Residential Tenancy Branch
Office of Housing and Construction Standards

September 18, 2019 CEU File # [redacted]

Ms. Donna Bartell (Formerly Zulke)
[redacted]

Notice of Administrative Penalty and Reasons for Decision

Dear Ms. Bartell,

I am writing further to my letter dated July 23, 2019. In that letter, I outlined relevant details relating to your continued breach of section 28(b) of the *Residential Tenancy Act* (the "Act"), protection of tenant's right to quiet enjoyment (to be known as matter #1) and your failure to comply with an order of the Director under the Act, repairs of sundeck (to be known as matter #2).

You were provided with an opportunity to be heard as required by section 87.3 (2)(a) of the Act, with a response date set for August 19, 2019. On August 20, 2019, I decided to extend the deadline for your opportunity to respond to September 4, 2019.

You responded on August 5, 2019 with respect to matter #1 and on August 29, 2019 with respect to matter #2, and I have reviewed and considered all the information before me including your submissions.

You provided a detailed submission for each of the notices to end tenancy and a history of your tenancy with respect to matter #1. You did not provide any evidence to prove why you think each notice was served in good faith. You also failed to explain and present any evidence as to why you disagree with the administrative penalty and/or the amount of the penalty. The opportunity to be heard is not an opportunity to reargue your case.

With respect to matter #2, you did not submit any evidence or information to explain why you ignored an order of the Director dated June 19, 2019. It was only when you were informed by the Compliance and Enforcement Unit that you were facing administrative monetary penalties that the repairs to the sundeck commenced and were completed.

I have now completed my assessment of an administrative penalty against you with respect to each matter. In reaching this decision, I have taken into consideration:

- the investigation report;
- the appendices of the investigation report; and
- the submissions made to date in relation to this matter.

Notice of Administrative Penalty

Matter #1:

This letter is notice to you, Donna Bartell that based on my analysis of the evidence, and pursuant to section 87.3 and 87.4(2) of the Act, I hereby order you to pay an administrative penalty in the amount of $5,000.00 for contravention of section 28(b) of the Act.

Matter #2:

This letter is notice to you, Donna Bartell that based on my analysis of the evidence, and pursuant to section 87.3 and 87.4(2) of the Act, I hereby order you to pay an administrative penalty in the amount of $3,500.00 for failure to comply with an order of the Director.

Administrative Penalty Authority

Section 87.3 of the Act authorizes the Director of the Residential Tenancy Branch (the "RTB") to order a person to pay an administrative penalty if the Director is satisfied on a balance of probabilities that the person has:

- *contravened a provision of the Act or the regulations, or*
- *failed to comply with a decision or order of the Director.*

Section 87.4 of the Act provides that an administrative penalty may be up to $5,000.00 for **each day the contravention continues.**

Under section 9.1(1) of the Act, I have been delegated this authority with respect to the administration of administrative penalties by the Director of the RTB.

Contravention or failure to which the penalty relates

I have considered all factors set out in section 87.3(2)(b) of the Act in deciding to impose an administrative penalty against you.

Matter #1:

I am satisfied on the balance of probabilities that you have repeatedly and deliberately contravened section 28(b) of the Act. Between the dates of November 27, 2018 and June 27, 2019, you served ten notices to end tenancy. Some of the notices were served within a month and others only months apart. In three cases the Arbitrators decided the notices were not served in good faith. In all remaining

attempts to serve notices to end tenancy on the tenant, separate arbitrators have ruled in favor of the tenant. The cumulative affect on the tenant in disputing these repeated notices to end tenancy have significantly disrupted their quiet enjoyment.

At the January 13, 2019 hearing (RTB file #[redacted]) the arbitrator issued a warning to you for serving notices not in good faith and ordered compensation be paid to tenant for loss of quiet enjoyment.

At the April 10, 2019 hearing (RTB file #[redacted]) the arbitrator found that the tenants raised sufficient questions as to the good faith of the notices and the landlord failed to establish the notices were given in good faith.

At the June 10, 2019 hearing (RTB file #[redacted]) the arbitrator issued a warning to you that issuing notices to end tenancy, which are not served in good faith, are breaches of a tenant's right to quiet enjoyment. Then on June 19, 2019 you served the tenant two notices to end tenancy, one for landlord's use and one for early termination.

At the June 12, 2019 hearing (RTB file #[redacted]) you served a notice to end tenancy to bring yourself within compliance of a [redacted] bylaw requiring the landlord to be living on the property. You stipulated in your submissions to me that at a later time the tenant downstairs moved out, arguably bringing you within compliance of the [redacted] bylaw, but instead you immediately chose to re-rent the unit. You have demonstrated by these actions that you have an ulterior motive for your repeated attempts to evict the tenant in question not in good faith and it was not to bring you within compliance of the law.

Matter #2:

On June 19, 2019 at hearing (RTB file #[redacted]) the arbitrator ordered you to repair or replace the sundeck and stated you must take steps without undue delay as it was blocking a point of egress in the event of an emergency.

On July 23, 2019 you received a notice of opportunity to be heard as no steps had been taken to repair the sundeck. As of July 23, 2019 it had been 34 days since the order was created. You were given a warning that an administrative penalty was being considered against you in the amount of $1,000.00 per day for each day the sundeck is not repaired.

On July 30, 2019 you notified Senior Compliance and Enforcement Investigator Rishi Mahal (MAHAL) that repairs to the sundeck have been made and you provided contact information for a certified carpenter who could verify the work completed. I have been informed that the repairs on the sundeck were confirmed to have been completed as of July 30, 2019.

It was only upon you being informed that you faced administrative monetary penalties that the repairs to the sundeck commenced and were completed.

Should a penalty be imposed?

I have considered all of the factors set out in section 87.3(2)(b) of the Act in deciding to impose administrative penalties against you. Please bear in mind that the purpose behind administrative penalties is to not only ensure compliance with the Act but also to act as deterrence against similar actions in the future.

Matter #1:

Based on the fact that you have repeatedly and deliberately contravened the Act by serving several notices to end tenancy not in good faith, I have determined that you have significantly disrupted the quiet enjoyment of the tenant. I have determined on a balance of probabilities that these contraventions are deliberate, which is sufficient and appropriate to justify a penalty of $5,000.00 given the repeated nature after having received numerous warnings from arbitrators and monetary orders on behalf of the tenants' to deter this behavior. There has been an ongoing impact on the tenant's right to quiet enjoyment, and in addition, there has been negative impact on the health of the tenants.

Matter #2:

Given the deliberate nature of your actions in ignoring an order to repair a sundeck and open up a blocked exit that posed a safety risk, I find it is appropriate to order an administrative monetary penalty. The repairs ordered were considered to be urgent and were to begin without undue delay. Each day the repairs were not made, there was ongoing risk placed to the tenant and the tenant's family. In addition, despite the order of the Director, you deliberately chose to not make the repairs for 34 days. Given the ongoing, serious and deliberate attempts to avoid a Director's Order and risking the health and safety of another, I have concluded that a penalty for each day the sundeck was not repaired from the date that you were provided an opportunity to be heard to the date the deck was repaired, is warranted.

Amount of penalty

Matter #1:

For the reasons set out in the Administrative Penalty Assessment document attached to this decision, I have set the amount of the administrative penalty at $5,000.00 and is due as of the date of the order.

Matter #2:

The penalty was assessed for each day the contravention continued. The reasons are set out in the Administrative Penalty Assessment document attached to this decision, starting at the date of opportunity to be heard letter, July 23, 2019, to the date the deck was reported repaired, July 30, 2019. The total is seven days at $1,000.00 per day, totaling to an amount of $7,000.00. However, I have taken into consideration that upon receiving the opportunity to be heard notice you took action

and came into compliance; therefore, I will reduce the amount from $7,000.00 to $3,500.00. The amount of the administrative penalty is now set at $3,500.00 and is due as of the date of the order.

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 for matter #1 and $3,500.00 for matter #2, with the expectation that this will ensure your compliance with the Act and the existing decisions and orders of the RTB.

Please be advised that should you continue to breach section 28(b) of Act and/or refuse to comply with the existing orders of the director concerning maintenance and repairs, you may be subject to additional penalties of up to $5,000.00 for each day the contravention continues.

This $5,000.00 and $3,500.00 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 November 18, 2019.**

Right to have 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 79 of the Act, a decision or an order of the Director may be reviewed only on one or more of the following grounds:

a) a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;
b) a party has new and relevant evidence that was not available at the time of the original hearing;
c) a party has evidence that the director's decision or order was obtained by fraud.

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 regulations, and

c) must be accompanied by full particulars of the grounds for review and the evidence on which the applicant intends to rely.

The time limit for filing an application for review is within 15 days after you have received a copy of this decision. Should you wish to exercise this right, complete an Application for Review Consideration (form #RTB-2).

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 BC 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/dispute-resolution/after-the-hearing/review-clarify-or-correct-a-decision

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 takenshe.
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Sincerely,

[redacted] *Signature on original

Scott McGregor
Director, Compliance and Enforcement
Residential Tenancy Branch
PO Box 9298 STN PROV GOVT
Victoria BC, V8W 9J8

[redacted]

Attachments:

Investigative Report 2/2 September 4, 2019
Administrative Penalty Assessments
Administrative Penalty Order
Residential Tenancy Branch Administrative Penalty Policy Guideline 41