- Penalty funds collected should not be directed to the benefit of the regulator

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Use of Administrative Penalties in BC

Administrative penalties are an extensively used enforcement tool among regulatory agencies within BC. For example, the Ministry of Environment, the Ministry of Transportation and Infrastructure, and Consumer Protection BC and the Homeowner Protection Office, to name a few, have the ability to levy administrative penalties. Because administrative penalties can be administered with less onerous procedural and legal requirements than a court prosecution, they are an effective and efficient enforcement option.

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In addition to financial penalties, many agencies levy administrative sanctions which can include the revocation or suspension of permits, licences or other administrative instruments.

Ministry of Environment

The Ministry of Environment have very robust compliance and enforcement policies and procedures to protect the environment and human health and safety. Failure to comply with regulatory requirements, even in the absence of environmental damage, may result in a penalty. Many other steps are taken before an administrative penalty or sanction is levied. These steps include:

- **Advisory:** often the first enforcement response taken in cases of minor to moderate non-compliance when there is a high likelihood of achieving compliance.
- **Warning:** differs from an advisory in that it warns of the possibility of an escalating response should non-compliance continue.
- **Orders:** requires parties to address noncompliance issues or take proactive measures. Orders are effective in: ensuring that no party benefits from not complying; deterring other potential violators; and responding quickly to prevent or stop actual or potential negative impact.
- **Ticket:** among other considerations, a ticket may be issued where there has been non-compliance with a regulatory requirement or an advisory or warning is not appropriate.

The Ministry of Environment employs inspectors (primarily Conservation Officers), to verify compliance with regulatory requirements. Inspections may be followed by an investigation if non-compliance is suspected. Investigators collect information and evidence that may be required to support enforcement and are conducted by designated ministry staff.

Ministry of Transportation and Infrastructure

The Ministry of Transportation and Infrastructure employs several mechanisms for compliance and enforcement for transportation safety, including administrative penalties. However, proactive tools are also used, including:

- **Audits:** focus on education and consultation to assist the licensee with complying with their licence obligations. If a licensee is deemed in non-compliance, it may necessitate the issuance of notice, orders and/or violation tickets against the licensee.
- **Fines/tickets:** a set fine is imposed for each infraction and increase for each offence. At the first offence, a warning is letter sent to the licensee to indicate subsequent infractions will result in additional administrative penalties.

Consumer Protection BC

Consumer Protection BC is a non-profit organization that promotes a fair marketplace for BC consumers and businesses.

Consumer Protection BC uses administrative penalties to promote compliance with legislation. They also have the ability to inspect businesses for potential violations and to providing the businesses opportunities to remedy the violations. These inspections have focused on drawing violations to the

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attention of the business. Where non-compliance was not remedied or has continued, inspectors will escalate the issue for further enforcement action, including:

- Warning Letters: enforcement inspectors routinely meet with business owners to discuss compliance-related issues and complaints. If warranted, they may send warning letters to business owners.
- Voluntary Compliance/Undertakings: seek voluntary compliance with the legislation through education and awareness. If the Director has reason to believe that a person is violating, is about to violate or has violated the Act or the Regulations, the Director may accept from the person a written undertaking (promise) that contains the terms and conditions the Director determines are appropriate in the circumstances.
- Compliance Orders: if the business does not voluntarily comply with the legislation, the Director may issue a Compliance Order, which forces the business to comply with legislation. If the Compliance Order is filed in the BC Supreme Court, it is enforceable as an order of the court.
- Direct Sales Prohibition Order: order a supplier engaging in “direct sales” to cease operating if there are grounds to believe that the conduct of the supplier is contrary to the public interest or if the supplier has violated the legislation.
- Property Freezing Orders: the Director can issue a property freezing order for a person under inspection if the Director believes the order is advisable for the protection of those dealing with the person under inspection.

Homeowner Protection Office

The Homeowner Protection Office (HPO) encourages voluntary compliance to the legislation through education and awareness initiatives. When voluntary compliance can’t be achieved, the HPO’s enforcement tools include Compliance Orders and Monetary Penalties (including court-ordered enforcement of both), and submitting reports to Crown Counsel recommending charges be laid under the Homeowner Protection Act.

Compliance Orders: The purpose of a Compliance Order is to remedy non-compliant behaviour (such as building without a licence or selling a home that is not covered by home warranty insurance when required). A person may request that the HPO Registrar review a Compliance Order and may appeal the decision of the Registrar’s review.

Monetary Orders: The HPO Registrar may impose a Monetary Penalty of up to \$25,000 if a person fails to comply with a Compliance Order, a condition of a licence or of an authorization, or certain provisions of the Homeowner Protection Act or its regulations. A person may request that the HPO Registrar review a Monetary Penalty and may appeal the decision of the Registrar’s review.

Convictions: In the most serious cases of non-compliance, the HPO Registrar can recommend to Crown Counsel that charges be laid against an individual or corporation. Crown Counsel would then prosecute through the courts. Individuals who are convicted may be fined up to \$25,000, imprisoned for up to one year, or both. If a corporation commits an offence, every director, officer or other person who authorized, permitted or acquiesced in the offence may be fined up to \$25,000, imprisoned for up to one year, or both. A corporation may be fined up to \$100,000 if convicted.

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A commonality between these organizations is the ability for inspectors to investigate a licensee - a provision that is less robust in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act*. These organizations may also revoke licenses or permits; neither landlords nor tenants are licensed in British Columbia.

Use of Administrative Penalties in Other Provinces and Territories

Each province and territory addresses its compliance and enforcement regime for residential tenancy matters in a different way:

- Alberta has a system of offences in its legislation with enforcement actions for contraventions that include warning letters, violation tickets with fines ranging from \$150 to \$400, and mandatory court appearances with fines on conviction of up to \$5,000 and \$10,000. The offence sections are enforced by Service Alberta. The Consumer Investigations Unit reviews a range of consumer complaints to determine if an offence has occurred and if an investigation is warranted, considering factors such whether a business has a prior complaint history, the number of people affected, and the vulnerability of the consumers. Chargeable offences do not include maintenance and repairs; however, a monetary order made be made through dispute resolution requiring the landlord to pay the tenant for work that the landlord promised to do but never did. Alberta's tenancy legislation requires adherence to minimum standards prescribed for housing premises established under the *Public Health Act* and regulations which are enforced by Public Health Inspectors/Executive Officers of Regional Health Authorities on a systematic or complaint basis.
- Saskatchewan...
- Manitoba has the authority to issue a notice of administrative penalty for serious or repeated failures to follow the *Residential Tenancies Act* or the *Life Leases Act*, including for non-compliance with orders or for contraventions. Administrative penalties can be levied for breaches of any provisions of the legislation; however, certain provisions are specifically listed within the legislation such as the duty to not withhold essential services. The regulations set out the associated penalties for contraventions of the legislation and of orders. A person required to pay an administrative penalty may appeal the matter to the Residential Tenancies Commission. The Commission is established as a specialist tribunal to hear appeals from decisions and orders of the director under the Act. The Act gives the Commission authority to investigate, although the definition of investigate seems unclear (see section 167).
- Where there are contraventions of the landlord's obligation to repair that are substantial to occupancy of the unit, the director may order that the landlord be prohibited from renting the unit until the repairs are complete. The director may also order to redirect the tenant's rent payments to the director and, for urgent repairs, use monies from the Residential Tenancies Repair Program to pay for the repairs (established under clause 44(k) of *The Housing and Renewal Corporation Act*).
- Manitoba...

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○ If the failure to follow either Act is serious or repeated, the branch can charge the person responsible an administrative penalty (or fee), right to appeal to The Residential Tenancies Commission

- Ontario – a corporation convicted of an offense under the Act is liable for a fine of up to \$25,000. The Act provides more than 37 different offenses, including contravening a repair or compliance order
- Ontario has an enforcement and investigations unit in its Residential Tenancy Branch, with staff in each of its eight offices. The Ontario enforcement process is part of its criminal proceedings. Upon conviction, an individual can face an administrative penalty up to \$25,000, and a corporation can face an administrative penalty up to \$100,000.

•○ Provincial Standards of Maintenance Bylaw

Local Jurisdiction/Enforcement/Bylaws

British Columbia

Health, Safety, Housing and Maintenance Standards

Most standards are found in municipal property standards by-laws, but may also be provincial standards such as the fire code, elevator standards.

Residential Tenancy Branch Regulatory Compliance Toolkit

EDUCATION

- Website
- Guides
- Public education sessions
- Information Officers
- Expert System/Solution Explorer
- Stakeholder Information

WARNING

- Decisions and Orders
- Held on File Letter
- Warning Letter
- Compliance Agreement

PENALTY

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1. Education

- a. Website (*Fact Sheets removed; PG only speaks to weighting for \$\$ amounts*)
- b. Guides
- c. Public education
- d. Information Officers
- e. Expert system/solution explorer
- f. Stakeholder information

g. Information on administrative penalty process

g-h. At outset of all hearings

2. Dispute Resolution

- a. Settlement
- b. Decisions
- c. Orders

3. Warning

- a. Warnings in decisions
- b. Warning letters in response to AP requests (opportunity to remedy the violation)
(The purpose of a warning letter is to educate the respondent, encourage compliance, and establish a record of the respondent's non-compliance history. Where a warning letter is not appropriate, the natural progression of discipline would involve a financial sanction – an administrative penalty)
- c. Warning follow-up

4. Penalty (where non-compliance is not remedied or continues) (not punitive)

- a. Discretion
 - i. Assessment (seven mandatory criteria)
 - ii. Assessment → Investigation → Penalty
 - iii. Assessment → Penalty
 - iv. Negotiated settlement

<http://www.consumerprotectionbc.ca/hfb-help-for-businesses/compliance-and-enforcement/enforcement/administrative-penalties>

Field Code Changed

http://www.consumerprotectionbc.ca/images/content/law/policies/inspection_adminpen_policy.pdf

Field Code Changed

The decision maker will give the licensee subject to an administrative penalty a notice imposing the administrative penalty that specifies the following:

- the contravention;
- the amount of the penalty;
- the date by which the penalty must be paid;
- the person's right to have this decision reconsidered;
- an address to which a request for reconsideration may be given.

Compliance inspection

Post Inspection Letter

<https://globalcompliance.com/canada-the-constitutionality-of-administrative-monetary-penalties-defining-the-punitive-paradigm-20150809/>

Field Code Changed

The amount of the penalty should reflect the objective of deterring non-compliance with the administrative or regulatory scheme.”

There are five essential elements of internal compliance programs that can be applied in the AMPs context:[23]

Field Code Changed

1. The compliance program must be founded upon strong leadership

The tone from the top should signal the importance of compliance regimes and that these will include the wider administrative ambit now recognized by the Supreme Court of Canada.

2. A proper risk assessment should be completed

Risk management techniques are central to establishing a defence of due diligence and rebutting any suggestion of wilful blindness.

3. Sufficient standards and controls should be developed and carefully implemented

In the past, organizations may have focused on financial regulatory requirements or the avoidance of criminal sanctions. Further standards and controls must now be developed in areas that may be subject to AMPs.

4. Timely training and communication protocols ought to be rolled-out

Training must now include education about administrative regimes and penalties.

5. The program must be properly monitored, audited, and updated as necessary

The level of monitoring and auditing will be linked to the risk assessment conducted under step 2

Current Challenges

Access to Information

- Insufficient information available to the public regarding the Residential Tenancy Branch’s processes for assessing, investigating and levying administrative penalties.
- Absence of comprehensive policy guideline on administrative penalty policies and processes
- Clear criteria for assessment/triage
- Template letters for warnings, notice

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Alternative tools for compliance

- Insufficient use of alternative compliance tools such as warning letters or advisory notices.
- Inability to revoke permits or licences (as landlords and tenants are not regulated).

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Residential Tenancy Branch Resources

- Lack of training for arbitrators and policy staff to conduct pre-investigation assessments ("triage checklist).
- Ambiguity regarding pre-investigation assessment and investigation, and whether a formal investigation is required in all circumstances when there is evidence of non-compliance.
- Tracking of complaint disposition - Currently, there are no resources allocated to pro-active monitoring of repeated non-compliance, or monitoring of respondents who have received a warning letter from the Residential Tenancy Branch.
- Ambiguity regarding the investigation stage, specifically concerning cost, scope and responsibility.
- The limited availability of arbitrators may impact the ability to conduct investigations and to hear administrative penalty disputes.
- Knowledge/training of HQ staff to assess complaints – gravity scale

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Legislative constraints

- The *Residential Tenancy Act* lists offences and penalties – separate from administrative penalties. Amendments to the Regulation to the *Offence Act* would be required to allow offence on the *Residential Tenancy Act* to be ticketable/enforced by enforcement officers.
- Ambiguity regarding how investigations are conducted when there has been no application for dispute resolution.

– existing provisions

- AP when no dispute
- Limitation period (consideration of previous enforcement actions taken more than two years prior)
- Acting on offences – prosecution of offences
- Investigations – when no application made for dispute resolution; whether there must always be an investigation
- Rent redirect

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Policy constraints

- The current *Residential Tenancy Policy Guideline 41 Administrative Penalties* (January 2012) is available on the internet. It outlines considerations for levying an administrative penalty and

how to determine the size of the penalty. This includes a value scale for assessing the gravity of each of the seven required elements that the legislation identified must be considered when applying an administrative penalty.

- The policy guideline does not outline the assessment process undertaken prior to determining whether a complaint will be considered for an administrative penalty.

Recommendations

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Consultation Questions

1. Do you consider that there are other roles or objectives that should be taken into account when consider the RTB's approach to administrative penalties? Please give reasons for your views?

Considerations

Change in owner/landlord

- What happens when ownership has changed and orders were against previous landlords/owners? And tenancies have continued. Is there any obligation on behalf of the new owner/landlord to comply with previous orders? Do things start from square 1? Where does this leave the tenants?

Investigator Powers

- Can person retained as investigator use powers under 76 (1) to issue summons requiring the production of documents (related to the subject matter of the dispute)?

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Appendix I: Administrative Penalties Initial Checklist

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Person at centre of matter _____ AP# _____

Primary address of matter _____

- ☐ More than one address (list on reverse or a separate sheet)

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First consideration: scope

Administrative Penalties are allowed through the RTA or MHPTA in very limited circumstances. The first consideration is whether Administrative Penalties apply to the matter being raised.

- ☐ Contravened Residential Tenancy Act, section _____ Regulation, s.: _____
- ☐ Contravened MHP Tenancy Act, section _____ Regulation, s.: _____
- ☐ Failed to comply with an Order: file #s _____
- Dates: _____
- ☐ Other relevant details: _____

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Second consideration: scale

Documentation or statements should be provided on following issues, as applicable:

- ☐ Previous enforcement actions _____
- ☐ Gravity and magnitude _____
- How is safety compromised? (e.g., locks removed) _____
- How is health compromised? (e.g., no windows, exposing residents to harsh weather) _____
- How is economic viability compromised? (e.g., repeated non-payment of rent results in mortgage foreclosure) _____
- ☐ Extent of harm to others _____
- ☐ Repeated or continuous offence(s)
- Type of order(s)/ contraventions outside of orders (list on separate sheet) _____
- Number of Orders Against in past year _____ in past 2 years _____
- ☐ Evidence that it was deliberate
- ☐ Evidence of economic benefit to contravening party

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Third consideration: Previous Practices

Documentation or statements should be provided on following issues. This information may not be available from the person raising the matter.

- ☐ Is there a history of compliance without court-ordered enforcement? _____
- ☐ Is there a history of correspondence or communications with RTB? _____

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Fourth consideration: T3 – Triggers, Turf & Talk

- ☐ Trigger: what triggered this complaint? _____
- ☐ Turf: whose responsibility is it, and why is RTB involved? _____
- ☐ Talk: have attempts have been made to resolve the situation? _____

Contact information

- ☐ Person at centre of the matter: name _____
Address: _____
Daytime phone number: _____
Other contact information: _____
- ☐ Person bringing matter to RTB: name _____
Organization/Affiliation: _____
Address: _____
Daytime phone number: _____
Other contact information: _____
- ☐ Second person bringing matter to RTB: name _____
Organization/Affiliation: _____
Address: _____
Daytime phone number: _____
Other contact information: _____

Additional information

Beattie, Michelle OHCS:EX

From: Donald, Janet OHCS:EX
Sent: Monday, October 19, 2015 2:25 PM
To: Panter, Audrey OHCS:EX; Gordon, Alexis M OHCS:EX
Subject: Review Report_First Cutv4
Attachments: Review Report_First Cutv4.docx

Hi – you have done a great job pulling this together!! The recommendations need a bit more work – what is the end goal that we are making recommendations to work toward – what are the options and what is recommended.

Thx
Janet

Residential Tenancy Branch Administrative Penalties Review

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Introduction

The Residential Tenancy Branch is a branch of the Office of Housing and Construction Standards within the Ministry of Natural Gas Development and Responsible for Housing. The Residential Tenancy Branch is a neutral agency that provides information and dispute resolution services to landlords and tenants to help them have successful tenancies. The Residential Tenancy Branch's primary roles are to provide information so that landlords and tenants are informed of their rights and responsibilities under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* and to provide dispute resolution services when tenants and landlords are unable to resolve disputes themselves.

In 2006, the British Columbia government added administrative penalty provisions to the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. The provisions were brought into force in March 2008. Although the Residential Tenancy Branch has this legislative authority, the Branch has come under criticism for not acting on it.

The purpose of this paper is to review the administrative penalties framework with the following objectives:

- Clarify the intent and efficacy of administrative penalties as an enforcement tool
- Examine the review process prior to levying an administrative penalty
- Identify alternative processes to problematic residential tenancy matters
- Develop recommendations for improving the administrative penalty process, and other tools for compliance

Legislative Framework

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* provide authority for the Residential Tenancy Branch to undertake a number of activities including accepting applications for dispute resolution of landlord-tenant disputes, conducting dispute resolution proceedings, determining disputes and making final and binding decisions and orders.

The legislation provides authority for the Branch to conduct investigations to ensure compliance with this Act and the regulations whether or not the director has accepted an application for dispute resolution in relation to the matter. It also contains an offences provision which allow for a person to be fined up to \$5,000 upon conviction for failing to comply with specified provisions of the Acts.

The administrative penalty provision gives authority for the Residential Tenancy Branch to impose an administrative penalty when a landlord or tenant has contravened a provision of the legislation or its regulations, or has failed to comply with a decision or order of the Residential Tenancy Branch. The standard of proof used to reach this decision is the balance of probability.

The legislation sets out seven mandatory criteria to be considered before imposing an administrative penalty. These are:

- Previous enforcement actions for contraventions of a similar action

- Gravity and magnitude of the contravention
- Extent of harm to other resulting from the contravention
- Whether the contravention was repeated or continuous
- Whether the contravention was deliberate
- Whether any economic benefit was derived from the contravention
- The person's efforts to correct the contravention

The person who may be subject to the administrative penalty must be provided with an opportunity to be heard. The regulation allows the Branch determines whether that will be in writing, in person, or by video conference, audio conference, telephone or other electronic means. The person must be given notice of an opportunity to be heard which must include:

- The provision of the Act or regulations the person is alleged to have contravened or the decision or order of the director with which the person is alleged to have failed to comply and the particulars of the alleged contravention or failure.
- The due date for written submissions or the time, date, place and manner of hearing.

The maximum amount that may be imposed under the administrative penalty provision is \$5,000 for each day the contravention or failure continues. The legislation also provides discretion to the director to negotiate a settlement and cancel or reduce the size of the administrative penalty in return for specific actions, such as building repairs. If the person who is given notice fails to provide submissions or to appear when required, the Branch may proceed without further notice to make an order for an administrative penalty. A Policy Guideline outlines considerations for levying an administrative penalty and, if one is to be levied, how to determine the size of the penalty and whether the penalty should be repeated on each day the contravention continues.

Intent of Administrative Penalties

Administrative penalties are a mechanism for enforcing compliance with regulatory requirements. They are intended to act as a deterrent, discouraging people from failing to comply with the legislation or decisions and orders. Because administrative penalties can be administered with less onerous procedural and legal requirements than a court prosecution, they are an effective and efficient enforcement option. Discretionary administrative penalties are not automatic, but require a decision on whether a penalty should be imposed or not, and the amount of the penalty. They allow for a monetary penalty to be imposed in proportion to the type, frequency, and severity of the infraction. Most penalties are graduated and will take the compliance history of the client into consideration.

An administrative penalty matter is different from Residential Tenancy Branch dispute resolution processes in a very important way. Dispute resolution hearings are between a landlord and a tenant; whereas, administrative penalty matters are between the provincial government and the person who is thought to have broken the law or failed to comply with a decision or order.

When the administrative penalty provisions in BC's tenancy laws were brought into effect, the policy intent was that only complaints about serious or repeated contravention of the legislation or failure to

comply with dispute resolution orders would be considered for an administrative penalty. They were intended to be levied when there was a pattern of contraventions, or where the contravention was significant in its magnitude. A Policy Guideline outlines considerations for levying an administrative penalty and, if one is to be levied, how to determine the size of the penalty and whether the penalty should be repeated on each day the contravention continues.

The Residential Tenancy Branch intended to impose monetary penalties in only the most serious matters as it anticipated that most matters would be resolved either through the assessment process or a negotiated settlement to correct the contravention, such as a repair to a rental unit. It was also anticipated that, for example, a single contravention could be pursued under the Offence provisions of the Act, and under the Administrative Penalties provisions if done many times on various rental units. The Residential Tenancy Branch did not anticipate taking many actions under the administrative penalty system. *Anticipated three to five actions a year, resulting in APs of \$3000 to \$5000*

Stakeholder Reports

The Residential Tenancy Branch has been criticised for not exercising its investigation powers and its authority to impose administrative penalties. Key stakeholders have proposed recommendations to improve the Residential Tenancy Branch's administrative penalty framework.

In April 2013, a coalition of legal organizations working with people affected by residential tenancy issues released a report titled *BC's Residential Tenancy System: Recommendations for Change*. The report recommends that the Residential Tenancy Branch be mandated to make more extensive use of financial penalties as a deterrent, especially against landlords who consistently defy the law. Specific operational and legislative recommendations include:

- Deterring non-compliance and preventing the escalation of problem by increasing early intervention efforts by having Residential Tenancy Branch staff intervene informally in disputes by calling landlords on behalf of tenants to explain the law, such as the administrative penalty process.
- Funding and mandating the Residential Tenancy Branch to fully exercise its investigation and administrative powers.
- Removing the provisions in s. 94.1(4), (5), (6) of the *Residential Tenancy Act* that allow agreements in lieu of enforcement of administrative penalties.

In October 2013, the Community Legal Assistance Society (CLAS) released a report titled *On Shaky Ground: Fairness at the Residential Tenancy Branch*. The report provides the following recommendations for administrative penalties:

- Advertise the possibility of Administrative Penalties more widely.
- Hear from affected tenants when deciding on an administrative penalty case, sharing the investigation report with affected tenants and inviting them to send in written submissions.
- When an administrative penalty is unpaid by the due date, the Branch should commence enforcement proceedings to collect the debt or impose a second administrative penalty.

In May 2014, CLAS provided a series of recommendations for improving the *Residential Tenancy Act*. The document, titled *Suggested Amendments to BC's Residential Tenancy Act*, recommends legislative amendments “to ensure that the administrative penalty provisions are effective at deterring non-compliance with the Act or Residential Tenancy Branch orders related to significant maintenance and repair issues”. The report recommends that administrative penalties related to significant maintenance and repairs must:

- Be mandatory so they are actively used;
- Be streamlined and incorporated into existing Branch processes so the dedicated of additional resources is not required; and
- Maintain a consequence for non-compliance even if the Branch reaches a negotiated resolution.

Procedural Fairness

The principles of natural justice apply to all administrative proceedings, including the imposition of an administrative penalty. The process for imposing a penalty must be fair and in accordance with the principles of natural justice. The courts can be expected to overturn penalties if minimum standards of fairness are not met. Minimum procedural rules to ensure fairness include:

- Reasonable notice of intention to impose an administrative penalty;
- An opportunity for the subject of the complaint to be heard and to make a written statement before an administrative penalty is imposed;
- An impartial decision maker; and
- Reasons for the decision when an administrative penalty is imposed.

The Law Reform Commission of Saskatchewan notes that:

When the principles of natural justice are applied to administrative penalties, a basic question is where the procedure imposing the penalty fits in the spectrum of procedural fairness. Although administrative penalties are usually imposed by a regulator instead of an independent decision maker, and often without holding a full hearing, the courts have not found these procedures to be a violation of the principles of natural justice for those reasons alone.

Best Practice in Administrative Penalties

Principles

Key principles in the design of administrative penalties systems to reduce non-compliance include:

- **Deterrence**
Aim to deter people from violating the law through threat of administrative penalty and deter future non-compliance by removing any financial gain or benefit from non-compliance.
- **Responsiveness**
Act promptly and effectively.
- **Proportionality**

Be proportionate to the nature of the alleged contravention and the harm caused.

- **Fairness and equity**

Ensure fair and equitable treatment of the regulated community. Be consistent and flexible in the assessment of penalties.

- **Transparency**

Be transparent about the mechanisms and processes for determining administrative penalties.

Factors to Consider when Exercising Discretion

Most discretionary administrative penalty provisions in statutes identify factors to be considered in deciding whether to impose an administrative penalty and in deciding on the amount to be imposed. Those factors may include:

- The nature of the contravention.
- The seriousness of the risk or harm of non-compliance.
- The contravention and compliance history of the party.
- Whether the contravention was repeated or continuous.
- Any economic benefit that the party would have derived either directly or indirectly from the contravention, wilfulness or lack of care in causing the contravention.
- Whether the party exercised due diligence to prevent the contravention.
- Efforts the party made to correct the contravention or prevent future occurrences.
- Any efforts undertaken to mitigate or reduce the harm.

The seven mandatory criteria set out in the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* that are to be considered before imposing an administrative penalty are consistent with these factors.

Essential Elements of an Administrative Penalty System

Common elements of a framework for administrative penalties include:

- Making a range of enforcement options available.
- A clear indication of the amount of discretion and how to exercise this discretion.
- Limits on the penalty amount that can be levied.
- Notice, including the amounts, reasons, due date, any appeals or reviews.
- Separation of inspection and enforcement roles.
- Sentencing guidelines for criminal prosecution.
- Communication of penalties to the regulated community at large.
- Provisions for the penalization of directors and/or officers of corporations.
- Provisions for appeals of administrative penalties to specialized agencies, if practical.
- That penalty funds collected should not be directed to the benefit of the regulator.

Use of Administrative Penalties in BC

Administrative penalties are an extensively used enforcement tool among regulatory bodies within British Columbia. They are included in statutes affecting industry, environmental protection and management, consumer protection, homeowner protection, financial institutions and securities for example. Many statutes include the same seven mandatory criteria as the *Residential Tenancy Act* that need to be considered before an administrative penalty is imposed.

In addition to financial penalties, many regulatory bodies levy administrative sanctions which can include the revocation or suspension of permits, licences or other administrative instruments. Most utilize enforcement officers or industry inspectors who routinely meet with licensees, business owners, etc. to verify compliance and discuss compliance-related issues and complaints. They have the ability to inspect businesses for potential violations and to provide opportunities for the violation to be remedied. These inspections have focused on drawing violations to the attention of the business. Where non-compliance was not remedied or has continued, inspectors will escalate the issue for further enforcement action. An inspection may be followed by an investigation if non-compliance is suspected. Investigators collect information and evidence that may be required to support enforcement.

Most administrative penalty systems operate on a graduated model that involves a number of steps being taken to encourage compliance before a penalty or sanction is levied. Some examples are:

- **Audits:** focus on education and consultation to assist the licensee with complying with their licence obligations. If a licensee is deemed in non-compliance, it may necessitate the issuance of notice, orders and/or violation tickets against the licensee.
- **Voluntary Compliance/Undertakings:** seek voluntary compliance with the legislation through education and awareness. If the Director has reason to believe that a person is violating, is about to violate or has violated the Act or the Regulations, the Director may accept from the person a written undertaking (promise) that contains the terms and conditions the Director determines are appropriate in the circumstances.
- **Advisories:** often the first enforcement response taken in cases of minor to moderate non-compliance when there is a high likelihood of achieving compliance.
- **Warnings:** differs from an advisory in that it warns of the possibility of an escalating response should non-compliance continue.
- **Warning Letters:** enforcement inspectors routinely meet with business owners to discuss compliance-related issues and complaints. If warranted, they may send warning letters to business owners.
- **Compliance Orders:** if the business does not voluntarily comply with the legislation, the Director may issue a Compliance Order, which forces the business to comply with legislation. If the Compliance Order is filed in the BC Supreme Court, it is enforceable as an order of the court.
- **Violation Tickets:** among other considerations, a ticket may be issued where there has been non-compliance with a regulatory requirement or an advisory or warning is not appropriate.

- **Fines:** a set fine is imposed for each infraction and increase for each offence. At the first offence, a warning is letter sent to the licensee to indicate subsequent infractions will result in additional administrative penalties.
- **Monetary Orders:** The HPO Registrar may impose a Monetary Penalty of up to \$25,000 if a person fails to comply with a Compliance Order, a condition of a licence or of an authorization, or certain provisions of the *Homeowner Protection Act* or its regulations. A person may request that the HPO Registrar review a Monetary Penalty and may appeal the decision of the Registrar's review.
- **Convictions:** In the most serious cases of non-compliance, the HPO Registrar can recommend to Crown Counsel that charges be laid against an individual or corporation. Crown Counsel would then prosecute through the courts. Individuals who are convicted may be fined up to \$25,000, imprisoned for up to one year, or both. If a corporation commits an offence, every director, officer or other person who authorized, permitted or acquiesced in the offence may be fined up to \$25,000, imprisoned for up to one year, or both. A corporation may be fined up to \$100,000 if convicted.
- **Direct Sales Prohibition Order:** order a supplier engaging in "direct sales" to cease operating if there are grounds to believe that the conduct of the supplier is contrary to the public interest or if the supplier has violated the legislation.
- **Property Freezing Orders:** the Director can issue a property freezing order for a person under inspection if the Director believes the order is advisable for the protection of those dealing with the person under inspection.

Use of Administrative Penalties in Tenancy Matters in Other Provinces and Territories

Each province and territory addresses its compliance and enforcement regime for residential tenancy matters in a different way:

Manitoba and Ontario are the only other provinces with administrative penalty provisions. These provisions are rarely used, in part due to the use of other enforcement tools.

Most of the other provinces have offence provisions in their residential tenancy legislation with varying levels of enforcement. In Alberta, the Service Alberta Consumer Investigations Unit enforces offences. In Saskatchewan, a party must initiate through a complaint to police. In New Brunswick, failure to comply with the Act or an order of the rentalsman could be punishable under the *Provincial Offences Procedure Act*. This provision frequently, under the POPA.

Manitoba

Manitoba has the authority to issue a notice of administrative penalty for serious or repeated failures to follow the *Residential Tenancies Act* or the *Life Leases Act*, including for non-compliance with orders or for contraventions. Administrative penalties can be levied for breaches of any provisions of the legislation; however, certain provisions are specifically listed within the legislation such as the duty to not withhold essential services. The regulations set out the associated penalties for contraventions of the legislation and of orders. A person required to pay an administrative penalty may appeal the matter to the Residential Tenancies Commission. The Commission is established as a specialist tribunal to hear appeals from decisions and orders of the director under the Act. The Act gives the Commission

authority to investigate, although the definition of investigate is unclear (see section 167). The Branch enforces orders issued by the Residential Tenancies Commission or the Court of Appeal. The Branch also enforces final orders issued by other agencies under other Acts, regulations or bylaws. For example: The Public Health Act, the Neighbourhood Liveability By-law No. 1/2008. A final order is one where there is no appeal, the appeal period has ended or there is no further opportunity to appeal.

If a landlord doesn't comply with an Order to Repair, the Branch may also issue an order to redirect the tenant's rent payments to the director and, for urgent repairs, use monies from the Residential Tenancies Repair Program to pay for the repairs (established under clause 44(k) of *The Housing and Renewal Corporation Act*). The Branch redirects twice the amount of the original estimated cost of the repairs to ensure there will be enough money to pay a contractor for the repairs. The Branch also charges an administration fee when redirecting rent. The amount of the fee is set by regulation. When the Branch hires a contractor, the Branch advises the landlord. If the landlord then does the repairs, the landlord is responsible for any costs of the contractor. For example: The contractor buys material to do the repairs, but the landlord does the work on their own. The landlord must compensate the contractor for the material. When the repairs will cost more than \$999.99, the Branch tries to get estimates from at least two contractors. However, in emergency situations, the Branch may hire a contractor without getting estimates. If the Branch issues an Order to Repair, and the tenant moves out before the landlord finishes the work, the Branch may enforce the Order to Repair by redirecting rent from the new tenant; or order the landlord not to re-rent the unit until they do the repairs. Where there are contraventions of the landlord's obligation to repair that are substantial to occupancy of the unit, the director may order that the landlord be prohibited from renting the unit until the repairs are complete.

Ontario

Ontario has an enforcement and investigations unit in its Residential Tenancy Branch, with staff in each of its eight offices. The Investigation and Enforcement Unit responds to complaints alleged offences and enforces a Provincial Standards of Maintenance Bylaw. The Ontario enforcement process is part of its criminal proceedings. Upon conviction, an individual can face an administrative penalty up to \$25,000, and a corporation can face an administrative penalty up to \$100,000.

A landlord or a tenant may report an offence to the Investigation and Enforcement Unit (IEU); and/or apply to the Landlord and Tenant Board (the Board) for dispute resolution. The first step for the IEU is to discuss the issue with the parties and attempt to have the alleged offender comply with the requirements of the legislation. A letter outlining the complaint and explaining the action required to correct the problem is mailed to the alleged offender. The maximum penalties set out by the legislation are also outlined in the letter. If a party refuses or fails to comply with the Investigation & Enforcement Unit's request, the case may be referred for further investigation. The vast majority of offences are resolved by the enforcement unit calling the contravener and explaining the law.

Alberta

Alberta has a system of offences in its legislation with enforcement actions for contraventions that include warning letters, violation tickets with fines ranging from \$150 to \$400, and mandatory court appearances with fines on conviction of up to \$5,000 and \$10,000. The offence sections are enforced by Service Alberta through a written warning, a violation ticket with a specified penalty (no court appearance required), or mandatory court appearance (with a maximum fine on conviction for each offence). The Consumer Investigations Unit reviews a range of consumer complaints to determine if an offence has occurred and if an investigation is warranted, considering factors such as whether a business has a prior complaint history, the number of people affected, and the vulnerability of the consumers. Chargeable offences do not include maintenance and repairs; however, a monetary order made be made through dispute resolution requiring the landlord to pay the tenant for work that the landlord promised to do but never did. Alberta's tenancy legislation requires adherence to minimum standards prescribed for housing premises established under the *Public Health Act* and regulations which are enforced by Public Health Inspectors/Executive Officers of Regional Health Authorities on a systematic or complaint basis.

Local Jurisdiction/Enforcement/Bylaws

British Columbia, like most other jurisdictions, states in its tenancy legislation that landlords must provide and maintain a rental property in a state of decoration and repair that complies with health, safety and housing standards required by law. Most standards are found in bylaws set and enforced by municipalities under the authority of the *Community Charter* or the *Vancouver Charter*. These may address nuisances, disturbances and other objectionable behaviour, public health, and buildings and other structures. Many municipalities have Standards of Maintenance bylaws. Provincial standards, such as those set in the *Safety Standards Act*, the *Fire Services Act* and the BC Building Code, BC Plumbing Code and BC Fire Code and elevator standards which are enforced all at the local level. A tenant can contact their local government or health authority to complain about local bylaw contravention.

More to be added

Current Process – Disposition of complaints

Authority to consider administrative penalty matters is delegated to the Residential Tenancy Branch Director of Policy, to provide consistency in application of criteria and decision making.

The following process was established for considering complaints and requests for administrative penalties under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*:

- A. Complaint intake
- B. Complaint assessment and disposition
- C. Investigation
- D. Hearing
- E. Decision
- F. Review

A. Complaint intake

Complaints may be initiated by anyone such as a landlord or tenant, members of the public or organizations. The Residential Tenancy Branch may also consider matters at its own initiative. Once an issue is raised, it is assessed and a decision is made as to whether or not further action is necessary and advisable. Complaints, which must be in writing, are referred to a delegate of the Director of Policy for assessment.

B. Complaint assessment and disposition

The information provided in the complaint is assessed to decide on a recommendation for disposition. The initial assessment is completed using a *Triage Checklist* (Appendix I) to determine if an investigation is warranted. The *Triage Checklist* considers the seven criteria outlined in the Legislation.

Complaints may be dismissed if they:

- Do not involve an offence under the legislation or failure to comply with an order.
- Are not considered serious or repeat contraventions.
- Involve a matter that is, or could be before an arbitrator.
- Involve an individual circumstance that could be resolved through dispute resolution, court action or other authorities (e.g. police, local government).
- Involve a matter before the courts.
- Are frivolous.

Based on the assessment, the delegate may recommend that:

1. The complaint be dismissed,
2. The complaint be held on file for possible future action,
3. A warning letter be issued, or
4. Investigation

The Director of Policy reviews the materials and decides on disposition.

1. If the complaint is dismissed, a letter is sent to the complainant stating that the complaint has been dismissed, with reasons and any other relevant advice (e.g., the complainant may submit an application for dispute resolution).
2. If it is decided that the complaint will be held on file, a letter is sent to the complainant stating that the complaint is not being investigated but will be held on file in the event that further complaints about the same matter are received. A letter is also sent to the person who is the subject of the complaint, informing them that a complaint has been made, providing a copy of the letter of complaint, and informing them that the complaint will be held on file.
3. If it is decided that a warning letter will be issued, a letter is sent to the complainant stating that a warning letter is being issued and compliance will be monitored. A letter is sent to the person who is the subject of the complaint, informing them that a complaint has been made, providing a copy of the letter of complaint, and warning the person to comply or an investigation for possible administrative penalties will be initiated. The letter provides information about the relevant provisions of the legislation related to the complaint and an administrative penalties fact sheet (*do we still send given that it is no longer on the website*). It was intended that at this stage a settlement agreement may be negotiated

C. Investigation

The director may initiate an investigation if the person

- Fails to comply with a warning letter, or
- Continues to re-offend after receiving the warning letter.

If the director decides to initiate an investigation, a letter is sent to the complainant stating that action is being initiated on the complaint, that the complainant may be contacted to provide more information, and that the complainant will be informed of the outcome of the complaint.

The Director will then provide copies of all relevant documentation to the investigator. The investigator will collect information relevant to the case and prepare a report for the Director with recommendations for applying an administrative penalty. The director will decide whether to proceed with a hearing for an administrative penalty. If the Director decides to proceed with a hearing, a hearing date will be scheduled.

D. Hearing

If it has been decided that there will be a hearing, the Respondent will be notified by the Residential Tenancy Branch, given a copy of the evidence gathered by the Investigator and be given a hearing date. The hearing will be held 21 days after the notice and the evidence are sent to the Respondent. The Respondent submits any evidence in his or her defence to the RTB during this time. The Respondent may be fined for failing to submit evidence. The hearing will be a review of written evidence and submissions rather than oral evidence. The Registrar of the

Residential Tenancy Branch will conduct the hearing by reviewing the evidence gathered by the Investigator, the relevant laws, regulations and guidelines, as well as any other submissions.

E. Decision

The Registrar will decide to either dismiss the case or to impose an administrative penalty.

F. Review

right of review

The decision made is final and binding. It may be reviewed only for procedural fairness, for one of the three reasons set out in the legislation as criteria for review.

Comment [AG1]: Who conducts the review (Should an arb review the Director's decision?) What should be reviewed, e.g., the amount of the penalty?

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No bullets or numbering

Administrative Penalty Complaint History

2012: 7 complaints

2013: 7 complaints

2014: 6 complaints

2015 (to October 13): 4 complaints

More analysis to be included

Current Challenges

Access to Information

- Insufficient information available to the public regarding the Residential Tenancy Branch's processes for assessing, investigating and levying administrative penalties.
- Absence of comprehensive policy guideline on administrative penalty policies and processes
- Clear criteria for assessment/triage
- Template letters for warnings, notice

Alternative tools for compliance

- Insufficient use of alternative compliance tools such as warning letters or advisory notices.
- Inability to revoke permits or licences (as landlords and tenants are not regulated).
- Investigations- a provision that is less robust in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act*. These organizations may also revoke licenses or permits; neither landlords nor tenants are licensed in British Columbia.
- Some matters, such as orders to repair a rental unit, cannot effectively be enforced through existing mechanisms. Because of this, some people do not comply with a dispute resolution order.
- *Court Enforcement of Orders* - If the respondent fails to comply with an order of the Residential Tenancy Branch, the other party may seek court enforcement. However, court enforcement actions are effectively limited to monetary orders (e.g. collection of unpaid rent, return of security deposits) which are filed in Small Claims Court and to orders of possession which are

filed in BC Supreme Court and enable a bailiff to remove personal effects from a rental unit following an eviction.

- Some matters, such as orders to repair a rental unit, cannot effectively be enforced through existing mechanisms. Because of this, some people do not comply with a dispute resolution order.
- Penalties and Offences Provision - The onus is currently on a participant to request that the Crown proceed, through Crown Counsel rarely proceeds on matters where there is an administrative dispute resolution mechanism.

Residential Tenancy Branch Resources

- The Administrative Penalty process occurs outside of the Residential Tenancy Branch's usual dispute resolution process. This requires the use of additional staff resources to carry out the processes for addressing complaints and requests for Administrative Penalties.
- Lack of training for arbitrators and policy staff to conduct pre-investigation assessments ("triage checklist).
- Ambiguity regarding pre-investigation assessment and investigation, and whether a formal investigation is required in all circumstances when there is evidence of non-compliance.
- Tracking of complaint disposition - Currently, there are no resources allocated to pro-active monitoring of repeated non-compliance, or monitoring of respondents who have received a warning letter from the Residential Tenancy Branch.
- Ambiguity regarding the investigation stage, specifically concerning cost, scope and responsibility.
- The limited availability of arbitrators may impact the ability to conduct investigations and to hear administrative penalty disputes.
- Knowledge/training of HQ staff to assess complaints – gravity scale

Legislative constraints

- The *Residential Tenancy Act* lists offences and penalties – separate from administrative penalties. Amendments to the Regulation to the *Offence Act* would be required to allow offence on the *Residential Tenancy Act* to be ticketable/enforced by enforcement officers.
- Ambiguity regarding how investigations are conducted when there has been no application for dispute resolution.

– existing provisions

- AP when no dispute
- Limitation period (consideration of previous enforcement actions taken more than two years prior)
- Acting on offences – prosecution of offences

- Investigations – when no application made for dispute resolution; whether there must always be an investigation
- Rent redirect

Policy constraints

- The current *Residential Tenancy Policy Guideline 41 Administrative Penalties* (January 2012) is available on the internet. It outlines considerations for levying an administrative penalty and how to determine the size of the penalty. This includes a value scale for assessing the gravity of each of the seven required elements that the legislation identified must be considered when applying an administrative penalty.
- The policy guideline does not outline the process and procedures undertaken prior to determining whether a complaint will be considered for an administrative penalty.
- Do not have set criteria when considering whether to proceed to an investigation.

Recommendations

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Residential Tenancy Branch Regulatory Compliance Toolkit

EDUCATION

- Website
- Guides
- Public education sessions
- Information Officers
- Expert System/Solution Explorer
- Stakeholder Information

WARNING

- Decisions and Orders
- Held on File Letter
- Warning Letter
- Warnings in Decisions
- Compliance Agreement

PENALTY

- Where non-compliance is not remedied or continues) (not punitive)
- Discretion
- Assessment (seven mandatory criteria)
- Assessment→Investigation→Penalty
- Assessment→Penalty
- Negotiated settlement

NOTES

Consultation Questions

1. Do you consider that there are other roles or objectives that should be taken into account when consider the RTB's approach to administrative penalties? Please give reasons for your views?

Considerations

Change in owner/landlord

- What happens when ownership has changed and orders were against previous landlords/owners? And tenancies have continued. Is there any obligation on behalf of the new owner/landlord to comply with previous orders? Do things start from square 1? Where does this leave the tenants?

Investigator Powers

- Can person retained as investigator use powers under 76 (1) to issue summons requiring the production of documents (related to the subject matter of the dispute)?

DRAFT

Appendix I: Administrative Penalties Initial Checklist

Person at centre of matter _____ AP# _____

Primary address of matter _____

- ☐ More than one address (list on reverse or a separate sheet)

First consideration: scope

Administrative Penalties are allowed through the RTA or MHPTA in very limited circumstances. The first consideration is whether Administrative Penalties apply to the matter being raised.

- ☐ Contravened Residential Tenancy Act, section _____ Regulation, s.: _____
- ☐ Contravened MHP Tenancy Act, section _____ Regulation, s.: _____
- ☐ Failed to comply with an Order: file #s _____
Dates: _____
- ☐ Other relevant details: _____

Second consideration: scale

Documentation or statements should be provided on following issues, as applicable:

- ☐ Previous enforcement actions _____
- ☐ Gravity and magnitude _____
How is safety compromised? (e.g., locks removed) _____
How is health compromised? (e.g., no windows, exposing residents to harsh weather) _____
How is economic viability compromised? (e.g., repeated non-payment of rent results in mortgage foreclosure) _____
- ☐ Extent of harm to others _____
- ☐ Repeated or continuous offence(s) _____
Type of order(s)/ contraventions outside of orders (list on separate sheet) _____
Number of Orders Against in past year _____ in past 2 years _____
- ☐ Evidence that it was deliberate
- ☐ Evidence of economic benefit to contravening party

Third consideration: Previous Practices

Documentation or statements should be provided on following issues. This information may not be available from the person raising the matter.

- ☐ Is there a history of compliance without court-ordered enforcement? _____

☐ Is there a history of correspondence or communications with RTB? _____

Fourth consideration: T3 – Triggers, Turf & Talk

☐ Trigger: what triggered this complaint? _____

☐ Turf: whose responsibility is it, and why is RTB involved? _____

☐ Talk: have attempts have been made to resolve the situation? _____

Contact information

☐ Person at centre of the matter: name _____

Address: _____

Daytime phone number: _____

Other contact information: _____

☐ Person bringing matter to RTB: name _____

Organization/Affiliation: _____

Address: _____

Daytime phone number: _____

Other contact information: _____

☐ Second person bringing matter to RTB: name _____

Organization/Affiliation: _____

Address: _____

Daytime phone number: _____

Other contact information: _____

Additional information

Beattie, Michelle OHCS:EX

From: Panter, Audrey OHCS:EX
Sent: Saturday, October 17, 2015 7:27 AM
To: Gordon, Alexis M OHCS:EX
Subject: Review update

Hi Alexis,

Janet wanted a copy of the report to review over the weekend so my focus on Friday and now is getting that cleaned up and sent off to her. I have not had time to do any additional work on the presentation at this moment.

Audrey Panter
Senior Policy Analyst
Residential Tenancy Branch
Office of Housing and Construction Standards
Phone: (250) 818-5749