Residential Tenancy Branch
Office of Housing and Construction Standards

November 19, 2019 CEU File [redacted]

Ms. Pao Lien Chen
[redacted]

Notice of Administrative Penalty and Reasons for Decision

Dear Ms. Chen,

I am writing further to my letter dated August 15, 2019. In that letter, I outlined relevant details related to your continued breach of section 28(b) of the *Residential Tenancy Act* (the "Act"), protection of tenant's right to quiet enjoyment.

You were provided with an opportunity to be heard as required by section 87.3 (2)(a) of the Act, with a submission deadline set for September 10, 2019.

You responded on September 6, 2019 and I have reviewed and considered all the information before me including your submissions.

You provided a submission for each of the notices to end tenancy and a history of the tenancy. From your submission, I have reviewed your facts from 1-15 and legal basis 1-14.

I acknowledge that your conduct in some files should not be characterized as a contravention of the Act and accept that you stopped serving 2-Month Notices to end tenancy after the April 2018. I recognize and acknowledge the change in your behavior; however, I also recognize that this change only came after having received numerous warnings and were ordered twice to pay for damages that you stopped issuing notices to end tenancy. As a result of your change in behavior, I have requested a new Administrative Penalty Assessment be completed to ensure some files were not miss characterized.

As noted above, a new Administrative Penalty Assessment has been completed and I have taken into consideration that you now appear to acknowledge that there are consequences for serving frivolous notices to end tenancy.

You note in your submission that under s. 87.3(4), the Director may, instead of enforcing any penalty, enter into an agreement with a party who would be otherwise liable for the penalty. While I have taken this into consideration, based on your repeated and deliberate disregard of the law I am electing to levy an administrative penalty as you were given multiple warnings and opportunities to stop issuing notices, yet continued to do so.

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

- the investigation report;
- the appendices of the investigation report;
- your submissions made to date in relation to this matter
- the supplemental investigative report; and
- the second Administrative Penalty Assessment.

Notice of Administrative Penalty

This letter is notice to you, Pao Lien Chen, 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 contravention of section 28(b) of the Act.

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*

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.

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 September 21, 2017 and April 10, 2018, you served five notices to end tenancy. In three cases the arbitrators decided the notices to end tenancy 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 her quiet enjoyment.

On September 21, 2015 (RTB File[redacted]) you served [redacted] her first notice to end tenancy. You listed multiple causes for serving this notice but did not provide any evidence at the hearing to support the causes you listed. This demonstrated that you had an ulterior motive to evict [redacted], and the notice was not served in good faith.

At the March 23, 2016 hearing (RTB File[redacted]) the issue of serving notices to end tenancy that are frivolous was raised and [redacted] expressed a loss of quiet enjoyment.

At the December 13, 2017 hearing (RTB File#[redacted]) the arbitrator found that the tenant raised sufficient questions as to the good faith of the notices to end tenancy and you failed to establish that the notices to end tenancy were given in good faith. The arbitrator noted how previous filing fees did not deter you from issuing frivolous notices to end tenancy and ordered you to pay $500.00 in damages for loss of quiet enjoyment.

The damages you were ordered to pay and the warning issued by the arbitrator at the December 13, 2017 hearing did not deter you from issuing another notice to end tenancy in bad faith, as on January 20, 2018 [redacted] was served another notice to end tenancy (a Two Month Notice to End Tenancy for Landlord's Use of Property).

At the April 10, 2018 hearing (RTB File#[redacted]) the issue of serving notices to end tenancy that are meritless was raised and the arbitrator found that your behavior had an impact on [redacted] right to quiet enjoyment, and ordered you to pay $200.00 in damages for loss of quiet enjoyment.

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.

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 $3,500.00 given the repeated nature after having received numerous warnings from arbitrators and monetary orders on behalf of the tenant 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 tenant.

Amount of penalty

For the reasons set out in the Administrative Penalty Assessment #2 (document attached) to this decision, I have set the amount of the administrative penalty at $3,500.00 and is due as of the date of the order.

At this time, I am setting the penalty at one time for $3,500.00, with the expectation that this will ensure your compliance with the Act.

Please be advised that should you continue to breach section 28(b) of the Act, you may be subject to additional penalties of up to $5,000.00 for each day the contravention continues.

This $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 *Residential Tenancy 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 January 18, 2020.**

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 - in this case, as no hearing was commenced this would refer to your opportunity to respond;
b) a party has new and relevant evidence that was not available at the time of the original hearing, or through your opportunity to respond;
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. We will not accept Review applications by mail or email.

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 taken.

Sincerely,

[redacted] *Signature on Original

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

Email: [redacted]

Attachments:

Supplemental Report dated October 16, 2019
Administrative Penalty Assessment #2
Administrative Penalty Order
Residential Tenancy Branch Administrative Penalty Policy Guideline 41