

**MINISTRY OF NATURAL GAS DEVELOPMENT AND
MINISTER RESPONSIBLE FOR HOUSING
OFFICE OF HOUSING AND CONSTRUCTION STANDARDS
ESTIMATES BRIEFING NOTE 2015/16**

ISSUE: Business Transformation – Residential Tenancy Branch

KEY MESSAGES:

- Modernizing Residential Tenancy Branch services is about ensuring that citizens have better access to information and improved tools to resolve disputes.
- We are following through on our commitment to streamline and modernize Residential Tenancy Branch services in our provincial housing strategy, Housing Matters 2014.
- Significant improvements have been made through a more user-friendly website, and a more efficient contact centre.
- The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* are being amended to provide modern, user-friendly citizen service and more effective dispute resolution processes by:
 - Creating a facilitated settlement process.
 - Enabling more business to be done online.
- These improvements will support more satisfactory outcomes for landlords and tenants, and provide greater options for preventing and resolving disputes.

BACKGROUND:

- Current tools are outdated, do not support public demand and constrain the Residential Tenancy Branch's ability to make significant improvements. The Branch is working to provide more opportunities for landlords and tenants to use web-based services to access residential tenancy information.
- Since January 2014, the Residential Tenancy Branch has undertaken the following improvements to Residential Tenancy Branch services:
 - Launched an updated website with plain language information on tenancy laws and regulations, making it easier for tenants and landlords to understand their responsibilities.
 - Prioritized scheduling of hearings to focus on the most urgent issues, limiting wait times for issues with the greatest impact on landlords and tenants, such as those dealing with possession of a rental unit or emergency repairs.
 - Re-organized the contact centre, increasing productivity in the number of calls the Branch responds to.

Contact: Jeff Vasey
Cell Phone: 250-361-6673
Date: April 27, 2015

Estimate Note: D2

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- The legislative amendments enable the Branch to provide facilitated dispute resolution services that promote collaborative problem solving between the landlord and tenant.
 - When parties have more input into the resolution of their dispute, they are more likely to be satisfied with the outcome.
- The legislative amendments also provide the legal authority to increase opportunities for landlords and tenants to do more business online.

CROSS-REFERENCE:

D1 - Wait Times/Operations – Residential Tenancy Branch

OFFICE OF HOUSING AND CONSTRUCTION STANDARDS

INFORMATION NOTE

DATE: September 8, 2015

PREPARED FOR: Honourable Rich Coleman, Minister

ISSUE: Review of the administrative penalty framework under the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act*

BACKGROUND:

The Residential Tenancy Branch has authority to levy an administrative penalty for serious or repeated contraventions of the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the legislation) or Residential Tenancy Branch orders. The maximum penalty is \$5000 for each day the contravention continues. Tenant and landlord advocacy groups have expressed concern that the Residential Tenancy Branch does not adequately exercise its powers to conduct investigations and levy administrative penalties and that the penalty provisions are ineffective at deterring non-compliance.

The administrative penalty provisions were brought into force in 2008. In 2012, the Residential Tenancy Branch issued its only administrative penalty to date. In May 2015, the Minister Responsible for Housing committed to publicly release a review of the administrative penalty framework by late 2015. The Residential Tenancy Branch has committed to completing this review.

DISCUSSION:

The purpose of the review to clarify the intent and efficacy of administrative penalties as an enforcement tool, to examine the review process prior to levying a penalty and to identify alternative approaches to problematic residential tenancy matters.

Advocate reports have raised the issue of the province's role in addressing problematic tenancy matters. More detailed analysis is required to determine whether policy, regulatory or legislative changes are needed and how they could be implemented.

CONCLUSION:

The Residential Tenancy Branch is reviewing the legislations' administrative penalty framework based on the project objectives listed above. A report will be ready for public release by late 2015.

Prepared by:

Alexis Gordon

Cliff#: 19777

Version:

Updated:

Reviewed by:

Greg Steves

Initial

Date:

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INFORMATION NOTE

Policy Analyst
Residential Tenancy Branch
250 812-2675

A/ Executive Director
Residential Tenancy Branch

Jeff Vasey
Assistant Deputy Minister
Office of Housing and
Construction Standards

Steve Carr
Deputy Minister
Ministry of Natural Gas
Development and
Responsible for Housing

Cliff#: 19777
Version:
Updated:

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**OFFICE OF HOUSING AND CONSTRUCTION STANDARDS
DECISION NOTE**

Cliff #:
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Updated:

OFFICE OF HOUSING AND CONSTRUCTION STANDARDS

DECISION NOTE

DATE: February 25, 2016

PREPARED FOR: Honourable Rich Coleman, Minister

ISSUE: Recommendations from Administrative Penalty Framework Review

BACKGROUND:

Stakeholders have expressed significant ongoing concerns that the Residential Tenancy Branch does not adequately promote compliance with tenancy legislation through its powers to conduct investigations and levy administrative penalties for non-compliant landlords and tenants.

The legislation provides authority for the director of the Branch to take both proactive and reactive action to encourage and enforce compliance.

The Branch's resources have historically focused on individual applications from landlords and tenants for dispute resolution services, which is a reactive approach. The legislation also includes provisions for more proactive approaches, including:

- Administrative penalties – levying monetary penalties for serious or repeated contraventions to encourage compliance with the legislation and orders.
- Broad investigative powers - granting the authority to conduct investigations to ensure compliance with the legislation, whether or not an application for dispute resolution has been accepted.
- Offences under the applicable Act - allowing for prosecution and conviction of identified contraventions through the courts.
- Rent redirection – ordering that a tenant pay their rent to the director to hold in trust or pay out for completion of maintenance or repairs required of a landlord.

In May 2015, the Minister committed to conduct and publicly release a review of the Branch's administrative penalty framework under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. The Branch has completed this review.

DISCUSSION:

The review of Branch's administrative penalty framework brought to light opportunities to improve the process and make better use of deterrents, although resourcing remains a challenge. There are also opportunities to enhance the role of the director and highlight the intent of the legislation with respect to enforcement for serious or repeated non-compliance.

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Administrative penalties should act mainly as a deterrent to non-compliance, rather than a penalty after the fact; with penalties levied only in situations of serious, repeated and deliberate contraventions of legislation or orders. The use of administrative penalties is most appropriate where there is a pattern of non-compliance that affects multiple tenants or landlords.

The effectiveness of administrative penalties as a deterrent has been demonstrated in Manitoba, the only other province with administrative penalties in their tenancy legislation.

The Branch's administrative penalty framework could be improved by making greater use of it as a proactive and progressive enforcement tool, rather than relying on the dispute resolution process as the sole means of addressing non-compliance issues. This shifts the role of the director from solely an arbitrator of disputes to one that is more proactive in encouraging compliance with the legislation. The goal, as outlined in Housing Matters BC, is to balance safety, economic and social interests and contribute to safe affordable housing.

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the Branch's position is that the benefits of administrative penalty provisions for serious, repeated and deliberate violations outweigh the potential consequences of a judicial review.

Options to improve the administrative penalty framework and better utilize existing compliance and enforcement tools range from quick fixes to improve existing processes and the deterrent effect to more substantive long-term changes requiring additional resources and legislative changes. The latter would necessitate submissions to Treasury Board and Cabinet.

The Residential Tenancy Branch Administrative Penalties Review report (attached) highlights strengths and challenges of the existing administrative penalty framework and other enforcement tools set out in the legislation.

Recommendations

OPTIONS:

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Enclosures/Attachments

Appendix I: Compliance and Enforcement Tools in BC Residential Tenancy Legislation

Appendix II: Administrative Penalties Review

Approved/Not Approved

Honourable Rich Coleman
Minister

Date

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OFFICE OF HOUSING AND CONSTRUCTION STANDARDS DECISION NOTE

Prepared by:

Audrey Panter
Senior Policy
Analyst
Residential
Tenancy Branch
250-818-5749

Reviewed by:

Janet Donald
Director of Policy
Residential Tenancy
Branch

Initial

____JKD____

Date:

____Feb 25/16____

Greg Steves
Executive Director
Residential Tenancy
Branch

Jeff Vasey
Assistant Deputy
Minister
Office of Housing
and Construction
Standards

Dave Nikolejsin
Deputy Minister of
Natural Gas
Development &
Responsible for
Housing

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Appendix I: Compliance and Enforcement Tools in BC Residential Tenancy Legislation

Tool	Intent	Scope
Dispute Resolution Proceeding	Mechanism for landlords and tenants to enforce tenancy agreements and compliance with the legislation, and obtain a legally binding decision from an independent decision-maker	Arbitrator conducts dispute resolution proceeding, hears and examines evidence and statements made by parties, and makes a final and binding decision.
Decisions and Orders	A remedy for non-compliance in the form of a formal written record documenting outcome of dispute resolution proceeding and reasons (grounds, analysis and conclusions on which an arbitrator has based a decision, including both factual evidence and law)	Arbitrator provides formal written decision after a dispute resolution proceeding that includes reasons for decision and may include remedy. Remedy can be an order enforcing the Applicant's rights or can be redress or compensation for the violation.
Court Enforcement <i>RTA s.84- 85</i> <i>MHPTA s. 77-78</i>	Mechanism for a party to enforce an order of the director when the other party does not comply with the order after being served	No Branch involvement
Rent Redirect <i>RTA s.65 (1) (a)</i> <i>MHPTA s. 58 (1) (a)</i>	Mechanism for the director to incent landlords to comply with the Act, the regulations or a tenancy agreement in relation to maintenance or repairs or services or facilities <i>This provision remains in force but has not been utilized since the before the legislation was amended in 2002.</i>	Arbitrator makes order during dispute resolution proceeding ordering tenant(s) to pay their rent to the director to hold in trust or pay out, for the costs of maintenance or repairs if a landlord has been found to be in non-compliance with the Act.
Administrative Penalties <i>RTA s. 94.1 – 94.31</i> <i>MHPTA s. 86..1 - 86.31</i>	Mechanism for the director to deter non-compliance with the Act or regulations or with orders of the director through threat of or actual levying of an administrative penalty	Delegate of the director (currently Director of Policy) assesses complaints, issues warnings, provides opportunity for alleged violator to be heard and determines whether to levy an administrative penalty. Maximum penalty is \$5,000 for each day the contravention continues.

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Tool	Intent	Scope
Investigations <i>RTA s.96.1</i> <i>MHPTA s. 88.1</i>	Authority for the director to gather information and evidence to prove or disprove matters of fact raised by a complaint for the purpose of levying an administrative penalty or prosecuting an offence	The legislation provides authority for the director to conduct investigations to ensure compliance with the legislation and regulations, whether or not the director has accepted an application for dispute resolution in relation to the matter.
Offences and Penalties <i>RTA s. 95-96</i> <i>MHPTA s.87–88</i>	To prosecute and convict a person for violating provisions of the Act and regulations that are set out as offences <i>This provision remains in force but has not been utilized since well before the legislation was amended in 2002.</i>	The legislation allows for a person to be prosecuted for offences and fined up to \$5,000 upon conviction for failing to comply with specified provisions of the legislation. The decision to prosecute is made by the British Columbia Ministry of Justice's Prosecution Service (Crown Counsel).

Residential Tenancy Branch Administrative Penalties Review

February 25, 2016 Draft

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Residential Tenancy Branch Administrative Penalties Review
February 25, 2016 draft

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Introduction

The Residential Tenancy Branch is responsible for the administration of the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the legislation). The legislation balances the rights and responsibilities of landlords and tenants, provides a mechanism for dispute resolution, and gives the director authority to take action to encourage compliance with the legislation.

The Residential Tenancy Branch's resources have historically focused on providing information about the rights and responsibilities of tenants and landlords under the legislation, and responding to individual applications from landlords and tenants for dispute resolution services. However, the legislation also includes provisions for:

- broad investigative powers,
- levying administrative penalties,
- prosecuting offences, and,
- ordering the redirection of rent to the director.

The Residential Tenancy Branch has come under criticism for not fully utilizing the investigative and administrative penalty provisions in the legislation. Further to a commitment made in May 2015 by the Honourable Rich Coleman, Minister Responsible for Housing, the Residential Tenancy Branch has completed a review of the legislation's administrative penalty framework. This paper summarizes that review and is intended to provide information for further discussion.

Intent of Administrative Penalties

Administrative penalties are an efficient method of encouraging compliance with legislation. These penalties do not involve a court determination, such as with the prosecution of offences, and as a result are generally simple and quick to impose. The possibility or threat of an administrative penalty is intended to encourage compliance with legislation, as well as to work as a deterrent to non-compliance. Compliance rather than punishment after the fact is the goal of administrative penalties.

Administrative penalties are used extensively among regulatory bodies in British Columbia. They are included in statutes affecting industry, environmental protection and management, consumer protection, homeowner protection, financial institutions and securities. Administrative penalties are commonly used to encourage parties that are licensed to carry out regulated activities to comply with the terms of their license.

Administrative penalties are often monetary penalties, but can also take the form of sanctions such as revoking or suspending permits or licences. Most regulatory bodies utilize enforcement officers or industry inspectors who routinely meet with licensees, business owners and others to verify compliance and discuss compliance-related issues and complaints. Regulatory bodies have the ability to inspect businesses for potential violations, draw violations to the attention of the business, and provide opportunities for violations to be remedied. Where non-compliance is not remedied or is ongoing,

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 to encourage compliance before a penalty or sanction is levied. Some examples are:

- **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.
- **Fines/Monetary Orders:** A monetary penalty issued for failure to comply with an order, a condition of a licence or of an authorization, or certain provisions of an Act or regulation.

Best Practice in Administrative Penalties

A review of materials and reports on administrative penalties identifies best practices for administrative penalty systems, including key principles and essential elements.

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

- **Deterrence, not punishment**
Prevent people from violating the law through threat of administrative penalty or by removing the financial gain or benefit from non-compliance.
- **Responsiveness**
Act promptly and effectively.
- **Proportionality**
Consider the nature of the alleged contravention and the harm caused, and ensure the penalty is of appropriate weight.
- **Fairness and equity**
Ensure treatment of the regulated community is consistent and takes into account individual situations or circumstances.
- **Transparency**
Make information about the mechanisms and processes for determining administrative penalties publicly available.

Essential 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, of 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.

Residential Tenancy Branch Measures to Promote Compliance

The Residential Tenancy Branch currently undertakes numerous activities that are aimed at promoting compliance with the legislation ranging from education and awareness to enforcement.

Education and awareness tools

The Residential Tenancy Branch pursues a wide range of proactive activities aimed at encouraging voluntary compliance with the legislation.

- **Contact Centre:** Information Officers provide information on rights, responsibilities and obligations under the legislation in response to telephone calls, emails and in-person inquiries.
- **Website:** www.gov.bc.ca/landlordtenant contains comprehensive and up-to date information, tools and resources for landlords and tenants including:
 - **Guides:** Two publications, *Residential Tenancy Act: A Guide for Landlords & Tenants in B.C.* and *Manufactured Home Park Tenancy Act: A Guide for Manufactured Home Park Landlords & Tenants in B.C.*, provide plain-language information on the laws affecting landlords and tenants.
 - **Videos:** Short videos on important tenancy topics.
 - **Information Sheets:** Convenient summaries of information that every tenant and landlord should know.
 - **Policy Guidelines:** Plain language descriptions of the policy intent of the legislation.
 - **Calculators:** For landlords and tenants to determine important deadlines or calculations.
- **Public education:** Senior Information Officers provide 50-60 public education sessions on a range of topics each year in person and through webinars.
- **Information and workshops with stakeholders:** The Branch engages in presentations, conferences and training sessions for landlord and tenant groups on key topics.

Compliance and enforcement tools

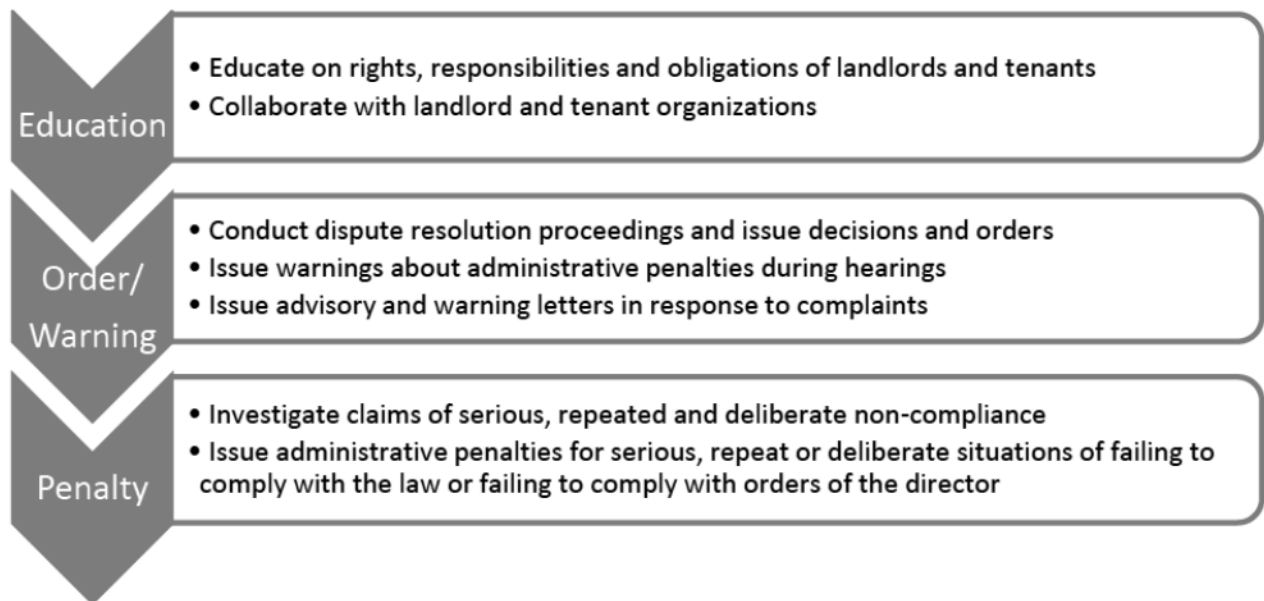
A range of measures is available within the legislation to promote and enforce compliance including:

- **Dispute Resolution:** Branch Arbitrators conduct hearings and render legally binding decisions on landlord and tenant disputes, in accordance with the legislation.
- **Decisions and Orders:** Written dispute resolution decisions are legally binding and include substantive reasoning for the decision. The purpose of an order is to uphold the legislation and remedy loss or damage caused by non-compliance.

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- **Court Enforcement:** Monetary orders can be enforced through the Provincial (Small Claims) Court. Other orders, primarily orders of possession, can be enforced through the BC Supreme Court.
- **Administrative Penalties:** A maximum of penalty is \$5,000 per day may be levied on a party for contraventions of the legislation or orders. Residential Tenancy Branch policy reserves administrative penalties for serious, repeated and deliberate contraventions of tenancy laws and dispute resolution decisions. This provision has been used only once since it came into force in 2008.
- **Investigations:** May be conducted to ensure compliance with the legislation and regulations, whether or not the director has accepted an application for dispute resolution in relation to the matter. Two formal investigations have been undertaken for the purpose of determining whether to levy an administrative penalty. In addition, systematic examinations of complaints and dispute resolution outcomes are conducted for the purpose of assessing requests for administrative penalties.
- **Offences and Penalties:** British Columbia's Crown Counsel may charge and prosecute a party for offences under the legislation, with fines up to \$5,000 upon conviction.
- **Rent Redirect:** If a landlord has been found to be in non-compliance with the legislation, a tenant may be ordered to pay rent to the director to hold in trust or pay out, for costs to comply with the legislation in relation to maintenance, repairs, services or facilities. This provision has not been used since the 1990's.
- **Warning Letters:** Although not included in the legislation, warning letters have been sent on several occasions. The letters sent are described later in this review.

The following diagram provides a brief visual summary of the Branch's current regulatory compliance framework:



Compliance and Enforcement in Residential Tenancy Matters in Other Provinces and Territories

Each Canadian province and territory has residential tenancy legislation, a quasi-judicial or judicial process for resolving disputes between landlords and tenants and other mechanisms for enforcing compliance with tenancy agreements and the rights and obligations set out in legislation. Jurisdictions with proactive provisions to address non-compliance have found that early intervention is the most effective method of resolution. Examples of early intervention include:

- Contacting the violator by phone to advise them of their responsibilities under legislation and the consequences of non-compliance.
- Sending warning letters to advise of the potential for a penalty.
- Ordering redirection of the rent.

Deterrence has proven largely effective, and only in rare circumstances does an actual penalty need to be used.

Offences

All Canadian provincial and territorial tenancy legislation includes provisions that establish certain contraventions of the legislation as offences that can be prosecuted; however, only a few provinces make use of these provisions. For example:

- In Alberta, the Service Alberta Consumer Investigations Unit conducts investigations and enforces offences through violation tickets and prosecution through the courts.
- Ontario has an Investigation and Enforcement Unit that responds to complaints of alleged offences and enforces a Provincial Standards of Maintenance Bylaw.
- New Brunswick frequently prosecutes offences through the courts.

It is worth noting that investigation and prosecution of offences requires significant resources, substantial evidence and involves a high onus of proof.

Administrative Penalties

Manitoba introduced administrative penalties in its legislation in 2009 and the Yukon brought their provisions into force in January 2016. Other than British Columbia, these are the only other Canadian jurisdictions that currently have administrative penalty provisions for non-compliance with tenancy legislation and orders. Manitoba has not had to levy administrative penalties due to the effectiveness of warnings in deterring non-compliance and also in part due to the use of other enforcement tools, most notably rent redirect for repairs.

Rent Redirect

In Manitoba, if a landlord doesn't comply with an Order to Repair, the Branch may issue an order to redirect the tenant's rent payments to the director, and may use funds from their Residential Tenancies Repair Program to pay for urgent repairs. 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, and also charges a rent redirection administration fee that is set by regulation.

Yukon brought their provisions for rent redirect, as well as provincial maintenance standards, into force in January 2016. New Brunswick also has a legislative mechanism to redirect rent and contract for repairs.

BC Residential Tenancy Administrative Penalties

In 2006, the British Columbia government added discretionary administrative penalty provisions to the legislation. The provisions were brought into force in March 2008 as an alternative tool to encourage compliance with the law.

An administrative penalty matter is different from the Residential Tenancy Branch dispute resolution process 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.

British Columbia introduced administrative penalties to the legislation to be imposed in only the most serious of circumstances, where there was a pattern of contraventions or where the contravention was significant in its magnitude. The Residential Tenancy Branch did not anticipate taking many actions under the administrative penalty system, as it anticipated that most disputes would continue to be addressed through the dispute resolution process with enforcement through the courts.

Under the legislation, if the director is satisfied on the balance of probabilities that a party has failed to comply with the legislation, regulations or an order of the director, the director may:

- order a party to pay a monetary penalty,
- determine the amount of the penalty,
- negotiate a settlement, and
- cancel or reduce the size of the administrative penalty in return for specific actions, such as building repairs.

The seven criteria for considering an administrative penalty are set out in the legislation:

- Previous enforcement actions for contraventions of a similar nature by the party,
- The gravity and magnitude of the contravention,
- The extent of the harm to other resulting from the contravention,
- Whether the contravention was repeated or continuous,
- Whether the contravention was deliberate,
- Any economic benefit derived by the party from the contravention, and
- The party's efforts to correct the contravention.

The Branch also has a Policy Guideline that 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.

Before imposing an administrative penalty, the director must give the party an opportunity to know the case against them, provide submissions or appear in person to be heard. If the party who is given notice fails to provide submissions or to appear when required, the director may proceed without further notice to make an order for the penalty.

Disposition of complaints

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

When administrative penalty provisions were brought into force, the Branch developed a general process for considering complaints and requests for administrative penalties, which it currently follows with some variation:

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

A. Complaint intake

Complaints may be initiated in writing by anyone. The Branch may also consider matters at its own initiative. Once an issue is raised, it is assessed by a delegate of the Director of Policy to determine whether further action is necessary and advisable.

B. Complaint assessment and disposition

The initial assessment of information provided in a complaint is completed using a Triage Checklist that considers the seven criteria for administrative penalties outlined in the legislation.

In addition to consideration under legislated criteria, 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. An investigation be initiated.

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

C. Investigation

An investigation may be initiated if a party

- fails to comply with a warning letter, or,
- maintains a pattern of non-compliance.

The original process established that the director would provide copies of all relevant documentation to a private investigator. Currently this activity is undertaken internally. During an investigation, information relevant to the complaint is collected and recommendations for applying an administrative penalty are provided to the director. The director decides whether to proceed with a hearing for an administrative penalty.

D. Hearing

If a hearing is warranted, a notice of opportunity to be heard is given to the Respondent. The notice includes the date by which written submissions must be received. The notice is required to be given at least 21 days before the specified date. The hearing involves a review of written evidence and submissions rather than oral evidence, including reviewing any evidence gathered through the investigation, submissions from the Respondent and the relevant laws, regulations and guidelines. The hearing may proceed even if the Respondent does not submit evidence and the Respondent may still be issued a penalty.

E. Decision

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

F. Review

The decision to levy an administrative penalty is final and binding, and may be reviewed under the review provisions of the legislation.

Administrative Penalty Complaint History

There is limited data available prior to 2011 for complaints assessed under the legislation's administrative penalty provisions. Between 2012 and 2015 the Branch received 26 requests for administrative penalties. Of these complaints:

- seven warning letters were issued
- two formal investigations were undertaken
 - one administrative penalty was levied in 2012

- a determination is pending on whether an administrative penalty will be levied in another matter

For the remainder, the complaints were assessed and complainants were provided with a letter advising that no action would be taken and informing of other available options, such as the dispute resolution process.

A significant proportion of the complaints were related to maintenance and repair of rental unit or residential property by landlords (42%), followed by access (16%), quiet enjoyment (13%), unpaid rent (13%), return of security deposit (13%) and other (3%).

In 2012, the Branch levied its first, and to date only, administrative penalty. The Branch came under criticism for the length of the process undertaken to determine the penalty and the decision to negotiate an agreement with the landlord for completion of the repairs.

Maintenance and Repairs

Residential Tenancy Branch Enforcement

The legislation sets out landlord and tenant obligations to repair and maintain the rental unit and residential property. A landlord is obligated to provide and maintain the residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and makes it suitable for occupation by a tenant. A tenant is responsible for maintaining reasonable health, cleanliness and sanitary standards throughout the rental unit and the other common property to which the tenant has access, and for repairing damage that they or their guests or pets cause.

If there is a dispute regarding maintenance and repair, the aggrieved party can apply to the Branch for dispute resolution. If it is determined that the other party has not fulfilled their obligations under the legislation, the remedies may include an order to repair, a rent reduction for an aggrieved tenant and/or a monetary order.

Court Enforcement

If the party against whom a repair order was issued does not carry out the repairs, the next avenue for enforcement of the order could be through the BC Supreme Court. Under section 84 (1) of the *Residential Tenancy Act* and Rule 2-2 of the *Supreme Court Civil Rules*, a decision or an order of the director (or a tribunal) may be filed in the Supreme Court and enforced as a judgment or an order of that court. Anecdotal evidence is that parties rarely apply to the Supreme Court to enforce Residential Tenancy Branch repair orders.

Local Enforcement

Enforcement of many of the health, safety and housing standards required by law are within the jurisdiction of local government and health authorities. Under the *Local Government Act*, the

Community Charter, and the *Vancouver Charter*, local governments are provided with authority to establish bylaws to carry out administration and enforcement.

Local governments are encouraged, but not required, to establish and enforce standards of maintenance bylaws, which set minimum requirements for the maintenance and repair of residential properties and rental premises. There are very few local governments in BC that have standards of maintenance bylaws. Some property maintenance bylaws include maintenance standards for the building as well as the property. An ideal standards of maintenance bylaw sets out minimum criteria for rental accommodation, regarding things such as the condition and repair of a building and its walls, ceilings and floors, the condition of appliances and fixtures, heating systems and access to hot water.

There has been significant policy tension between the province and local governments with respect to jurisdiction over maintenance and repairs of rental properties. Many municipalities consider the expectation for local standards of maintenance bylaws to be a downloading of provincial responsibility.

Review Analysis and Findings

This review of the British Columbia Residential Tenancy Branch administrative penalties framework included examination of:

- the legislative authority of the director,
- current processes for assessing complaints,
- internal and external information and resource materials,
- the administrative penalty framework of other jurisdictions,
- intent and best practices of standard administrative penalty systems, and
- recommendations of stakeholders.

Aside from the fact that the legislation does not deal with licensed parties, the administrative penalties framework is consistent with the overall intent and best practices of standard administrative penalty systems.

Expectations

Stakeholders have stated they lack confidence in the Branch's administrative penalty process and its effectiveness at deterring non-compliance. The Branch has been criticised in recent reports (see Appendix I) for not better utilizing the range of enforcement provisions set out in the legislation and in particular the authority to impose administrative penalties and conduct investigations, particularly with respect to significant maintenance and repair issues.

There are expectations amongst the public and stakeholders that the Branch should take a greater role in enforcement beyond the dispute resolution process including using administrative penalties to address compliance issues. Some stakeholders recommend that the Branch more widely advertise the possibility of administrative penalties and increase early intervention efforts through informal staff intervention, such as calling landlords on behalf of tenants to explain the law. Increasing early

intervention efforts could be challenging, given the current high demand for Branch information and dispute resolution services. Other stakeholder recommendations include making administrative penalties mandatory and streamlining and incorporated them into existing Branch processes.

Procedures

When the administrative penalty provisions in BC's tenancy legislation were brought into force in 2008, the branch developed accompanying procedures including a triage checklist for assessing complaints, a fact sheet on the intent of administrative penalties, a flow chart outlining the administrative penalty process and a policy guideline detailing the weighting of factors to determine the amount of the penalty. A consistent staff person was assigned within the Residential Tenancy Branch head office to assess complaints and provide recommendations on disposition of the complaints.

Currently there is limited information available on the Branch's public website about administrative penalties, how complaints are directed and the process for assessing complaints. Internally, while the Branch has procedures to assist staff in assessing complaints, these have not been consolidated in one place, which can result in delays for new staff members who are less familiar with navigating the available materials.

There are limitations in the ability of the Branch to identify repeat violators and use advisory and warning letters to support a more graduated model to encourage compliance.

Set procedures are not currently in place to support collaboration with local governments to address significant issues of maintenance and repair.

Policy

From the outset, the policy intent has been that administrative penalties would mainly act as a deterrent to non-compliance, and be used only in situations of serious, repeated and deliberate contraventions of tenancy laws or dispute resolution outcomes. Administrative penalties were never intended to be an alternative to the existing dispute resolution process or existing mechanisms for enforcement of orders. While this has been seen as a limitation by some stakeholders, there are legal concerns that additional enforcement on matters that have already been decided through the dispute resolution process could be deemed administratively unfair.

Current administrative penalty policy requires an investigation prior to levying an administrative penalty. The director has broad discretion through the legislation to conduct investigations to ensure compliance with the Act and the regulations whether or not the director has accepted an application for dispute resolution in relation to the matter. The exercise of this discretion is limited by the absence of policy on how and when the discretion may be exercised and clarity on the nature and scope of investigations for the purpose of levying administrative penalties.

Residential Tenancy Branch policy guidelines are intended to provide a statement of the intent of the legislation. While there is a policy guideline on administrative penalties it does not reference investigations, nor is there a policy guideline specific to investigations. Consequently, there is ambiguity

regarding the use of the investigation provisions, specifically concerning the director's discretion on whether or not to conduct an investigation when there has not been an application for dispute resolution, and in particular how, when and by whom investigations are conducted. In addition, the current policy guideline on administrative penalties is focused on how the amount of an administrative penalty is determined but not on the activities and processes that are undertaken prior to that.

The legislation gives authority to the director to order that rent be redirected to the Residential Tenancy Branch for non-compliance with repair orders. While this provision has not been used since the 1990's due to administrative challenges and the Branch's shift toward use of rent reductions, this enforcement tool could serve as additional deterrent to non-compliance.

While local governments have authority to establish and enforce standards of maintenance, not all have such standards in place. Ontario established provincial standards of maintenance to be used where local government did not have its own standards in place. Limitations to the establishment of provincial standards include mechanisms and resources for timely and effective inspection and enforcement.

Legislation

The original intent of the legislation was to provide information on the rights and responsibilities of landlords and tenants, and a dispute resolution mechanism for tenancies under the applicable legislation. The administrative penalties enforcement provision is a more recently added area of authority. This provision allows the Branch to take direct action to address non-compliance issues. While the legislation gives the director the power to investigate, it does not contain provisions allowing the director to compel the provision of evidence or documentation for the purpose of considering administrative penalties. This may limit the scope and breadth of the director's investigation.

The legislation has contained offence provisions since its inception. The offence provisions are comprehensive but there are no procedural mechanisms in place in the regulations of the *Offence Act* to enforce violations through ticketing. In addition, the burden of proof required to support the prosecution of an offence in the courts is onerous and resource-intensive. Crown Counsel is unlikely to proceed on matters where there is already an administrative dispute resolution mechanism. It has been proven in British Columbia and other provinces to be extremely difficult to utilize offence provisions given the burden of proof required for Crown Counsel to be successful in laying charges and prosecuting the offences.

Resources

The Residential Tenancy Branch's resources are fully allocated towards providing timely information and dispute resolution services. An increased enforcement function would require new resources to carry out the administrative penalty framework, including addressing complaints, assessing the level of compliance or noncompliance, investigation functions and preventative enforcement actions. To ensure administrative fairness, there are limitations to incorporating administrative penalties into the Branch's existing processes.

Prevention and early intervention in disputes could, over time, reduce the number of disputes appearing before the Residential Tenancy Branch for resolution; however, additional resources would be required at the outset.

Conclusion

A regulatory system is most effective when a range of tools are available to encourage compliance. The Residential Tenancy Branch has a robust range of tools available to encourage compliance with the legislation, regulations and tenancy agreements, from public education to orders and warnings and finally penalties. Enforcement is necessary to compel compliance when voluntary compliance cannot be achieved.

Appendix I: Stakeholder Reports

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 through 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 allocation of additional resources is not required; and
- Maintain a consequence for non-compliance even if the Branch reaches a negotiated resolution.

OFFICE OF HOUSING AND CONSTRUCTION STANDARDS

DECISION NOTE

DATE: April 15, 2016

PREPARED FOR: Honourable Rich Coleman, Minister

ISSUE: Rent Geared to Income (RGI) Rent Increase Exemptions

BACKGROUND:

The *Residential Tenancy Act* (RTA) controls the frequency and amount of rent increases that a landlord can impose without a tenant's written consent.

The Residential Tenancy Regulation (the Regulation) provides an exemption from the RTA's rent controls for Rent Geared to Income (RGI) housing that is either:

1. operated directly by:
 - BC Housing;
 - Canada Mortgage and Housing Corporation;
 - the City of Vancouver;
 - the City of Vancouver Public Housing Corporation;
 - Metro Vancouver Housing Corporation;
 - the Capital Region Housing Corporation; or
2. operated by a non-profit organization under an operating agreement with:
 - the government of British Columbia;
 - BC Housing; or
 - the Canada Mortgage and Housing Corporation.

The Regulation's rent control exemption for RGI housing supports Government's commitment to promoting affordable housing, by ensuring that tenants pay rent according to their means. Rent is based on the income of the household, (i.e., no more than 30 percent of the household's total gross monthly income) rather than the market rate. Without this exemption, RGI housing would not be possible as the housing operator would not have the flexibility to match rents to household incomes, and tenants would be unlikely to provide written consent to rent increases on a voluntary basis.

Recently, the Residential Tenancy Branch (RTB) has been examining two issues involving the RGI exemption:

Cliff #: 20502
Version 1
Updated: Apr 15, 2016

OFFICE OF HOUSING AND CONSTRUCTION STANDARDS

DECISION NOTE

1. **Expiring Operating Agreements with BC Housing**

Operating agreements between BC Housing and operators of RGI housing are beginning to expire, meaning that these RGI housing operators will no longer qualify for the exemption to rent controls under the Regulation, and will be hampered in their efforts to provide affordable housing.

2. **Operating Agreements with the City of Vancouver**

The City of Vancouver has advised the RTB of plans to create new RGI housing to be operated by non-profit organizations under agreements with the City. Although the Regulation allows an exemption for RGI housing operated directly by the City of Vancouver, it does not allow an exemption for RGI housing operated by a non-profit society under an operating agreement with the City.

DISCUSSION:

Expiring Operating Agreements with BC Housing

Over the next 10 years, about 25 percent of operating agreements with BC Housing are scheduled to expire. This will impact 318 buildings and more than 10,000 rental units. By 2030, more than 70 percent of operating agreements with BC Housing are scheduled to expire. This will affect 889 buildings and almost 30,000 units.

Section 2(g) of the Residential Tenancy Regulation can be amended to provide rent increase exemptions for housing operators with expired BC Housing operating agreements, which would allow them to continue to provide affordable housing options through RGI tenancies. No unintended consequences are anticipated, as this would simply continue the existing exemption and no parties would be negatively impacted.

BC Housing had indicated they are in support of this proposed amendment.

Operating Agreements with the City of Vancouver

The City of Vancouver has advised the RTB that there are a number of new affordable housing projects in development that have been offered to the City as part of a Community Amenity Contribution in a rezoning application. In these instances, the rezoning applicant will transfer ownership of the housing to the City, and the City will select a non-profit organization to operate the housing on an RGI basis through an operating agreement with the City. The City recently issued a Request for Qualification to establish a shortlist of operators by the summer of 2016.

The Regulation does not currently provide an exemption for RGI housing operated under an agreement with the City of Vancouver.

OFFICE OF HOUSING AND CONSTRUCTION STANDARDS DECISION NOTE

Section 2(g) of the Residential Tenancy Regulation could be further amended to include RGI housing operated under an agreement with the City of Vancouver in the exemption. If this exemption is extended only to City of Vancouver, then it will not support similar RGI projects that other municipalities may propose in the future. At the present time, the RTB is not aware of any other municipalities that are planning new RGI housing; however, no unintended consequences are anticipated for ensuring such projects would fall within the scope of the exemption.

OPTIONS:

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**OFFICE OF HOUSING AND CONSTRUCTION STANDARDS
DECISION NOTE**

s.13

Approved/Not Approved

Honourable Rich Coleman
Minister

Date

Prepared by:

Kyle Agnew
Policy Analyst
Residential Tenancy
Branch
Phone 250-896-5270

Reviewed by:

Janet Donald
Policy Director
Residential Tenancy Branch

Initial

JKD

Date:

April 20, 2016

Greg Steves
Executive Director
Residential Tenancy Branch

GDS

April 20, 2016

Cliff #: 20502
Version 1
Updated: Apr 15, 2016

**OFFICE OF HOUSING AND CONSTRUCTION STANDARDS
DECISION NOTE**

Jeff Vasey Assistant Deputy Minister Office of Housing and Construction Standards	JV	May 24, 2016
Dave Nikolejsin Deputy Minister Ministry of Natural Gas Development		

OFFICE OF HOUSING AND CONSTRUCTION STANDARDS

DECISION NOTE

DATE: February 26, 2016

PREPARED FOR: Honourable Rich Coleman, Minister

ISSUE: Administrative Penalty Legislative Amendments

BACKGROUND:

In May 2015, the Minister committed to conduct and publicly release a review of the Residential Tenancy Branch's administrative penalty framework. The review is complete and options for improvement have been identified. These are set out in a separate decision note for the Minister.

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* provide authority for the director to take both proactive and reactive action to encourage compliance with the law and with tenancy agreements. The ultimate goal, as outlined in Housing Matters BC, is to balance safety, economic and social interests and contribute to safe affordable housing.

The policy goal of administrative penalties is to address serious, repeated and deliberate acts of non-compliance with the law or with orders of the director such as those affecting multiple tenants or landlords (e.g. serial bad tenants; inadequate maintenance of multi-unit buildings by landlords). Such circumstances are not ideally resolved through individual applications for dispute resolution.

The review of the administrative penalty framework not only identified challenges with the existing processes and the authority of the director but also highlighted opportunities to strengthen and improve the use and effectiveness of the existing compliance and enforcement tools currently provided for in the legislation.

DISCUSSION:

Administrative penalties are a mechanism for enforcing compliance with legislation. They are intended to act as a deterrent to non-compliance rather than a punishment.

Concerns continue to be expressed by the public, landlord and tenant stakeholders and members of the opposition that the Residential Tenancy Branch is not adequately enforcing compliance with the province's tenancy laws through its powers to conduct investigations and levy administrative penalties.

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OFFICE OF HOUSING AND CONSTRUCTION STANDARDS DECISION NOTE

Authority for the director to conduct investigations and levy administrative penalties was added to the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* in 2006 and brought into force respectively in 2006 and 2008.

While significant improvements can be made to existing processes, additional changes to the legislation may further strengthen and improve the director's role in compliance and enforcement. Additional policy analysis and consultations with RTB's solicitor and key stakeholders are required to finalize anticipated amendments.

Should the Minister support the option to undertake legislative amendments, that information will be conveyed to Cabinet Operations and RTB staff will undertake the development of additional materials as required by Cabinet.

OPTIONS:

s.13

OFFICE OF HOUSING AND CONSTRUCTION STANDARDS DECISION NOTE

s.13

Approved/Not Approved

Honourable Rich Coleman
Minister

Date

Prepared by:

Audrey Panter
Senior Policy Analyst
Residential Tenancy Branch
Phone # 250-818-5749

Reviewed by:

Janet Donald
Director of Policy
Residential Tenancy Branch

Greg Steves
Executive Director
Residential Tenancy Branch

Jeff Vasey
Assistant Deputy Minister
Office of Housing and
Construction Standards

Dave Nikolejsin
Deputy Minister
Ministry of Natural Gas
Development and Minister
Responsible for Housing

Initial

Date:

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