

CITATION: Nichol (Re), 2024 BCSRE 32

Date: 2024-05-23

File # 17-936

BC FINANCIAL SERVICES AUTHORITY

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c. 42 as amended**

AND

IN THE MATTER OF

**DONALD PAUL NICHOL
(087202)**

CONSENT ORDER

[This Order has been redacted before publication.]

RESPONDENT: Donald Paul Nichol, rental property management services representative,
Pacific Quorum Properties Inc.

DATE OF CONSENT ORDER: May 23, 2024

COUNSEL: Laura Forseille, Legal Counsel for the BC Financial Services Authority
Stephen Hamilton, Legal Counsel for the Respondent

PROCEEDINGS:

On May 23, 2024, Superintendent of Real Estate (the "Superintendent"), or the Superintendent's authorized delegate, of BC Financial Services Authority ("BCFSA") accepted the Consent Order Proposal (the "Proposal") submitted by Donald Paul Nichol ("D. Nichol").

WHEREAS the Proposal, a copy of which is attached hereto, has been executed by D. Nichol.

NOW THEREFORE, having made the findings proposed in the attached Proposal, and found that D. Nichol committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* ("RESA") and sections 34 (formerly section 3-4), section 30(a) (formerly 3-3(a)), section 30(b) (formerly 3-3(b)) and section 34 (formerly section 3-4) of the *Real Estate Services Rules* (the "Rules"), pursuant to section 43 of the RESA the Superintendent orders that:

1. D. Nichol will have his licence under RESA suspended for one year as of June 21, 2024;
2. D. Nichol will pay a discipline penalty to BCFSa in the amount of \$30,000 by September 30, 2024;
3. D. Nichol will pay enforcement expenses to BCFSa in the amount of \$2,000 by September 30, 2024.

If D. Nichol fails to comply with any term of this Order, the Superintendent may suspend or cancel their licence without further notice to them, pursuant to sections 43(3) and 43(4) of the RESA.

Dated this 23rd day of May, 2024 at the City of Victoria, British Columbia.

Superintendent of the BC Financial Services Authority

"Original signed by Jonathan Vandall"

Jonathan Vandall
Delegate of the Superintendent of Real Estate
Province of British Columbia

Attch. Consent Order Proposal

BC FINANCIAL SERVICES AUTHORITY

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
SBC 2004, c. 42 as amended**

IN THE MATTER OF

**DONALD PAUL NICHOL
(087202)**

CONSENT ORDER PROPOSAL BY DONALD PAUL NICHOL

BACKGROUND AND FACTS

This Consent Order Proposal (the "**Proposal**") is made by Donald Paul Nichol ("**D. Nichol**") to the Superintendent of Real Estate (the "**Superintendent**") of the BC Financial Services Authority ("**BCFSA**") pursuant to section 41 of the *Real Estate Services Act* ("**RESA**").

For the purposes of the Proposal, D. Nichol and the Superintendent have agreed upon the following facts:

Background

1. D. Nichol (087202) has been licensed intermittently as a representative in rental property management services since 1990.
2. D. Nichol was at all relevant times licensed as a representative in the rental property management services and strata management services categories with Pacific Quorum Properties Inc. in Surrey, British Columbia ("**Pacific Quorum**").
3. On September 27, 2016, D. Nichol signed a consent order resolution for a previous disciplinary matter, agreeing to complete the remedial course on rental property management and pay expenses of \$1,500. He had failed to carry out the day-to-day management of a rental property, failed to collect monies payable to the owner, and failed to issue a 10-Day Notice to End Tenancy immediately. For a second property owned by the same client, he had entered into a settlement agreement with a tenant without seeking authorization from the owner.
4. [Individual 1], the Vice President of Property Management at Pacific Quorum, provided evidence to BCFSA that D. Nichol has a large portfolio of property management clients and Pacific Quorum will require additional time to make adequate arrangements for file transition. BCFSA has considered this evidence in allowing for D. Nichol's suspension to begin on June 21, 2024.

First Residential Tenancy Agreement

5. On February 10, 2016, [Client 1] and [Client 2] (the "**Clients**") entered into an agreement with Pacific Quorum for a year-to-year contract commencing on March 1, 2016 to manage a rental property at [Property 1], Surrey (the "**Property**"). D. Nichol was assigned as the property manager.

6. The [Clients] instructed Pacific Quorum and D. Nichol to include no-smoking and no-pet policies in any residential tenancy agreements in relation to the Property.
7. On March 10, 2016 a one-year residential tenancy agreement was signed for the Property with the tenant [Tenant 1]. Pacific Quorum was listed as the landlord on the agreement. The addendum to the agreement indicated that no pets were allowed without prior approval, but the addendum was not signed by [Tenant 1], as was required by the terms of the residential tenancy agreement. The addendum does not contain a no-smoking policy.
8. On October 31, 2016, [Tenant 1] gave notice to Pacific Quorum that she was ending her tenancy at the Property early. The contracted penalty was \$2,000 for early termination, but she advised that she could not pay it so her security deposit of \$1,000 was forfeited, leaving \$1,000 unpaid to the [Clients].
9. [Tenant 1]'s move-out inspection report included a forwarding address for her, but D. Nichol failed to contact her to obtain the balance of the financial penalty owed to the [Clients] for her early residency termination.

Second Residential Tenancy Agreement

10. On November 18, 2016, a second one-year residential tenancy agreement was signed for the Property with tenants [Tenant 2] and [Tenant 3]. Pacific Quorum was again listed as the landlord. The first page of the agreement lists the incorrect address for the Property. There was no mention of a pet policy in the addendum to the agreement.
11. D. Nichol did not perform a credit check on [Tenant 2] or [Tenant 3] prior to their residential tenancy agreement. He also did not collect the required \$1,000 security deposit prior to the tenants moving onto the Property.
12. On November 23, 2016 D. Nichol emailed the [Clients] to advise that the new tenants were paying a pro-rated amount of \$667 for November rent.
13. On November 28, 2016 the [Clients] emailed D. Nichol to inquire about November rent as they had not received it yet, nor the security deposit. They also requested a copy of the inspection report that was done during the move-in. D. Nichol advised that that the move-in inspection would be done the next day, November 29. However, the inspection was conducted on December 5, 2016, two weeks after the tenants had moved in.
14. On December 12, 2016 the [Clients] sent emails to D. Nichol about the owner disbursements for rent that they had not received from Pacific Quorum.
15. On January 17, 2017 D. Nichol received an email from [Tenant 2] that rent payment was coming that afternoon.
16. On January 23, 2017 the [Clients] sent an email to D. Nichol instructing him to evict the tenants if January's rent and the security deposit was not received on that date, and that February rent must be received by February 3.
17. On January 25, 2017 the City of Surrey issued a notice indicating animal noise by-law violations of barking dogs at the Property. On February 1, 2017 the [Clients] emailed D. Nichol about the bylaw notice, indicating that they did not want pets on their property.

18. On February 2, 2017 D. Nichol forwarded an email from the tenants to the [Clients] advising that the noise was caused by the neighbours' dog. D. Nichol also advised the [Clients] that the tenants were dog-sitting for two weeks.
19. On February 3, 2017 a subsequent bylaw warning was issued for unlicensed dogs observed upon inspection of the home. The [Clients] emailed [Individual 2], the branch manager at Pacific Quorum, advising that they wanted to evict the tenants. D. Nichol advised that the tenants would be removed by the end of the month, and he would issue a 10-Day Notice to End Tenancy for their unpaid rent.
20. On February 7, 2017, the [Clients] advised [Individual 2] that they wanted D. Nichol removed as their property manager. That day D. Nichol signed a 10-Day Notice to End Tenancy.
21. On February 16, 2017, [Individual 2] advised the [Clients] that Pacific Quorum didn't have anyone to manage their property besides D. Nichol and that they should sever the contract with Pacific Quorum after the eviction of the tenants.
22. On February 23, 2017, the [Clients] requested an update from D. Nichol about the eviction. He advised that he had just received documents from the Residential Tenancy Board and that he had to send the Notice to the tenant. The same day, the RTB received Pacific Quorum's Application for Dispute Resolution, claiming \$2,867 in unpaid rent.
23. On February 25, 2017, the Notice was served on the tenant via registered mail.
24. On February 28, 2017, the RTB advised that the address of the rental unit on the residential tenancy agreement did not match the one on the Notice, and a hearing was set for March 30.
25. On March 14, 2017, the [Clients] became aware that the eviction process was delayed because of the filing error.
26. The RTB hearing proceeded on March 30, 2017. It was noted that the tenants had not been served the Application for Dispute Resolution until March 17, 2017, which was a day later than required. The tenants requested an adjournment, and a new hearing date was set for May 8.
27. On March 31, 2017, D. Nichol told the [Clients] that he would be issuing second 10-Day Notice to the tenants.
28. On April 1, 2017, Pacific Quorum received cheques for \$1,113 and \$867 from the tenants but they were from accounts with insufficient funds.
29. On May 2, 2017, the tenants moved out.
30. On May 9, 2017, the RTB arbitrator issued a Monetary Order for \$7,867 to be paid by the tenants for unpaid rent after the hearing, as [Tenant 2] did not attend.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, D. Nichol proposes the following findings of misconduct be made by the Superintendent:

1. D. Nichol committed professional misconduct within the meaning of section 35(1) of RESA in that, in respect of a rental property at [Property 1], Surrey, British Columbia (the "**Property**"), he:

- a. Failed to collect a security deposit and first month's rent from a tenant prior to the tenant taking residency of the Property on November 21, 2016, contrary to:
 - i. Section 30(a) (formerly 3-3a) of the Rules [*a licensee must act in the best interests of the client*]; and
 - ii. Section 34 (formerly 3-4) of the Rules [*a licensee must act with reasonable care and skill*].
- b. Failed to ensure the two residential tenancy agreements associated with the Property contained negotiated terms as per the instructions of the Property owners, contrary to:
 - i. Section 30(b) (formerly 3-3b) of the Rules [*a licensee must act in accordance with the lawful instructions of the client*]; and
 - ii. Section 34 (formerly 3-4) of the Rules.
- c. Failed to enter the correct address of the Property on a residential tenancy agreement in respect of the Property, which was later provided to the Residential Tenancy Board in the filing of a request, resulting in a delay of approximately six weeks in the associated Residential Tenancy Board hearing, contrary to section 34 (formerly 3-4) of the Rules.
- d. Failed to make reasonable efforts to collect a monetary penalty from a tenant for the early termination of the tenant's residency of the Property in October 2016, contrary to section 34 (formerly 3-4) of the Rules.
- e. Failed to conduct a move-in inspection prior to a tenant moving into the Property on November 21, 2016, as required by the residential tenancy agreement, contrary to sections 30(a) (formerly 3-3(a)) and 34 (formerly 3-4) of the Rules.
- f. Failed to conduct a credit check on prospective tenants as instructed by the Property owners, contrary to sections 30(a) (formerly 3-3(a)), 30(b) (formerly 3-3(b)), and 34 (formerly 3-4) of the Rules.

PROPOSED ORDERS

Based on the facts herein and the Proposed Findings of Misconduct, D. Nichol proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the Superintendent, pursuant to section 43 of the RESA:

1. D. Nichol's license under RESA will be suspended for one year as of June 21, 2024.
2. D. Nichol will pay a discipline penalty to BCFSa in the amount of \$30,000 by September 30, 2024.
3. D. Nichol will pay enforcement expenses to BCFSa in the amount of \$2,000 by September 30, 2024.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. D. Nichol acknowledges and understands that the Superintendent may accept or reject the Proposal. If the Proposal is rejected by the Superintendent, the matter may be referred to a disciplinary hearing.
2. D. Nichol acknowledges that he has been urged and given the opportunity to seek and obtain independent legal advice with respect to the disciplinary process, the allegations contained in the Notice of Discipline Hearing, and the execution and submission of the Proposal to the Superintendent; and, that they have obtained independent legal advice or has chosen not to do so, and that they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. D. Nichol acknowledges and is aware that BCFSA will publish the Proposal and the Consent Order or summaries thereof on BCFSA's website, on CanLII, a website for legal research and in such other places and by such other means as BCFSA in its sole discretion deems appropriate.
4. D. Nichol hereby waives their right to appeal pursuant to section 54 of the RESA.
5. If the Proposal is accepted and/or relied upon by the Superintendent, D. Nichol will not make any public statement(s) inconsistent with the Proposal and its contents. Nothing in this section is intended to restrict D. Nichol from making full answer and defence to any civil or criminal proceeding(s).
6. The Proposal and its contents are made by D. Nichol for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of D. Nichol in any civil proceeding with respect to the matter.

"Original signed by Donald Nichol"

DONALD PAUL NICHOL

Dated 6 day of May, 2024