

41. Administrative Penalties

January 2012

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

This policy guideline outlines considerations for levying an administrative penalty and if one is to be levied, how to determine the size of an Administrative Penalty as well as whether a penalty should be repeated on each day the contravention continues.

LEGISLATIVE FRAMEWORK

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*¹ (the Legislation) allows the Residential Tenancy Branch (RTB) to levy administrative penalties when a landlord or tenant has contravened a provision of the *Residential Tenancy Act*, the *Manufactured Home Park Tenancy Act*, regulations to these Acts, or the landlord or tenant has failed to comply with a decision or order of the Residential Tenancy Branch.

DEFINITIONS

In this policy guideline:

- **Contravention** refers to either a violation of a section the Legislation or Regulations or a failure to comply with a decision or order of the RTB;
- **Respondent** refers to the person named in the administrative penalty proceeding.

DECISION ON WHETHER AN ADMINISTRATIVE PENALTY SHOULD BE APPLIED

The Residential Tenancy Branch may decide that an administrative penalty should be applied when the evidence shows the respondent has:

- Contravened a provision of the Legislation or regulations; or
- Failed to comply with a decision or order of the RTB.

A decision is based on proof, on the balance of probabilities. Evidence must substantiate complaints.

¹ *Residential Tenancy Act* Part 6, Division 2.1; *Manufactured Home Park Tenancy Act* Part 7, Division 2.1

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DETERMINING THE AMOUNT OF AN ADMINISTRATIVE PENALTY

The Legislation identifies seven elements that must be considered when applying an administrative penalty:

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

The amount of an administrative penalty may be determined by the sum of the values identified in the tables in the following section.

- If the sum of values is 1-7, the maximum penalty is \$250.00.
- If the sum of values is 8-14, the maximum penalty is \$500.00.
- If the sum of values is 15-19, the maximum penalty is \$1,000.00.
- If the sum of the values is 20-23, the maximum penalty is \$2,500.00.
- If the sum of the values is 24-26, the maximum penalty is \$3,500.00.
- If the sum of the values is 27-28, the maximum penalty is \$4,000.00.

If the highest value (five) is assigned in any of the categories, the penalty is \$5,000.

Despite the above maximum penalties, when there is a positive value for the contravention in:

- five categories, the maximum penalty is \$2,500.00
- six categories, the maximum penalty is \$3,500.00.
- all seven categories, the maximum penalty is \$5,000.

WEIGHT GIVEN TO ELEMENTS CONSIDERED

The following tables describe how much weight to give the contravention in each of the seven required elements to be considered when levying an administrative penalty.

Elements described in each cell of the table are representative, not cumulative. For example, the gravity and magnitude of a contravention may impact on either health or safety, or both.

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Previous Actions for Similar Contraventions

Value	Description
0	No similar contraventions
1	RTB issued one decision or order on the same topic against the respondent once in the past two years
2	RTB issued two decisions or orders on the same topic against the respondent in the past two years
3	RTB issued three or four decisions or orders on the same topic against the respondent in the past two years
4	RTB issued five or more decisions or orders on the same topic against the respondent in the past two years Or RTB levied an Administrative Penalty of \$1,000.00 or less for a similar contravention against the respondent in the past two years
5	RTB levied an Administrative Penalty of more than \$1,000.00 for a similar contravention against the respondent in the past two years

Gravity and magnitude

Value	Description
0	<ul style="list-style-type: none"> not impact health or safety not impact economic viability of continued investment in renting housing stock contravention results in expenditure that is quantified to be less than one per cent of annual rent
1	<ul style="list-style-type: none"> moderate impact on health moderate impact on safety contravention quantified at up to 15 per cent of annual rent of unit(s) in which contravention occurred
2	<ul style="list-style-type: none"> measurable impact on health measurable impact on safety contravention quantified at 16 to 45 per cent of annual rent of unit(s) in which contravention occurred
3	<ul style="list-style-type: none"> measurable impact on health or safety contravention quantified at 45-65 per cent of aggregate annual rent for more than 50% of rental units in building
4	<ul style="list-style-type: none"> significant impact on health

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Value	Description
	<ul style="list-style-type: none"> significant impact on safety contravention quantified at 65-79 per cent of aggregate annual rent for all rental units in building contravention of Act or Regulation that is not open to interpretation
5	<ul style="list-style-type: none"> lack of structural sufficiency in building contravention quantified at 80 per cent or more of aggregate annual rent for all rental units in building Another government agency or enforcement body deemed the rental unit to be not habitable

Extent of Harm to Others

Value	Description
0	<ul style="list-style-type: none"> No harm
1	<ul style="list-style-type: none"> Economic harm quantified at up to 25% of annual rent
2	<ul style="list-style-type: none"> Economic harm quantified at 26% to 50% of annual rent Mild unreasonable disturbance experienced by another party to the tenancy or another occupant of the building Mild disruption of right to quiet enjoyment
3	<ul style="list-style-type: none"> Economic harm quantified at up to 75% of annual rent Contravention resulted in medical treatment Moderate unreasonable disturbance experienced by another party to the tenancy or another occupant of the building Moderate disruption of right to quiet enjoyment
4	<ul style="list-style-type: none"> Economic harm quantified at 76% to 100% of annual rent Contravention resulted in hospitalization of one person for more than one day Contravention resulted in hospitalization of more than one person for up to one day Significant unreasonable disturbance experienced by another party to the tenancy or another occupant of the building Significant disruption to right to quiet enjoyment
5	<ul style="list-style-type: none"> Contravention resulted in at least one death

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Repeated or Continuous

Value	Description
0	<ul style="list-style-type: none"> Not repeated or continuous
1	<ul style="list-style-type: none"> Some evidence that the landlord and tenant earlier resolved the problem without the involvement of the Residential Tenancy Branch Dispute Resolution Services
2	<ul style="list-style-type: none"> RTB decisions show same contravention occurred for same tenant once before
3	<ul style="list-style-type: none"> RTB decisions show same contravention occurred for fewer than five tenants fewer than five times
4	<ul style="list-style-type: none"> RTB decisions show same contravention occurred for more than five tenants fewer than five times RTB decisions show same contravention occurred for fewer than five tenants more than five times
5	<ul style="list-style-type: none"> Same contravention occurred for more than five tenants more than five times Contravention occurred for more than one year from time the respondent became aware of it

Deliberate

Value	Description
0	<ul style="list-style-type: none"> Respondent not made aware of issue by the other party to the tenancy
1	<ul style="list-style-type: none"> Respondent verbally asked by the other party to the tenancy to stop or correct the contravention
2	<ul style="list-style-type: none"> Respondent asked in writing by the other party to the tenancy to stop or correct the contravention
3	<ul style="list-style-type: none"> Order from a governmental body (e.g., Fire Department, Bylaw Enforcement Branch) made within two months of Respondent received RTB notification that they are under investigation
4	<ul style="list-style-type: none"> Order from any government body (e.g., BC Safety Authority, Fire Department) made two to 12 months before Respondent received RTB notification that they are under investigation
5	One year or more passed since RTB issued decision or order against Respondent on the contravention

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Economic benefit derived from contravention

Value	Description
0	<ul style="list-style-type: none"> No economic benefit
1	<ul style="list-style-type: none"> Respondent derived nominal economic benefit (less than \$100) from the contravention
2	<ul style="list-style-type: none"> Respondent derived economic benefit of up to \$500
3	<ul style="list-style-type: none"> Respondent derived economic benefit of \$501 to \$5,000
4	<ul style="list-style-type: none"> Respondent derived economic benefit of \$5,001 to \$20,000
5	<ul style="list-style-type: none"> Respondent derived economic benefit greater than \$20,000

Efforts to correct

Value	Description
0	<ul style="list-style-type: none"> Contravention corrected or fully addressed Compliance with RTB decision or order
1	<ul style="list-style-type: none"> Substantial completion of activities required to correct contravention
2	<ul style="list-style-type: none"> Significant completion of activities required to correct contravention
3	<ul style="list-style-type: none"> Evidence of moderate activities required to correct contravention
4	<ul style="list-style-type: none"> Evidence of minimal activities required to correct the contravention
5	<ul style="list-style-type: none"> No documented efforts to correct contravention

ONE TIME OR CONTINUING PENALTY

The Legislation allows a monetary penalty of up to \$5,000. The Legislation also states that if a contravention occurs or continues over more than one day, the monetary penalty may be imposed for each day the contravention continues.

Administrative penalties are issued to promote compliance, and consideration is given to whether continuing application of the penalty will result in earlier compliance.

The Respondent's compliance history and the seriousness of the contravention are also taken into account when determining a one-time or continuing penalty.

SETTLEMENT

The Residential Tenancy Branch may, after levying an administrative penalty, offer the respondent a settlement. A settlement offer may include a condition that reduces the penalty, or that suspends it, for a specified number of days if compliance is achieved or the contravention is corrected within a stated period. In such cases, the settlement offer

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should include a description of the actions or measures that demonstrate compliance or a correction of the contravention. When such a condition exists, the onus is on the Respondent to prove to the RTB that compliance has been achieved or the contravention has been corrected. The settlement offer may require the Respondent provide third party verification that the terms of the settlement offer have been met.