



Residential Tenancy Branch

Compliance and Enforcement Unit

December 28, 2023

Notice of Administrative Penalty and Reasons for Decision

Colleen June Clancy
[REDACTED]

To: Colleen June Clancy

Full Summary of Administrative Penalty

Name of Respondent: Colleen June Clancy, [REDACTED] (the Respondent)

Rental Address: Multiple addresses.

Date of Penalty Issued: December 28, 2023

Contraventions under the *Residential Tenancy Act (the Act)*: Failure to pay rent contrary to section 26(1) of the Act, Failure to follow an order of the director contrary to 87.3(1)(b) of the Act.

Outcome of the Investigation: An administrative penalty in the amount of \$5,000.00.

Contravention of the Act:

Section 26(1) of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Section 87.3(1)(b) of the Act states that subject to the regulations, the director may order a person to pay an administrative penalty if the director is satisfied on a balance of probabilities that the person has failed to comply with a decision or order of the director.

The evidence provided in the Investigation Report and supporting materials indicates that the Respondent has deliberately failed to pay rent in accordance with the Act in seven (7) separate tenancies between 2018 and 2023. In addition to the deliberate non-payment of rent, the Respondent has deliberately failed to follow an order of the director in seven (7) separate cases resulting in seven (7) Monetary Orders, three (3) of which resulted in monetary enforcement orders, issued by the court.

On June 2, 2022, in accordance with section 87.1 of the Act, the Compliance and Enforcement Unit (CEU) commenced an investigation into the allegations.

On June 2, 2022, based on the evidence before me, the Respondent was provided with a formal Notice of Investigation served in accordance with the Act that included information regarding the allegations against her, the applicable sections of the Act that may be in contravention, and information on how to ensure she could bring herself into compliance with the Act.

On September 15, 2023, I was provided with an investigation report (Investigation Report) which included all evidence gathered in the investigation and included recommendations for a one-time administrative penalty against the Respondent for allegedly contravening section 26(1) of the Act, for deliberate non-payment of rent in eight (8) separate tenancies, and section 87.3(1)(b) of the Act, for failing to follow orders in relation to seven (7) separate decisions against the Respondent to pay monetary compensation.

The Respondent was provided with a notice of Opportunity to be Heard dated September 19, 2023, in accordance with section 87.3(2) of the Act and section 33 of the Residential Tenancy Regulation (the Regulation).

Response to Opportunity to be Heard:

In response to the Opportunity to be Heard the Respondent communicated through email that she was having technical difficulties accessing the investigation report and supporting materials through a secure file transfer system. The deadline for submissions was extended to October 30, 2023, and the notice of Opportunity to be Heard, investigation report and all supporting materials were provided to the Respondent in hard copy through a Service BC Office within their geographical area. The respondent picked up the disclosed materials noted above on October 17, 2023. As of the date of this decision I have received no submissions from the Respondent, therefor in accordance with section 34 of the Regulation, I have considered that the Respondent has waived her right to respond, and I have proceeded to make my final decision to levy an administrative penalty against her.

Administrative Penalties are issued to promote compliance only after all other attempts to gain compliance have failed. The Respondent's compliance history and the seriousness of the contravention are considered when determining a one-time or continuing penalty.

Under the authority provided by Part 5.1 of the Act, I am ordering a one-time administrative penalty in the amount of \$5,000.00 against the Respondent for deliberately contravening section 26(1) and section 87.3(1)(b) of the Act.

As explained in the decision, in certain circumstances, Respondents have the right to have the Director (or a delegate appointed by him) reconsider my decision to impose an administrative penalty.

Contraventions to which the penalty relates:

Background:

The CEU received a complaint on May 2, 2022, alleging the Respondents (C. Clancy [REDACTED] – the Respondents) were contravening the Act and failing to comply with orders of the director.

The matter was first brought to the attention of the CEU by a former landlord who had entered a tenancy with the Respondents at [REDACTED] (the complainant). The Complainant alleged that the Respondents had contravened the Act by failing to pay their rent on time or in full and in addition, had failed to follow an order of the director by failing to pay a monetary order against them as so ordered by an Arbitrator at an RTB Dispute Resolution Hearing on February 11, 2022. The allegation included additional allegations of repeated failure to pay rent at previous tenancies in relation to other third-party landlords.

On June 2, 2022, the CEU commenced an investigation pursuant to section 87.1 of the Act and Senior Compliance and Enforcement Investigator Safavian (the initial Investigator) was assigned conduct of the investigation. The initial Investigator sent the Respondents a formal notice of investigation which outlined the allegations against them, the alleged contraventions under the Act, and information about how to take steps to ensure their compliance with the Act.

The initial Investigator made further inquiries on the Residential Tenancy Branch (RTB) Dispute Management System (DMS) and learned that the Respondents may have failed to pay rent in 6 previous tenancies that they were party to. In addition, the initial Investigator had concerns that the Respondents may also have contravened section 37(1) of the Act by failing to leave a tenancy once the tenancy had ended and had possibly failed to follow an order of the director by failing to pay three (3) monetary orders against them which she based on 3 such Orders of the director being filed in the Provincial Court of British Columbia.

On August 5, 2022, Compliance and Enforcement Investigator Mah (the Investigator) took over conduct of the investigation.

Reasons for decision:

Based on my preliminary review of the Investigation Report and supporting materials, including recommendations from the Investigator, the Respondents C. Clancy [REDACTED] were provided an opportunity to be heard on September 19, 2023. I am satisfied that the Respondents were provided with the full Investigation Report and all supporting materials before me in this matter and that they were provided a reasonable time to make submissions to me regarding the allegations and the administrative penalties I was considering issuing against them. To date I have received no submissions from either of the named Respondents.

Respondents:

I note that the Investigator recommended penalties against both C. Clancy [REDACTED], which is why I provided both parties with an opportunity to be heard before I made any final decisions. Based on my fulsome review of the Investigation Report and all supporting materials I have determined that it is only the Respondent, C. Clancy, that is listed on all tenancy agreements noted above and that she has signed each tenancy agreement. I note further that in cases that resulted in RTB hearings, C. Clancy was the sole applicant to the RTB to dispute each notice to end tenancy and the Respondent that consistently appeared at each hearing and spoke on behalf of any other tenants listed on the tenancy agreements. In addition, I note that C. Clancy is the sole Respondent named in each of the 4 enforcement Orders issued by the courts; one for landlord order of possession and 3 monetary enforcement orders. There is inconsistent evidence that the Respondent named by the Investigator as [REDACTED] was a party to each

tenancy where rent was not paid in accordance with the Act. Although I cannot accept that [REDACTED] was not likely complicit in deliberately not paying rent, I must limit myself to the evidence before me that she had direct involvement in the deliberate non-payment of rent. In addition, I note that an additional party named [REDACTED] was a party to a tenancy where rent was not paid but was not named by the Investigator as a Respondent in this matter. For the reasons noted above, I am severing [REDACTED] from my decision and consider C. Clancy as the sole Respondent (the Respondent) as it relates to my decision to levy an administrative penalty in this case.

On September 15, 2023, the Investigator provided me with an Investigation Report which included all evidence gathered to date in relation to the allegations against the Respondent, her analysis of that evidence and her recommendations. I have reviewed the full Investigation Report, and all supporting materials in making my final decision.

I am satisfied from the uncontested evidence in the investigative report that the Respondent C. Clancy, was a party to tenancy agreements at the following rental properties as it relates to my decision:

- 1) [REDACTED] from August 15, 2017, to January 16, 2018.
- 2) [REDACTED] from April 6, 2018, to July 31, 2019.
- 3) [REDACTED] from March 1, 2020, to October 31, 2020.
- 4) [REDACTED] from November 1, 2020, to March 12, 2021.
- 5) [REDACTED] from November 15, 2021, to February 28, 2022.
- 6) [REDACTED] from March 1, 2022, to September 30, 2022.
- 7) [REDACTED] from December 1, 2022, to April 11, 2023
- 8) [REDACTED] from May 1, 2023, to June 5, 2023.

I am further satisfied by the uncontested evidence before me that the Respondent meets the definition of tenant under the Act as defined under Part 1, Division 1 of the Act in each of the aforementioned tenancies.

I am further satisfied from the evidence before me that the CEU was within their authority, under section 87.1 of the Act, to commence an investigation into the allegations raised in the current matter. The Respondent was notified appropriately regarding the allegations against her, the possible contraventions being investigated and the potential consequences if it was later found that deliberate contraventions of the Act had occurred. The Respondent was invited to provide information or evidence to assist in the investigation and the Investigator provided contact information for any questions or concerns raised as a result of the investigation commenced. Further, the Respondent was appropriately informed that the Act requires tenants to pay their rent and in addition, the correct avenues or processes if they had concerns that their current landlord was not complying with their tenancy agreement or with the legislation.

Tenancies:

- 1) Based on the uncontested evidence before me the Respondent entered into a 6-month fixed term tenancy agreement with the landlord at the rental property located at [REDACTED] on August 15, 2017. The rent was \$1,600.00 per month due on the 1st of each

month. The tenancy agreement was signed by the Respondent C. Clancy. On January 6, 2018, the landlord served a 10-day notice to end tenancy for unpaid rent in the amount of \$2,650.00. The landlord made an application by direct request to the RTB and on February 1, 2018, the adjudicator decided that the tenants had failed to pay rent in the amount of \$2,650.00 and that they did not dispute the notice to end tenancy. The landlord was granted an Order of Possession and a Monetary Order, which included the \$100.00 filing fee, for a total of \$2,750.00. It was found that the tenant is “conclusively presumed under section 46(5) of the Act to have accepted the end of the tenancy”. This resulted in an **Order of the director for the Respondent to pay \$2,750.00 against the Respondent.**

- 2) Based on the uncontested evidence before me the Respondent entered into a 12-month fixed term tenancy agreement with their landlord at the rental property located at [REDACTED] on April 6, 2018. The rent was \$2,350.00 per month due on the 1st day of each month. The tenancy agreement was signed by the Respondent C. Clancy. On February 5, 2019, the landlord served a 10-day notice to end tenancy for unpaid rent in the amount of \$1,220.00. The landlord made an application to the RTB for an Order of Possession and a monetary order for unpaid rent in the amount of \$4,795 in unpaid rent since the date of the notice to end tenancy served on February 5, 2019. A hearing was commenced on July 23, 2019. The landlord and the Respondent attended the hearing which resulted in a **settlement agreement**. The Respondent accepted the notice to end tenancy and under oath of affirmation “agreed to pay the landlords the outstanding rent in the amount of \$45.00 for April 2019, and \$2,350.00 for the months of May through to July 2019 for total outstanding rent of \$7,095.00. The Respondent agreed that the landlord would retain \$1,600.00 of the security and pet damage deposits in satisfaction of the outstanding rent, which resulted in an **Order of the director for \$5,495.00 against the Respondent.** Both parties entered into a final and binding settlement agreement that the tenancy would end on July 31, 2019. The Respondent was cautioned that the agreement to pay the \$5,495.00 is Ordered by the director and that it may be filed in the Provincial Court of BC and Enforced by an Order of that court.

Based on the uncontested evidence in the Investigation Report and supporting materials, the Respondent failed to pay the monetary order against her, and the landlord applied for and was **issued an Enforcement Order by the Provincial Court of B.C. in relation to the Monetary Order of \$5,495.00 issued by the director** against the Respondent, C. Clancy. I note that on August 11, 2022, the landlord provided a written statement to the Investigator that after receiving the Enforcement Order by the Court the Respondents failed to pay any compensation and therefor failed to follow an Order of the director.

- 3) Based on the uncontested evidence before me the Respondent entered into a month-to-month tenancy agreement with the landlord at the rental property located at [REDACTED] on March 1, 2020. The rent was \$1,800.00 per month to be paid on the 1st of each month. The tenancy agreement was signed by the Respondent C. Clancy and a person identified as [REDACTED], who I note is not named as a Respondent in this matter.

Although the Investigator cited the date of Ministerial Order M089 as March 30, 2023, I believe this is a typographical error based on the evidence before me as the correct date of that order was March 30, 2020. The Ministerial Order was instated by the Provincial Government in response to the COVID 19 Pandemic and was intended to create protections for citizens as it relates to rental units to keep people housed to prevent the spread of the virus. Based on the evidence before me the Ministerial Orders stated the following:

Notices to end tenancy

3 (1) Despite sections 44 (1) (a) (ii) to (vi) and sections 46 to 49.1 of the Residential Tenancy Act or any other section of the Residential Tenancy Act, the Residential Tenancy Regulation or any term of a tenancy agreement, a landlord must not give a tenant a notice to end the tenancy during the period this order is in effect.

(2) If a landlord gave a tenant a notice to end the tenancy under sections 46, 47, 48, 49 or 49.1 of the Residential Tenancy Act before the date of this order, then (a) the notice to end the tenancy remains in effect, subject to the dispute resolution process, And (b) an order of possession may be granted under section 55 of the Residential Tenancy Act.

Orders of possession

4 (2) Except as permitted under section 3 (2) of this order, the director must not grant an order of possession under section 55 (1) of the Residential Tenancy Act or in the circumstances described in section 55 (2) (b) of the Residential Tenancy Act during the period this order is in effect.

Based on the uncontested evidence in the Investigation Report and supporting materials, MO89 was repealed on September 1, 2020. I note further that the landlord at the [REDACTED] rental address served a 10-day notice to end tenancy on September 5, 2020, for non-payment of rent. On October 9, 2020, the landlord made an application to the RTB for dispute resolution seeking an Order of Possession and a monetary order for \$1,800.00 of unpaid rent for the month of September. The landlord stated on their application that the Respondent had not paid rent since April 1, 2020. The landlord stated further that the Respondent had not paid rent since April 1, 2020, "by taking full advantage of the non-eviction clause". I note that although the landlord applied for dispute resolution to obtain an Order of Possession and Monetary Order, the application was dismissed as neither party appeared the hearing.

On August 16, 2022, the Investigator spoke with the landlord who provided a statement that the Respondent stopped paying rent once the Ministerial Order MO89 came into effect and deliberately failed to pay rent knowing they could not be evicted while the Order was in place. Although the supporting materials appear to include documents that may pertain to a "payment plan" presumably with the Respondent, the documents are not legible therefore I cannot place any weight on them. Regardless, the landlord stated to the Investigator in August 2022 that the Respondent never paid any outstanding rent and that the total amount of unpaid rent was \$11,200.00. I note further that the landlord stated that the Respondent moved out of the rental property on October 31, 2020, which was prior to the RTB scheduled hearing. I accept the uncontested evidence of the landlord in this case as the landlord had nothing to gain by providing this information to the Investigator and that the Respondent deliberately failed to pay rent over several months to a total of \$11,200.00 in unpaid rent.

- 4) Based on the uncontested evidence before me the Respondent entered into 12-month fixed term tenancy agreement with their landlord at the rental property located at [REDACTED] on November 1, 2020. The rent was \$1,850.00 per month due on the 1st day of each month. The tenancy agreement was signed by the Respondent, C. Clancy. On December 12, 2020, the landlord issued a 10-day notice to end tenancy for unpaid rent in the amount of \$1,780.00.

The Respondent applied to dispute the 10-day notice to end tenancy on December 16, 2020. At an RTB hearing which commenced on March 12, 2021, the parties agreed that the Respondent made some efforts to pay a portion of the unpaid rent although some rent remained outstanding. The landlord had issued subsequent 10-day notices to end tenancy in January and February 2021 for unpaid rent with the total amount of arrears equaling \$5,124.00. The arbitrator dismissed the application of the Respondent to dispute the notice to end tenancy and awarded the landlord with an **Order of Possession and Monetary Order of the director of \$3,879.00** on March 12, 2021.

On September 24, 2021, the landlord applied for and was **issued an Enforcement Order by the Provincial Court of B.C. in relation to the Monetary Order of \$3,879.00 issued by the director** against the Respondent, C. Clancy.

- 5) Based on the uncontested evidence before me the Respondent entered into a 12-month fixed term a tenancy agreement with their landlord at the rental property located at [REDACTED] on November 15, 2021. Rent was \$3,000.00 per month due on the 1st day of each month. The tenancy agreement was signed by the Respondent C. Clancy [REDACTED]. On November 26, 2021, the landlord served what was to be the first of two 10-day notices to end tenancy on the Respondent for unpaid rent. On November 30, 2021, the Respondent applied to the RTB to dispute the first notice to end tenancy. An RTB Dispute Resolution hearing was conducted to address the matter on February 4, 2022. The landlords were seeking an immediate Order of Possession and a Monetary Order in the amount of \$3,000.00. Although it was acknowledged at the hearing that the Respondent had made some efforts to pay all or a portion of the rent across several months it was decided in favor of the Landlord who was issued an **Order of Possession and a Monetary Order of the director of \$100.00** (the \$3,000.00 less security and pet deposit that the landlord was allowed to keep plus \$100 for the filing fee).

I note in the Investigation Report and supporting materials that the Respondent in the tenancy above indicated they experienced financial hardship from the moment they entered the tenancy at the [REDACTED] rental property. I note further that the landlords provided a statement to the Investigator that the Respondent created significant damage to the rental unit in February, including “burn holes, mould on windows, many holes in the walls, tacks and damage from moving out. No rent was paid for the month of February”. In a statement provided to the Investigator, the complainant was never paid the \$100.00 filing fee by the Respondent as ordered.

- 6) Based on the uncontested evidence before me the Respondent entered into a month-to-month tenancy agreement with their landlord at the rental property located at [REDACTED] on March 1, 2022. Rent was \$2,800.00 per month due on the 1st day of each month. The tenancy agreement was signed by the Respondent C. Clancy. The landlord served a 10-Day notice to end tenancy for unpaid rent in the amount of \$3,900.00 on the Respondent on April 23, 2022. On April 29, 2022, the Respondent, C. Clancy applied to the RTB to dispute the 10-day notice to end tenancy. An RTB Dispute Resolution hearing commenced on August 26, 2022, where the parties agreed to enter into a settlement agreement. The terms of the **settlement agreement** were documented by the Arbitrator in the written decision which became a final and binding decision of the director in accordance with section 63 of the Act. The Respondent did not dispute that rent had not been paid and agreed to pay the landlord \$19,000.00 in total, broken down into increments until the tenancy came to an end on September 30, 2022. The landlord was provided with a three (3) day Order of

Possession if the Respondent failed to abide by terms 2 or 3 which related to the payment of rental arrears as of September 18, 2022.

I note that on June 2, 2022, the CEU had commenced the investigation and that the Investigator at that time contacted the Respondent and notified her about the allegations, that she was now subject of an investigation and the potential consequences of deliberately not paying rent. Contact between the Respondent C. Clancy and the CEU recurred throughout this investigation where the Respondent was cautioned about the possibility of administrative penalties for deliberate non-payment of rent.

On September 28, 2021, the landlord applied for and was **issued an Enforcement Order by the Provincial Court of B.C. in relation to the Monetary Order of \$19,500.00 issued by the director** against the Respondent, C. Clancy.

In addition, the landlord provided a statement via email to the Investigator which stated that the Respondent did not abide by the settlement agreement and has paid no outstanding rent.

- 7) Based on the uncontested evidence before me the Respondent entered into a 6-month fixed term tenancy agreement at the rental property located at [REDACTED] on December 1, 2022. Rent was \$3,600.00 per month due on the 31st day of each month. The Respondent C. Clancy signed the rental agreement. On February 1, 2023, the landlord served a 10-day notice to end tenancy for non-payment of rent in the amount of \$7,200.00 (Rent for December and January). On February 21, 2023, the landlord made an application to the RTB for an Order of Possession and Monetary Order against the Respondent in the amount of \$10,800.00 for unpaid rent. The matter was dealt with by way of direct request, on April 11, 2023, as the Respondent did not dispute the notice to end tenancy. The landlord was issued an immediate Order of **Possession and a Monetary Order by the director** for \$7,300.00 (Rental arrears of \$7,200.00 plus the \$100.00 filing fee).
- 8) Based on the uncontested evidence before me the Respondent entered into a 6-month fixed term tenancy agreement at the rental property located at [REDACTED] on May 1, 2023. The rent was \$4,500.00 per month due on the 1st day of each month. The Respondent signed the tenancy agreement. On May 26, 2023, the landlord served the Respondent with a 10-day notice to end tenancy for unpaid rent in the amount of \$4,500.00. Although there is a record that the Respondent, C. Clancy made an application to dispute the notice to end tenancy on June 5, 2023, the application was not completed, no evidence was provided, and the application was deemed abandoned. On June 6, 2023, the landlord made an application to the RTB for an Order of Possession and Monetary Order for \$9,000.00 in unpaid rent. As the application to dispute the notice to end tenancy was abandoned the application made by the landlord was dealt with through the direct request process. In an ex parte hearing the landlord was issued an **Order of Possession and Monetary Order of the director** in the amount of \$4,600.00 (\$4,500.00 in rental arrears plus the \$100.00 filing fee). The Decision was dated July 10, 2023.

I note that on July 10, 2023, the Investigator received a statement from the landlord that the respondent did not move out until July 1, 2023, and at the time rental arrears totaled \$9,000.00.

Conclusion:

Contravention of section 37(1) of the Act:

I note the Investigator made inquiries to determine whether the Respondent may have failed to follow an Order of the director as it related to vacating the property once an Order of Possession has been granted by the director. The Investigator suggests that there was no evidence to suggest that the Respondent failed to follow an order of the director as it relates to Orders of possession, and I concur that there is no evidence before me to indicate that any orders of the director were not followed by the Respondent as it relates to vacating the property as so ordered. It appears that at the end of each tenancy noted above, once an Order of possession had been granted to the landlords, the Respondent vacated the properties, albeit in one instance, with claims by the landlords that they had caused considerable damage to the rental unit.

Failure to pay rent contrary to section 26(1) of the Act:

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. Based on the uncontested evidence before me there is a consistent pattern of behaviour of the Respondent of entering into tenancies and failing to fulfill the requirements of section 26(1) of the Act to pay rent in full and on time. In each case the Respondent has signed the tenancy agreement and is aware of her obligation to pay rent. There is no evidence before me that the tenant had any right to withhold or not pay rent in full and on time as required by the Act. I am satisfied based on a balance of probabilities that C. Clancy has repeatedly and deliberately contravened section 26(1) of the Act by failing to pay rent in each of the eight (8) tenancies noted above.

Contravention of section 87.3(1)(b) of the Act:

Section 87.3(1)(b) of the Act stipulates subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has failed to comply with a decision or order of the director, or a demand issued by the director for production of records. I am satisfied based on the evidence before me, C. Clancy has deliberately failed to follow orders of the director by not fulfilling her requirement to pay monetary compensation to each landlord in seven (7) of the tenancies above that resulted in Orders of the director. I find that in two (2) such hearings the Respondent entered into settlement agreements. As stated in each of those hearings, the Respondent swore an oath by affirmation to tell the truth and was cautioned by the Arbitrators in each case that the agreement to settle and to pay outstanding amounts of rental arrears was legal, binding, and enforceable.

It is troubling to me that it appears that the Respondent's actions in agreeing to enter into settlement agreements may be more tactical and not in good faith rather than genuine with intent to delay or usurp the landlords' ability to collect on rental arrears. Section 63 of the Act allows for parties to enter into settlement agreements facilitated by the delegated statutory decision maker and allows for any such agreements to be recorded as a decision or order. This mechanism allows for differences to be settled by agreement and forms an important and significant legal means to settle disputes. There is significant public interest in maintaining public trust in the RTB processes to settle disputes through legal and

binding decisions. I find that the actions of the Respondent in this matter especially egregious and serve to undermine the legitimacy of the settlement agreement process and to erode public confidence in these processes and must be deterred through significant sanctions. I am satisfied based on a balance of probabilities that C. Clancy has repeatedly and deliberately contravened section 87.3(1)(b) of the Act in relation to seven (7) separate Orders of the director.

Administrative Penalty

Residential Tenancy Policy Guideline 41 – Administrative Penalties explains that the purpose of the guideline is to set out the policy framework and assessment criteria ordinarily used by the director in deciding whether to impose an administrative monetary penalty (“administrative penalty”), and, if an administrative penalty is imposed, to determine the amount of the penalty.

The guideline includes an Assessment Guideline at Appendix A, which the Director of the Compliance and Enforcement Unit (DCEU) may use to generate a score to guide their decisions about the amount of administrative penalty to impose, where warranted. The Assessment Guideline includes a number of factors, which each receive a score. This section provides guidance on how the DCEU may interpret those factors and the criteria the DCEU will usually consider in determining a score for a factor.

The Act requires the DCEU to consider the factors set out below in assessing whether to impose an administrative penalty on the basis of a contravention.

The Act does not require the DCEU to consider these factors when determining whether to impose an administrative penalty on the basis of... “a failure to comply with a demand for the production of records”... These factors may not be applicable or relevant in such cases.

To the extent that they are applicable or relevant in a particular matter, the DCEU will assess the factors set out below according to the Assessment Guideline. Deviations from the Assessment Guideline may occur when its use is not applicable to or relevant to the circumstances. In some circumstances, the director may decide to deviate from this guideline.

Policy Guideline 41 stipulates that an administrative penalty may be imposed for each day a contravention or failure continued or continues. Ordinarily, the DCEU will only impose administrative penalties for each day of an ongoing contravention or failure to follow a decision or order if the contravention or failure has a current and serious impact on health and safety or, with respect to demands for the production of records, the failure significantly impedes the investigation. However, the DCEU may also determine that the totality of the circumstances, including the public interest or the failure of previous administrative penalties for the same or a similar contravention to achieve compliance, warrants a multi-day penalty.

The Respondent was provided with an opportunity to be heard before any final decision was made in accordance with section 87.3(2)(a) of the Act. The Respondent made no submissions in response to the opportunity to be heard. In accordance with section 34 of the Regulations I have presumed that the Respondent waived her right to make submissions and I have proceeded with my decision to issue an administrative penalty against her. I have considered all the factors set out in section 87.3(2)(b) to impose an administrative penalty against them.

Based on the evidence before me, I have determined on a balance of probabilities that the Respondent repeatedly and deliberately failed to pay rent across eight (8) separate tenancies dating back to 2018. In addition, based on the evidence before me I have determined on a balance of probabilities that the Respondent repeatedly and deliberately failed to follow Orders of the director issued in seven (7) separate dispute resolution hearings. For the reasons set out in the Administrative Penalty Assessment document attached to this decision and pursuant to the Residential Tenancy Policy Guideline 41, I have set the administrative penalty as follows:

A one-time administrative penalty of \$5,000.00 for repeated failure to comply with section 26(1) of the Act by failing to pay rent in full or on time across eight (8) tenancies dating back to 2018, and for repeatedly failing to follow decisions or orders of the director contrary to section 87.3(1)(b) of the Act in relation to seven (7) separate decisions.

Assessment Factors

Policy Guideline 41 sets out a formula to assist in determining the amount of a one-time or continuous administrative penalty.

1) Previous Enforcement Actions for Similar Contraventions

I note Policy Guideline 41 describes an enforcement action as an action taken to obtain compliance with laws, orders, or similar legal requirements. A previous enforcement action would be an action set out above that occurred before the contravention at issue took place. The weight given to a previous enforcement action will depend on the length of time that has elapsed since the action. For example, a previous enforcement action that occurred five years ago may be given less weight than one that occurred six months ago.

The Investigator has recommended a point value of 4 for this factor based on her assessment that the Respondents have been subject to 7 previous orders of possession and monetary claims for unpaid rent issued at dispute resolution for a total amount of \$43,624.00 in unpaid rent dating back to 2018.

Based on the evidence before me contained in the Investigation Report and supporting materials the Respondents were the subject of seven (7) previous actions taken by the director to ensure compliance with the Act, namely seven (7) Orders that the Respondents must vacate the property as a result of non-payment of rent and Monetary Orders to pay landlords outstanding rent. It appears from the evidence before me that three (3) Orders of the director resulted in Enforcement Orders issued by the courts. There is no evidence before me the Respondent complied with any of the aforementioned monetary orders to pay back rent in arrears to the landlords. I find that the Respondents were subject to seven (7) previous enforcement actions as a result of their deliberate non-payment of rent and the appropriate value for this factor is four **(4)**.

2) Gravity and Magnitude

Policy guideline 41 describes gravity and magnitude as referring to the severity or seriousness of the risk or potential impact resulting from the contravention, and the extent of the impact. In determining the gravity and magnitude of the contravention, in the case of a failure to comply with a demand for

records, the DCEU may consider the seriousness of the investigation and if the degree of impact on the investigation itself as well as public interest in the matter.

The Investigator has recommended a point value of six (6) for this factor based on her assessment that the deliberate actions of the Respondent in not paying rent affected six (6) landlords financially. The Investigator suggests that although it is likely that each landlord in all tenancies where rent was not paid had been impacted financially, she only received evidence from six (6) in total and therefore assigned a value of one (1) to each landlord.

Based on the evidence before me I find that in each tenancy the landlords were impacted by the deliberate non-payment of rent and were affected financially as a result. I find that considering that six (6) separate landlords provided statements related to the impact the actions of the Respondent had on them was significant, the suggested value of six (6) for this factor is appropriate.

3) Extent of harm to others

Policy Guideline 41 outlines point values based on contraventions that cause physical discomfort or other harm that may result in losses of quiet enjoyment or a need for medical treatment for the infractions. Guideline 41 states further that this factor considers the “actual harm resulting from the contravention. A person’s physical or mental health can be harmed. Impacts on a person’s mental state can be considered even if medical care or treatment is not required. There can also be economic and fiscal harm arising from damage to property, lost wages and revenue, or the reduction in the value of a material item.”

The Investigator has recommended a value of ten (10) for this factor on her assessment based on the evidence provided by four (4) separate landlords, that the actions of the Respondent had a significant impact on their mental health and financial situation. In addition, the Investigator notes that in one case, a landlord provided statements that the financial and emotional impact to her, and her husband required significant counseling.

Although I agree with the assessment of the Investigator that the actions of the Respondent in deliberately failing to pay rent likely impacted all affected landlords, the statements of the 6 impacted landlords that provided statement indicate a level of harm as a result of the Respondent’s actions.

Although I agree with the assessment of the Investigator that the actions of the Respondent in deliberately failing to pay rent impacted six (6) separate landlords, I must confine my reasons for decision to the evidence before me as it relates to the contravention of section 26(1) of the Act and section 87.3(1)(b) of the Act, and the actual harms that resulted. I accept the statement of the landlord from the [REDACTED] rental property with respect to the emotional and mental health harms that the actions of the Respondents in not paying rent had on her and her husband. I also accept the evidence of financial harm to the landlords at the [REDACTED] Rental Property that they continue to this day to suffer the financial impact the actions of the Respondent had on them.

However, because there is no evidence of actual harm on the other landlords the correct value for this factor is two (2).

4) Repeated or Continuous

4 (A) Number of repeated contraventions.

In the Residential Tenancy Branch Policy Guideline 41 - Administrative Penalty, "repeated" is described as a person repeating the same contravention multiple times, escalating related contraventions or a person repeating the same contravention escalating over multiple tenancies.

The Investigator had recommended a point value of ten (10) for this factor based on her assessment that the Respondent has been subject of seven (7) director's orders resulting in her deliberate non-payment of rent contrary to section 26(1) of the Act. In addition, the Investigator assessed that the time period where rent went unpaid spanned twenty-two (22) months and that the number of months where rent was unpaid decided by the director at adjudication in favor of the landlord was nineteen (19) in total. The investigator further suggests that the actions initially taken by three (3) landlords, even though their applications were withdrawn at the RTB should also be factored.

Based on the evidence before me I find that the Respondent was a tenant in eight (8) separate tenancies where she deliberately failed to pay rent contrary to section 26(1) of the Act.

Based on the evidence before me I find that the correct value for this factor is ten **(10)**.

4 (B) Number of days/weeks/months the contravention has continued.

Policy Guideline 41 - Administrative Penalty, describes a "continuous" contravention as one that is ongoing or uninterrupted.

The Investigator has recommended a point value of six (6) for this factor based on her assessment that the Respondent continued to fail to pay rent at the [REDACTED] rental property for a 6-month continuous period of time after being cautioned by an Arbitrator that that paying rent was a requirement under the Act whether or not the landlord complies with the Act and further that the settlement agreement to pay outstanding rental arrears was a legal, binding and enforceable decision.

As my reasons for decision span eight (8) separate tenancies dating back to 2018, and I note that there is no evidence before me that the contraventions were continuous, in other words, no evidence that each tenancy carried on immediately after one another, however, I agree with the assessment of the Investigator that the tenancy at the [REDACTED] rental property did span a 6-month period of time and therefore I agree with the assessment of the Investigator as it relates to this factor being applied to only one of the 8 separate tenancies.

I find that based on the evidence before me the appropriate value for this factor is six **(6)**.

5) Deliberateness

Policy guideline 41 describes a deliberate contravention as one that is done on purpose. This means the Respondents has intentionally or knowingly contravened the Act. A contravention may not always be deliberate at the beginning, but if the Respondents intentionally or knowingly allows the contravention to continue, the contravention may be considered deliberate.

The Investigator has recommended a point value of ten (10) for this factor based on her assessment that in each case of having not paid rent in full or on time across seven (7) tenancies, the Respondent had been informed, cautioned and warned about their requirement to pay rent in full and on time, regardless of whether there are issues with repairs and maintenance. The Investigator further states that in each case the Respondent was afforded opportunities to pay their rent by their landlords first and then later after cautions provided at dispute resolution that they continued to not pay their rent which by her assessment indicates a high degree of deliberateness.

Based on the evidence before me, I find that it is more likely than not that the Respondent has entered the tenancies in question with intention to not pay rent. I recognize that there is some evidence led at more than one dispute resolution hearing that the Respondent did at times pay a portion of their rent in some instances and they have communicated to landlords their intention to pay rent and to compensate for rental arrears. However, there is no evidence before me that the Respondent has paid any rental arrears, adhered to any settlement agreements and further, she has not complied with seven (7) separate monetary orders and 3 Enforcement Orders issued by the Provincial Court of B.C. I find that the words of the Respondent through communications to numerous landlords and additionally, through the dispute resolution settlement agreement process, carry little weight, and are more likely than not, not made in good faith.

What I find concerning is that despite being cautioned numerous times about their requirement to pay rent, the Respondent repeatedly and consistently, dating back to 2018, continues to enter into tenancies she cannot afford or regardless, has no intention on paying her rent. Although section 26(1) of the Act is not open to interpretation, the Respondent offers little to no explanation for the repeated failure to pay her rent. These actions on the part of the Respondent indicate a high degree of deliberateness in contravening section 26(1) of the Act.

I find that the Respondent poses a significant financial risk to landlords who may rent to her in the future. It may well be that should the actions of the Respondent not change after the issuing of this monetary penalty, that the CEU consider making recommendations to Crown Counsel for criminal charges.

Based on the evidence before me I find that the appropriate value for this factor is ten **(10)**.

6. Economic Benefit

Policy Guideline 41 describes economic benefit as financial gain the Respondents obtains from their contravention. PG 41 also stipulates that if a landlord impermissibly attempts to contract out of the RTA, the economic benefits may be substantial even though an exact or estimated amount of the total benefit may not be determinable. Assessing the significance of economic benefit depends on the circumstances of each case.

The Investigator has recommended a point value of ten (10) for this factor based on her assessment that the Respondents appear to have benefited economically equal to the amount of un-paid rent calculated to be approximately \$49,069.00 across all tenancies in question. The Investigator suggests that the amount of money not paid in rent has provided economic benefit because that is money otherwise that would have gone to the landlords to meet their obligations to pay rent.

I am not satisfied based on the evidence before me that the calculation of actual unpaid rent is sufficient to determine a financial benefit to the Respondent.

Although I am not prepared to accept that the Respondent has not benefitted from economic gain as a result of the months of not paying rent across all tenancies in question, there is insufficient evidence from which to quantify any such value.

I find that based on the insufficient evidence before me to quantify any accurate value of economic gain that the appropriate value for this factor is zero **(0)**.

7. Efforts to Correct

Policy Guideline 41 describes a Respondents' efforts to correct as a mitigating factor and that the DCEU may consider:

- what, if any, reasonable steps the Respondents has taken,
- how promptly the Respondents acted,
- the completeness of the correction, and
- any extenuating circumstances that may have impacted a Respondents' reasonable efforts.

The formula used to guide a determination of value for this factor sets the values in negative terms, intended to be used to reduce the cumulative score calculated prior to determining a value here. The intention is to use any identified efforts to correct to mitigate offset the total value of scores from factors 1 through 6. The DCEU will also set out any factors they have considered with respect to a failure to comply with a demand for records.

The Investigator has recommended a point value of 0 (zero) for this factor based on her assessment that there appeared to be no effort on the part of the Respondent to pay overdue rent at any of the tenancies in question.

Based on the evidence before me and explained in my reasons for decision above, I have examined the evidence as it relates to all tenancies in question dating back to 2018 and I am satisfied the Respondent has made no discernable effort to correct the contraventions and there is no evidence before me that she made any effort to pay the monetary orders against her for unpaid rent.

I am satisfied that the correct value for this factor is zero (0).

Penalty assessment score:

The summary of the Investigator's assessment is a total score of 56 which in accordance with PG41 she multiplied by 142 to generate a penalty amount of \$8,000.00.

Based on the evidence before me, I have considered all factors available to determine a possible maximum score of 70. As outlined in Policy Guideline 41 section F, "The factor of 142 generates a maximum penalty of \$5,000.00 that is assessed a score of at least 35 out 70."

I have decided that the correct value to be applied is 38 (38 multiplied by 142 is equal to \$5,396.00). In accordance with section 87.4(1) of the Act, a monetary penalty imposed under section 87.3 (1) may not exceed \$5,000.00.

Therefore the amount of penalty being issued against the Respondent is \$5,000.00.

Additional Information:

Please note that the Act allows for separate monetary penalties of \$5,000.00 for each day a contravention continues. At this time, I am setting the penalty at \$5,000.00 with the expectation that this will ensure your compliance with the Act and Regulation.

Please be advised that should you continue to contravene the Act or the Regulation and/or refuse to comply with the decision or orders of the director, or fail to comply with a demand for records, you may be subject to additional penalties of up to \$5,000.00 for each day the contravention continues or submissions to Crown Counsel for criminal charges.

Pursuant to section 9(5)(d) of the Act, the RTB will be publishing the decision and summary thereof with respect to the administrative penalty proceedings against you, including your penalty payment status and your name.

This \$5,000.00 administrative penalty is to be made payable to the Minister of Finance by cheque, money order or bank draft. Please submit the payment to:

Scott McGregor
Director, Compliance and Enforcement
Residential Tenancy Branch
PO Box 9298 Stn Prov Govt
Victoria, BC V8W 9J8

Date by which penalty must be paid Section 35 of the Regulation states that an administrative penalty must be paid within 60 days after the date of the order. Please send your payment to my attention at the address noted above by February 29, 2024.

Sections 87.3(4) through 87.3(7) of the Act provide opportunities for the Director to consider alternatives to enforcing all or part of an Administrative Penalty. Any request to consider an alternative can be sent to my attention at the address provided above before the payment due date. The request should include your proposal for an agreement including:

- the actions you propose to take,
- the date by when you propose to have completed those actions, and
- the amount by which you propose the administrative penalty be reduced or whether you propose the administrative penalty be cancelled if those actions are completed by that date.

If an agreement is entered into and you fail to complete the required actions by the specified date, the administrative penalty will once again be due and payable.

Right to have the Director reconsider the decision imposing the penalty:

Under section 87.8 of the Act, you have the right to apply to the Director for a review of the matters set out in this notice. Division 2 of Part 5 of the Act applies to any such review. Please note that, as outlined in section 87.8 (4) of the Act, a decision or order of the Director may be reviewed only on one or more of the following grounds:

- a) the person couldn't be heard because of unanticipated circumstances beyond their control;
- b) the person has new and relevant evidence that was not available before the director imposed the administrative penalty;
- c) a procedural error materially affected the decision to impose the administrative penalty or the amount of the administrative penalty;
- d) a technical irregularity or error materially affected the decision to impose an administrative penalty or the amount of the administrative penalty;
- e) the director did not determine an issue they were required to determine.

An application for review of a decision or order of the Director:

- a) must be made in the approved form and in the manner approved by the Director,
- b) must be accompanied by the fee prescribed in the regulation,
- c) must be accompanied by full particulars of the grounds for review and the evidence on which the applicant intends to rely, and
- d) may be made without notice to any other party.

The time limit for filing an application for review is within 15 days after you have received a copy of this decision. In accordance with section 89(1)(f) of the Act and 43(2) of the regulation, you will be deemed to have received this decision on the third day after it is emailed in accordance with section 44 of the regulation.

Should you wish to exercise this right, complete an Application for Review Consideration (form #RTB-56). Be sure to clearly indicate the grounds for the review and include all evidence that supports your claim. Submit your application along with the \$50.00 filing fee in person at a Residential Tenancy Branch office or Service B.C. location.

You can find additional information including the Application for Review Consideration on this webpage:

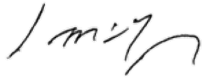
<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/tenancy-compliance-enforcement/outcomes#review>

Recovery of Administrative Penalty

As set out in section 87.9(1) of the Act, an administrative penalty is a debt due to the government. Failure to pay the penalty as ordered will result in collection action being taken.

In addition, section 59(5)(b) of the Act gives the RTB the authority to refuse applications for dispute resolution, with respect to any matter, if the applicant owes outstanding fees under this Act to the government.

Sincerely,



Scott McGregor
Director, Compliance and Enforcement
Residential Tenancy Branch
PO Box 9298 Stn Prov Govt
Victoria, BC V8W 9J8
Email: [REDACTED]

Enclosed:

Administrative Penalty Order
Residential Tenancy Branch Policy Guideline 41 Administrative Penalty
Residential Tenancy Branch Policy Guideline 53 Publishing Administrative Penalties