



Residential Tenancy Branch

Compliance and Enforcement Unit

CEU File [REDACTED]
November 9, 2021

Notice of Administrative Penalty and Reasons for Decision

Pierre Ka-Ling Wong
Hue Phan Wong
[REDACTED]

To: Pierre Ka-Ling Wong and Hue Phan Wong

Summary of Administrative Penalty

Name of Respondents: Pierre Ka-Ling Wong and Hue Phan Wong

Rental Property: [REDACTED]

Date Penalty Issued: November 9, 2021

Contraventions under the Residential Tenancy Act (the Act): Contravention of section 32 (1) landlord and tenant obligations to repair and maintain.

Amount of the Administrative Penalty: \$5,000.00

Date by which Penalty Must Be Paid: January 10, 2022

The Compliance and Enforcement Unit (the "CEU") received a complaint on December 30, 2020 alleging the respondents were contravening the Act. Pursuant to section 87.1 of the Act, an investigation commenced regarding this matter ("matter 2") on or about May 14, 2021.

The respondents were provided with notice of an Opportunity to be Heard via my letter dated August 30, 2021 in accordance with section 87.3(2) of the Act and section 33 of the *Residential Tenancy Regulation* (the Regulation).

Administrative Penalties are imposed to promote compliance only after other attempts to gain compliance have failed. I considered the respondents' compliance history and the seriousness of the contravention when determining whether to impose 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 of \$5,000.00 against the respondents. As explained in the decision, in certain circumstances, the respondents have the right to have the Director of the Residential Tenancy Branch (or a delegate appointed by her) reconsider my decision to impose an administrative penalty.

Response to Opportunity to be heard

You failed to respond to the Opportunity to Be Heard letter on or before the date set out in that letter: September 27, 2021. As of the date of these reasons for decision, I have received no submissions or any other correspondence from you, and on that basis, I have assumed that you have waived your right to be heard. As permitted by section 34 of the Regulation), I have proceeded without further notice to levy an administrative penalty against you.

Contravention or failure to which the penalty relates

Background:

The Opportunity to Be Heard letter dated August 30, 2021, outlined relevant details relating to your alleged contravention of section 32(1) of the Act. For ease of reference, some of those details have been restated below.

The CEU received a complaint on August 19, 2020, from the Provincial Fire Commissioner (the “PFC”) that alleged that the landlord’s of [REDACTED] Prince Rupert, B.C., P. Wong and H. Wong, had not complied with the Act by deliberately and repeatedly failing to complete emergency repairs. This complaint resulted in a CEU investigation being commenced on August 28, 2020 – CEU file [REDACTED] (matter 1). Senior Investigator Sorley (the Investigator) gathered evidence that indicated that you, P. Wong and H. Wong, may have been deliberately contravening the Act by failing to follow an order of the PFC to make immediate life safety repairs.

The Investigator issued you a written warning that a failure to come into immediate compliance with the Act could result in an administrative penalty being levied against you for each day the contravention continued. The Investigator continued to engage with you during this period warning you each day that administrative penalties may be accumulating. The Investigator received evidence from fire officials that you did initiate actions toward compliance, but only after six days of receiving repeated daily warnings from the CEU, thereby placing the life and safety of the occupants of that building at serious risk for a six-day period.

On September 3, 2020, the Investigator completed an Investigation Report which included a recommendation for an administrative penalty for each of the six days between August 29, 2020 and September 3, 2020 that you ignored the previous warnings and failed to take any action to complete emergency repairs as defined in section 33 of the Act. The report and recommendation were provided to me for consideration of whether an administrative monetary penalty was warranted.

On September 4, 2020, I provided you with an Opportunity to Be Heard on matter 1. You were provided with the full investigation report and all evidence before me so you could make submissions specific to the allegations on matter 1.

On September 11, 2020, the Investigator was provided with further evidence from the Prince Rupert Fire Department (PRFD) which gave rise to a concern that you may have contravened section 32(1) of the Act by deliberately and continuously failing to conduct repairs and maintenance at the Property dating back to 2018. The Investigator determined that the new evidence she had received pertained to separate matters that would require a much more comprehensive investigation and additional analysis.

I did not consider anything the Investigator received after September 4, 2020, or the issue of general repairs and maintenance when, on October 29, 2020, I decided to impose an administrative penalty on you in the amount of \$6,000.00 for matter 1. I provided you with my written decision and order but, to date, you have not paid this penalty.

On May 12, 2021 the Investigator received an email from the [REDACTED] City of Prince Rupert, [REDACTED], pertaining to the Property's address that stated:

"Currently, there is no front door on the property and several of the windows have plywood covering them even with them being occupied be [sic] residents."

The Investigator contacted P. Wong directly to discuss the report of the missing front door. The Investigator indicated in her investigation report that P. Wong became "argumentative" with her referring to the Residential Tenancy Branch (RTB) and the PFC as the "Chinese police". As a result, the Investigator requested the contact information for the on-site caretaker identified as [REDACTED]. Upon speaking with [REDACTED], the Investigator confirmed that the front door was missing and that he was in the process of repairing it. [REDACTED] provided the Investigator with a photo of a damaged door and the front entrance with the door missing.

The Investigator became concerned the Property was still in a state of ongoing and serious disrepair, despite previous enforcement action taken by the PFC on August 20, 2020 and the Director of CEU on October 29, 2020.

On or about May 14, 2021, the Investigator commenced a new investigation into the allegations pertaining to alleged contraventions of section 32 (1) of the Act:

Landlord and tenant obligations to repair and maintain

32. (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

This new investigation caused the Investigator to revisit the evidence she had set aside on September 11, 2020 and in addition, she obtained new information provided by the PRFD and the City of Prince Rupert.

On May 14, 2021, the Investigator wrote a formal letter to notify you of the allegations against you and that an investigation was being commenced. This notice provided you with the specific section of the Act in issue and invited you to contact the Investigator if you had any questions concerning the allegations or wanted to discuss the matter with her.

Reasons for decision concerning matter 2 (CEU file [REDACTED]):

On July 15, 2021, the Investigator provided me with an investigation report which included all evidence she had gathered to date in relation to matter 2, her analysis of that evidence and her recommendations. This investigation report only concerned new allegations and was not revisiting matter 1 that had already been decided.

In addition to the background relating to the investigation into matter 2 described above, the investigation report included photographic evidence and a description of the Property in question:

“The Rental Property: According to BC Assessment, 1127 2nd Avenue West in Prince Rupert B.C. owned by P. WONG and H. WONG, is a multi-family walk up apartment block. The last single property, improved sale occurred on April 8, 2005 and the cash sale price was \$43,750.00. The total actual value in 2021 is assessed at \$533,200.00.

The property manager [REDACTED] advised the Investigator on May 19, 2021, that there were 11 rental units with a total of 16 tenants. The Prince Rupert Fire Department and City of Prince Rupert have described the population of the rental

property as mostly low-income adults with some tenants and their visitors who appear to struggle with mental health and/or addiction issues”.

In reviewing the photographic evidence, I note that the Property appears to be a two-story building in serious disrepair. The photographs show extremely weathered siding with several missing tiles/pieces exposing the insulation behind; broken windows on every floor of the building, some that have been boarded up with plywood and some that are open to the elements; electrical wires from the main stack strewn across exterior walls and into windows, presumably into suites; and broken and partially collapsed front steps exposing the wooden supports underneath.

The central focus of the evidence before me primarily concerns complaints received from the PRFD indicating several long-standing attempts by them to ensure the safety of the Property dating back to June 18, 2018. Section 32(1) of the Act obliges a landlord to provide and maintain residential property in a state of decoration and repair that complies with the, safety and housing standards required by law. I find that these laws include the *Fire Services Act* (FSA) and the British Columbia Fire Code (BCFC).

The PRFD reports indicates they conducted 16 inspections of the Property between June 18, 2018 and May 18, 2021 pursuant to section 21 of the FSA. Section 21 of the FSA states:

Inspection of fire hazards

21. On complaint of a person interested or, if believed advisable, without complaint, the fire commissioner and the commissioner's inspectors may at all reasonable hours enter any premises anywhere in British Columbia to inspect them and ascertain whether or not any of the following conditions exist:

- (a) the premises are in a state of disrepair that a fire starting in them might spread rapidly to endanger life or other property;
- (b) the premises are so used or occupied that fire would endanger life or property;
- (c) combustible or explosive material is kept or other flammable conditions exist on the premises so as to endanger life or property;
- (d) a fire hazard exists on the premises.

A review of those PRFD reports shows that in fact only 15 of the 16 reported inspections were completed as there were obstructions in the areas of the Property where access could not be gained to complete one inspection. In each of those 15 cases, without exception, there were significant deficiencies noted in the report effecting the safety of the occupants. For example:

- Emergency lighting cited in all inspection reports
- Alarm/smoke detector system cited in 10 inspection reports

- Sprinkler system cited in 14 inspection reports
- Fire Extinguishers cited in all inspection reports

As a result of their inspections, the PRFD informed you about the deficiencies and in each case ordered you to make repairs pursuant to section 22 of the FSA which states:

Order to remedy conditions

- 22.** (1) After an inspection the fire commissioner, or an inspector with the fire commissioner's authority, may in writing order that within a reasonable time, to be set by the order,
- (a) if section 21 (a) applies, the owner remove or destroy the premises, or the owner or occupier repair the premises,
 - (b) if section 21 (b) applies, the owner or occupier alter the use or occupancy of the premises,
 - (c) if section 21 (c) applies, the occupier remove or keep securely the combustible or explosive material or remedy the flammable conditions, and
 - (d) if section 21 (d) applies, the owner or occupier remove or take proper precautions against the fire hazard.
- (2) After the receipt of an order, the owner, occupier or person in charge must comply with it.
- (3) Subject to an agreement to the contrary,
- (a) the cost of complying with an order must be borne by the owner, and
 - (b) if the occupier pays the cost, the occupier has a right of action or set off against the owner for the cost actually and necessarily paid in complying with the order.

In each case, the evidence shows the PRFD notified you of the deficiencies and you were aware of their concerns and orders to complete repairs. I note further that two of the inspections with unsatisfactory deficiencies, dated November 5 and December 30, 2020, occurred after I had levied an administrative penalty against you in matter 1 relating to your non-compliance with the Act.

Upon review of each inspection report I note that the fire inspector provided you with copies of the report where it was stated that most of the violations did not meet the acceptable standards of the BCFC. These findings were not challenged.

As set out in the investigation report, the official web site for the Government of British Columbia describes the BCFC as follows:

A provincial regulation containing technical requirements for the construction, use or demolition of buildings and facilities and the design, construction and use of specific

elements of facilities related to certain fire hazards, and protection measures for the current or intended use of buildings.

The BCFC 2018, effective December 10, 2018, states that it has reprinted the preface from the model National Fire Code of Canada and that the information also pertains to the BCFC; however, information not relevant to the BCFC was deleted and minor edits were made. The preface includes:

- “The National Fire Code (NFC) sets out technical provisions regulating
- activities related to the construction, use or demolition of buildings and facilities
 - the condition of specific elements of buildings and facilities
 - the design or construction of specific elements of facilities related to certain hazards
 - protection measures for the current or intended use of buildings

The NFC establishes requirements to address the following three objectives, which are fully described in Division A of the Code:

- safety
- health
- fire protection of buildings and facilities”

I am satisfied that the evidence before me demonstrates on a balance of probabilities that you were not in compliance with several sections of the BCFC resulting in “unsatisfactory” minimum levels of safety. The BCFC is the legislated requirement in the Province of B.C. providing minimum standards to ensure the health and safety of persons, including occupants of buildings. Attaining unsatisfactory results in 15 inspections over a period of 35 months establishes a contravention of section 32 (1) (a) of the Act.

The investigative report included a report from the City of Prince Rupert Bylaw Office which indicated that between July 14th, 2017 and February 24, 2021 you were the subject of exterior property inspections no less than 43 times where you were informed about bylaw infractions for garbage and debris on the property. Although it appears that you took steps in response on a few occasions, the City of Prince Rupert eventually issued a bylaw infraction ticket in relation to the property becoming or remaining unsightly because of your continued failure to respond. However, the BC Provincial Court dismissed this ticket. I have reviewed the BC Provincial Court’s decision (2021 BCPC 80). The judge found that the garbage dumpster in issue appeared to be on the City’s property. As matters relating to City property do not fall under section 32 of the Act, I have not relied on this evidence to make any findings that you have contravened the Act.

Upon my review of the investigative report, I note several instances where you have told fire officials, bylaw officers and the CEU Investigator that you were not responsible for the damage

caused by your tenants and that matters were beyond your control. I do not accept this position. Section 32 of the Act is clear that both tenants and landlords have obligations to repair and maintain the property. I acknowledge that a tenant must repair damage to a rental unit or common area caused by their actions or neglect or their guest's actions or neglect. If the problems did, in fact, stem from damage caused by your tenants, then you clearly had recourse under the Act as the landlords of the property to seek remedies through the RTB dispute resolution process for failure on the part of your tenants to follow section 32(3). In addition, notwithstanding section 32, you may have had cause to serve notices to end tenancy for those tenants causing unreasonable damage to the property and then seek to retain security deposits and additional monetary orders, if necessary, to remedy damage caused by the tenant. However, RTB's records do not show that you have applied for such remedies against any of your tenants.

While a tenant has an obligation to repair damage, this does not obviate the landlords' obligation to maintain residential property in accordance with health and safety standards required by law. While a landlord may be afforded an opportunity to seek remedies against a tenant where that tenant has caused damage, the mere fact that damage was caused by a tenant cannot mean the landlord no longer bears any responsibility in perpetuity.

I have determined that despite numerous attempts by various authorities to gain compliance from you as property owners and landlords, that you have demonstrated a pattern of deliberate neglect and disregard for maintaining the legal health, safety and housing standards of the Property and as such, you have jeopardized the safety of the tenants living at the Property.

I am satisfied on the balance of probabilities that between June 18, 2018 and May 18, 2021 you have been in continued contravention of section 32(1) of the Act.

Should a penalty be imposed?

After considering all the factors set out in section 87.3(2)(b) of the Act, I have decided to impose an administrative penalty against you:

- (i) previous enforcement actions for contraventions of a similar nature by the person;
- (ii) the gravity and magnitude of the contravention;
- (iii) the extent of the harm to others resulting from the contravention;
- (iv) whether the contravention was repeated or continuous;
- (v) whether the contravention was deliberate;
- (vi) any economic benefit derived by the person from the contravention;
- (vii) the person's efforts to correct the contravention.

Previous enforcement actions have been taken in respect of the failure to complete emergency repairs related to fire safety. On October 29, 2020 after repeated warnings by the PFC and an order made against you under the FSA, and warnings over a six-day period from a CEU Investigator before you came into compliance, I issued a \$6,000 Administrative Penalty against you. Administrative Penalties are meant, in part, to promote compliance with the Act going forward. However, the contraventions here have continued for a substantial period of time, even after this earlier Administrative Penalty.

The scope and magnitude of the current contravention related to fire safety, as well as the overall general disrepair of the building reflected in the photographs, is directly and negatively impacting the health and safety of the tenants who pay rent to live there. Although there is no evidence that any of these fire safety deficiencies resulted in direct harm to any of the renters during the period in question, the continued contravention of your failure to address the issues and concerns and any future non-compliance with these issues places the tenants at imminent risk.

As set out above, I have found that this contravention of section 32(1) of the Act has continued over a period of approximately 35 months and this has been deliberate on your part. Despite numerous warnings and direction from both the PRFD and, later, the CEU Investigator to bring yourself into compliance with the law regarding the Property, you have not. There has only been minimal effort on your behalf to correct any of the contraventions. It is not clear that you will take any further steps if an administrative penalty is not levied.

I note that the Investigator had no direct evidence that you benefited financially from these contraventions. However, the only logical inferences are that you have benefitted financially by collecting rent but not using the money collected to maintain the property, while the assessed value of the Property has increased by approximately \$487,000 in the 35-month period in issue. Based on the evidence before me, though, I cannot determine the extent of the economic benefit. On May 19, 2021, the property manager stated to the Investigator that there were 11 rental units, and that rent was being paid, but he was not aware how much each tenant was paying. There is also no evidence before me of the estimated costs for the repairs that have not been made.

After considering all of these factors, I find that it is appropriate to impose an administrative monetary penalty against you in these circumstances relating to the contraventions of section 32 of the Act that occurred between June 18, 2018 and May 18, 2021, in order to promote compliance with the Act and to ensure the health and safety of tenants is not needlessly jeopardized.

Amount of penalty

Residential Tenancy Policy Guideline 41 – Administrative Penalties includes considerations for determining the amount of an administrative penalty and whether a penalty should be

repeated on each day the contravention has continued. The Policy Guideline is not legally binding and cannot fetter my discretion.

However, I do not find it necessary to deviate from the Guideline in the circumstances here.

A number of the factors were at the highest end of the scales set out in the Policy Guideline. An administrative penalty of more than \$1,000 for a similar contravention was levied against you in the past two years, and this particular contravention has continued for more than a year since you became aware of it. Other factors were also at the higher end indicating the seriousness of this contravention and your actions, which should be reflected in the amount of the administrative penalty. For instance, only minimal efforts have been made to correct these contraventions since they were brought to your attention, and the evidence shows the Property has been subject to significant neglect over at least 35 months, which you would have been aware of for most if not all of this period of time.

Based on this, I have determined that the amount of the administrative penalty should be \$5,000.00.

As noted earlier, the Act allows for separate monetary penalties of up to \$5,000.00 for each day a contravention has continued. The period in issue in this decision is June 18, 2018 to May 18, 2021.

The Policy Guideline indicates consideration should be given to whether a continuing penalty would result in earlier compliance, the respondent's compliance history and the seriousness of the contravention. Despite a problematic compliance history, at this time, I have concluded that a one-time penalty of \$5000.00 should ensure your compliance with the Act.

However, should your contravention of section 32(1)(a) of the Act continue after you receive this decision, I may consider imposing additional administrative penalties of up to \$5,000.00 for each day the contravention continues. You would first be given notice and an Opportunity to Be Heard before any further penalties are imposed.

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

This \$5000.00 administrative penalty is to be paid by cheque, money order or bank draft made payable to the Minister of Finance. Please send 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 January 10, 2022.**

Sections 87.3(4) through (7) of the Act provide an opportunity for the Director to consider alternatives to enforcing all or part of an Administrative Penalty and enter into an agreement with respondents. 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 in full.

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 of the Residential Tenancy Branch for a review of the matters set out in this notice. Division 2 of Part 5 (sections 79 to 82) 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 (or respond to the opportunity to be heard) 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 (or before the deadline for submissions set out in the opportunity to be heard letter);
- 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 (#RTB-2) and in the manner approved by the Director,
- b) must be accompanied by the fee prescribed in the regulation (\$50), 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, a completed Application for Review Consideration including all evidence that supports your ground(s) for review, and the \$50.00 filing fee can be submitted in person at any 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 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 the Act to the government.

Sincerely,



*Signature on original

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



Enclosed:

Administrative Order
Residential Tenancy Branch Administrative Penalty Policy Guideline 41