Citation: Chang (Re), 2025 BCSRE 41
Date: 2025-03-10
File No. 24-5230

BC FINANCIAL SERVICES AUTHORITY

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

AND IN THE MATTER OF

ERNEST HSIEN-YU CHANG
(153687)

REASONS FOR DECISION REGARDING
ADMINISTRATIVE PENALTY RECONSIDERATION REQUEST

[These Reasons have been redacted before publication.]

DATE AND PLACE OF HEARING: Via Written Submissions

HEARING OFFICER: Gareth Reeves

Introduction

1. On November 26, 2024, the BC Financial Services Authority ("**BCFSA**") issued a Notice of Administrative Penalty (the "**NOAP**") in the amount of $25,000 to Ernest Hsien-Yu Chang pursuant to section 57(1) and 57(3) of the *Real Estate Services Act*, RSBC 2004, c 42 ("**RESA**").

2. In the NOAP, BCFSA determined that Mr. Chang had contravened sections 30(a), 30(f), and 34 of the *Real Estate Services Rules*, BC Reg 209/2021 (the "**Rules**") in relation to rental properly management services he provided in relation to a property located on [Property 1] in Richmond (the "**Property**"). The NOAP alleges Mr. Chang contravened the following rules in the following ways:

    a. Rule 30(a): "You failed to issue a notice of rent increase in accordance with the Residential Tenancy Act using the Residential Tenancy Branch ("RTB") rent increase notice form, this in relation to the [Property]. In so doing, you failed to act in the best interest of your client";

    b. Rule 30(f): "You failed to promptly advise the owner/landlord that one of the tenants had left the [Property]. In so doing, you failed to disclose to your client all known material information respecting the real estate services, and the real estate and the trade in real estate to which those services relate";

    c. Rule 34: "You failed to promptly provide a written notice to your client that the service agreement for the [Property] had been terminated. In so doing, you failed to act with reasonable care and skill when providing real estate services"; and

    d. Rule 34: "You failed to promptly advise the tenant that you no longer managed the [Property] and to promptly advise the tenant to contact the owner directly about the tenancy. In so doing, you failed to act with reasonable care and skill when providing real estate services."

3. The NOAP issued a $10,000 penalty for the alleged breach of section 30(a) of the Rules and a $5,000 penalty for each of the other alleged contraventions.

4. Mr. Chang applied for a reconsideration of the NOAP under section 57(4) of RESA. The application proceeded by written submissions.

Issues

5. The issue is whether the administrative penalties issued in the November 26, 2024 NOAP should be cancelled or confirmed.

6. If I cancel any of the administrative penalties, I must also decide whether to issue a notice of discipline hearing in relation to the alleged contraventions.

Jurisdiction and Standard of Proof

7. This application for reconsideration is brought pursuant to section 57(4) of RESA, which requires the Superintendent of Real Estate (the "**superintendent**") to provide a person who receives an administrative penalty with an opportunity to be heard upon request.

8. Section 57(4) of RESA permits the superintendent to cancel the administrative penalty, confirm the administrative penalty, or, if the superintendent is satisfied that a discipline hearing under section 40 of RESA would be more appropriate, cancel the administrative penalty and issue a notice of discipline hearing.

9. The superintendent has delegated the statutory powers and duties set out in section 57 to Hearing Officers.

10. The standard of proof is the balance of probabilities.

Background and Findings of Fact

11. The evidence and information before me consists of an investigation report completed by BCFSA, the tabs thereto, and the information provided by Mr. Chang in the application for reconsideration. The following is intended to provide some background to the circumstances and to provide context for my reasons. It is not intended to be a recitation of all the information before me.

Licensing and Enforcement History

12. Mr. Chang was first licensed on January 8, 2008 as a representative in the trading services category. He became licensed in the rental property management and strata property management categories on June 25, 2014. On February 27, 2015, he became licensed as an associate broker. On March 4, 2015, Mr. Chang became licensed as a sole proprietor and then on July 8, 2022 he became licensed as the managing broker for Ernest Chang Realty Ltd dba "Ernest Chang Realty".

13. In August 2019, Mr. Chang received a letter of advisement by the Real Estate Council of British Columbia for breaches of then sections 3-3(f) and 5-2 of the Rules. I note that 3-3(f) is the predecessor to section 30(f) of the current Rules.

14. In July 2022, Mr. Chang received another letter of advisement from BCFSA for breaches of section 30(a) and 30(c) of the Rules.

15. I note that neither of these letters of advisement are formal disciplinary processes and therefore did not include an adjudicated finding of a contravention by Mr. Chang.

16. Mr. Chang was previously subject to $11,000 in administrative penalties under a notice dated May 23, 2024 for contraventions of sections 30(a), 30(b), and 34 of the Rules. The section 30(a) contravention occurred in July and August 2022 when Mr. Chang failed to provide his rental property management client with a Notice of Infraction issued by the subject property's strata management company. These administrative penalties were confirmed on reconsideration with a decision issued on November 5, 2024: *Chang (Re)*, 2024 BCSRE 86.

Factual Background

17. On May 28, 2018, [Complainant 1] (the "**Complainant**") and Ernest Chang Realty, Mr. Chang's sole proprietorship at the time, executed a service agreement (the "**Management Agreement**") in which Mr. Chang agreed to provide rental property management services in respect of the Property. The Management Agreement contained the following material terms:

    a. The term of the Management Agreement was one year, renewing automatically each year for another year unless terminated.

    b. Mr. Chang agreed to provide a variety of rental property management services including advertising the Property for rent; strictly complying with all applicable laws; collecting monthly rent; issuing monthly income and expense statements; attending to enquiries, reports, and requests from tenants; collecting and handling deposits; and conducting inspections of the Property.

    c. The Complainant would pay to Mr. Chang a monthly fee of 6% of the rent for the Property plus GST (the "**Management Fee**") and a fee of a half a month's rent when the "existing tenant" moves out.

    d. The following termination provisions:

        "TERMINATION

        7. This Agreement shall be terminated immediately by the [Complainant] should the [Property] have been sold to third parties, and BY THE [COMPLAINANT], should the Company

            a. become insolvent;
            b. be dissolved;
            c. be convicted of criminal charges and/or fraud;
            d. breach this Agreement;

            BY THE COMPANY, should the [Complainant]

            a. become insane, or otherwise lose legal capacity to contract or perform;
            b. become insolvent;
            c. be convicted of criminal charges and/or fraud;
            d. breach this Agreement;
            e. fail to place a valid insurance on the [Property];
            f. fails to repair or authorize [Mr. Chang] to repair the [Property] within seven (7) working days after notice of vital deficiencies have been given by [Mr. Chang].

        TERMINATION ON NOTICE

        8. In addition to the provisions in paragraph 7, either party shall have the right at anytime to terminate this Agreement by 30 days written notice to the other party.

        CONSEQUENCES OF TERMINATION

        9. (A) On termination of this Agreement for any reason, [Mr. Chang] shall cease to manage the [Property] immediately.
            (B) The [Complainant] shall pay to [Mr. Chang] immediately all monies owing hereunder.

(C) And the [Company] shall, after deductions of any monies owing, pay the net proceeds from Rents and the balance of Retainer Account, if any, to the [Complainant] without delay."[1]

[*sic*]

e. All notices were required to be given in writing and could be sufficiently delivered by registered post.

18. On June 11, 2018, [Tenant 1] (the "**Tenant**") and [Tenant 2] (the "**Other Tenant**") signed a Residential Tenancy Agreement as tenants to commence on July 1, 2018. It was a one-year fixed term tenancy set to expire on June 30, 2019 with a monthly rent of $2,100.

19. On June 1, 2019, the Tenant and the Other Tenant signed a subsequent Residential Tenancy Agreement (the "**Tenancy Agreement**") to rent the Property from July 1, 2019 to June 30, 2020 at a rent of $2,152 per month. Also on June 1, 2019, Mr. Chang signed the Tenancy Agreement on behalf of the Complainant as landlord. The Tenancy Agreement provided that it would end at the end of its term. I note that the *Residential Tenancy Act*, SBC 2002, c 78 at that time only permitted automatic termination of fixed one year term leases at the time where the landlord or the landlord's close family member intended to occupy the Property at the end of the term. It appears this was not the case, and the tenancy continued after June 30, 2020.

20. On September 25, 2019, the Tenant advised Mr. Chang that the Other Tenant had moved out of the Property and asked if she needed to sign a new Tenancy Agreement. Mr. Chang advised that there was no need to do so. Mr. Chang did not advise the Complainant or her husband, with whom Mr. Chang was in contact, that the Other Tenant had moved out.

21. On March 21, 2022, Mr. Chang notified the tenant by WeChat message that the rent was to increase to $2,184 effective July 1, 2022. Mr. Chang did not serve the Tenant with the Residential Tenancy Branch ("**RTB**") Notice of Rent Increase form.

22. On June 30, 2022, the Tenant paid $2,184 for her July 2022 rent. She continued to pay this amount until November 2023, when the below described disputes regarding the termination of the Tenancy Agreement and the payment of rent arose.

23. On June 20, 2023, Mr. Chang notified the Tenant by WeChat message that the rent would increase to $2,227 starting October, 2023. Mr. Chang did not serve the Tenant with a RTB Notice of Rent Increase form.

24. On September 17, 2023, the Complainant's husband sent a voice message to Mr. Chang. I do not know what the content of that voice message was, but I infer from the context that it advised Mr. Chang that the Complainant wished to end the Tenancy Agreement because they wanted to use the Property for their family. Mr. Chang responded by a message asking for a letter in English explaining that the Complainant wanted to live in the Property and that Mr. Chang would send it to the Tenant. Mr. Chang also said that the notice will be two months and that there will be no charge for the last month's rent in compensation to the Tenant for the termination of the Tenancy.

25. On September 18, 2023, the Complainant's husband sent Mr. Chang a message in English stating that he and the Complainant would like to renovate the Property and then occupy it as a family residence. On that same date, Mr. Chang then forwarded that message to the Tenant and advised

[1] The Management Agreement refers to Mr. Chang as the "Company" and the "Department". I note that it is signed by both "Ernest Chang Realty", which was not a corporation at the time, and by "Ernest Chang Realty Property Management Department", which also does not appear to have been a corporation at the time. In my view, both "Company" and "Department" refer to Mr. Chang at the time the Management Agreement was signed and I have replaced those references with "Mr. Chang" in the above excerpts.

that the last day of the tenancy would be November 30, 2023 and that no rent would be due for November 2023.

26. Mr. Chang did not provide any advice to the Complainant or the Complainant's husband about the proper grounds for terminating a tenancy, or inquire with them about what they meant by the statement that they would be using the Property as a family residence. In particular, he did not inquire about who the Complainant intended to move into the Property after the Tenant left.

27. On September 19, 2023, Mr. Chang prepared a Two Month Notice to End Tenancy For Landlord's Use of Property (the "**Termination Notice**"). On the form, he checked the box next to "The Landlord or the landlord's spouse" and not next to "The father or mother of the landlord or landlord's spouse" in the area indicating who would occupy the Property. Mr. Chang did not review the form with the Complainant or the Complainant's husband before completing it. He delivered it to the Tenant by email on the same day and then properly served it on September 25, 2023.

28. On September 30, 2023, the Tenant attempted to send the October rent of $2,184 to Mr. Chang by e-transfer. It appears Mr. Chang accepted this payment. This is reflected as an October 3, 2023 rent deposit in Ernest Chang Realty Ltd.'s trust ledger for the Property.[2] On that day, Mr. Chang asked for the $43 increase to $2,227. That increase was not paid.

29. Sometime in September or October 2023, Mr. Chang told the Complainant verbally that he would stop managing the Property after the Tenant moved out. The Complainant's evidence confirms this. I note that Mr. Chang's evidence during the investigation largely comports with this account, though he says he told her that he would stop managing the property after the Termination Notice was sent. He does not say that he mentioned November 30, 2023 as the firm date that would occur and, as indicated in my findings below, he continued to provide services after the Termination Notice was delivered until at least November 30, 2023. He therefore could not have meant he would stop immediately after delivering the Termination Notice. I therefore find that what Mr. Chang told the Complainant at this time was that he would stop providing services after the Tenant moved out and that he did not provide a specific date.

30. On October 6, 2023, the Tenant filed an application with the Residential Tenancy Branch (the "**RTB**") to have the Termination Notice set aside and made a claim for return of a portion of her paid rent because she had been paying $2,184 in rent per month but no Notice of Rent Increase form had been served on her.

31. On October 14, 2023, the Tenant delivered her dispute notice package to Mr. Chang who forwarded it on to the Complainant's husband on October 14, 2023.

32. On October 15, 2023, Mr. Chang messaged the Complainant's husband to advise that the Complainant should hire legal counsel or attend the hearing herself.

33. On October 25, 2023, the Complainant's husband messaged Mr. Chang to ask if the Tenant had given formal notice of the Other Tenant moving out. Mr. Chang responded that one tenant moving out would not affect the monthly rent and that the Tenant had told him about the Other Tenant moving out. Included in these messages is an instruction from the Complainant's husband to Mr. Chang to continue to accept rent as long as the Tenant remains in the Property and that the Complainant or her husband had attempted to contact the Tenant but did not receive a reply. I have no evidence of how the Complainant or her husband attempted to contact the Tenant.

[2] I note that during the course of the Management Agreement, Mr. Chang transitioned from a sole proprietorship to a corporate brokerage. That fact does not appear to be at issue here. It appears the parties continued to operate under the Management Agreement.

34. On October 26, 2023, Mr. Chang messaged the Complainant's husband to state that they could not collect the rent for November because they had given the Termination Notice, but that he would need a letter from a lawyer arranging payment of the rent and agreement from the Tenant for a legal basis to collect it. He did not note that the Management Agreement had been or would be terminated.

35. On November 1, 2023, the Tenant attempted to send the November rent of $2,184 to Mr. Chang by e-transfer. This transfer was subsequently cancelled by the Tenant.

36. On December 1, 2023, the Tenant attempted to send the December rent of $2,184 to Mr. Chang by e-transfer. This transfer was never accepted by Mr. Chang.

37. The hearing before the RTB regarding the Termination Notice occurred on December 19, 2023. In that hearing, the Termination Notice was set aside fundamentally on the basis that the Arbitrator rejected the Complainant's evidence that she intended to use the Property as a family residence. The Arbitrator noted that the stated reason in the message on September 17, 2023 was to complete a "major renovation", that the Complainant provided no documentary proof of her claim that she intended to move her mother in, and that the Complainant provided "vague and non-convincing testimony". The Arbitrator found that the Complainant had failed to prove that she intended to occupy the Property as noted in the Termination Notice. The presiding arbitrator declined to address the rental overpayment issue and gave the Tenant leave to refile her application to claim for overpaid rent, which she did on December 19, 2023. The Tenant was permitted to deduct her $100 filing fee from the next month's rent.

38. On December 27, 2023, the Tenant delivered, via email, her dispute notice regarding the rent increase claim, in response, Mr. Chang emailed the Tenant to state the following "Contact owners directly, don't send me anything".

39. On January 1, 2024, the Tenant attempted to send the January rent of $2,052 to Mr. Chang by e-transfer. This transfer was never accepted by Mr. Chang.

40. On January 2, 2024, Mr. Chang messaged the Complainant's husband to ask if he should send the Tenant's deposit to the Complainant's husband or return it to the Tenant. The Complainant's husband replied to ask about whether rent had been paid for the past three months. Mr. Chang responded that he could no longer manage the property after the Termination Notice was issued and that he had already told the Complainant this. He did not mention that the Tenant had been attempting to pay him by e-transfer for several months. A discussion ensued in which Mr. Chang confirmed that he could not collect the rent because of the Termination Notice and required a letter from a lawyer to do so and the Complainant's husband expressed confusion regarding Mr. Chang's statement that he was not managing the Property.

41. On January 11, 2024, the Complainant issued a 10-Day Notice to End Tenancy for Unpaid Rent (the "**Rent Notice**") claiming $6,552.00 for unpaid rent for October, November and December, 2023. This was dated January 1, 2024 but emailed to the Tenant on January 11, 2024.

42. I note, as indicated above that the Tenant had in fact paid the October rent on September 30, 2023. Ernest Change Realty Ltd's trust ledger for the Property shows that he transferred the funds for that rent payment to "EFT-MM" which I take to be the Management to his brokerage in the amount of $137.59 on October 11, 2024 and to "EFT-LL", which I take to be a transfer to the landlord, of $2,046.41" on October 16, 2023. I find that October rent was received by Mr. Chang and remitted to the Complainant on October 16, 2023.

43. On January 12, 13, and 14, 2024, the Tenant attempted to send payments for the alleged outstanding 2023 rent to Mr. Chang by e-transfers totaling $4,500.[3] These transfers were never accepted by Mr. Chang.

44. On January 14, 2024, the Tenant attempted to resend payment of the January 2024 rent payment of $2,052. This transfer was never accepted by Mr. Chang.

45. On January 15, 2024, Ernest Chang Realty Ltd withdrew a cheque of $1,050, being the amount of the deposit under the Tenancy Agreement, from the trust funds held in relation to the Property. I find that this was paid to the Complainant or her husband.

46. On January 16, 2024, Mr. Chang sent the Tenant a WeChat message stating “916 owner manage self, contact owner directly” [*sic*].

47. The hearing for repayment of the Tenant’s claim for overpaid rent occurred on January 19, 2024. The arbitrator in that proceeding found that Mr. Chang and the Complainant had not given proper notice of the rent increase by providing the required form under the *Residential Tenancy Act*. The arbitrator ordered that the rent return to the original rent and the overpaid rent and the Tenant’s filing fee be deducted from the future rent.

48. On January 25, 2024, the Complainant emailed Mr. Chang to advise that although Mr. Chang had given verbal notice of termination of the Management Agreement in October 2023, Mr. Chang had never given a written notice of termination. The Complainant wrote that she accepted termination of the Management Agreement, though she does not indicate an effective date of that termination. The Complainant also asked for a return of the deposit under the Tenancy Agreement and any documents related to the tenancy. Mr. Chang advised that he had sent the balance of the deposit to her husband.

49. On January 26, 2024, Mr. Chang emailed the Complainant taking the position that the delivery of the Termination Notice also terminated the Management Agreement.

50. On January 30, 2024, the Tenant attempted to send the February, 2024 rent, less the amounts of overpaid rent and filing fees ordered by the RTB arbitrator on January 19, 2024, of $1,476 to Mr. Chang by e-transfer. This transfer was never accepted by Mr. Chang.

51. Also on January 30, 2024, the Complainant filed an application with the RTB seeking to have the tenant evicted on the basis of the Rent Notice.

52. On February 1 and 2, 2024, the Tenant attempted to send payment for the January 2024 rent to Mr. Chang by way of two e-transfers totaling $2,052.

53. On March 11, 2024, the RTB issued a decision regarding the Rent Notice pertaining to a hearing held on February 12, 2024. I note that the Complainant was represented by counsel in the hearing that resulted in that decision. That decision notes that the following occurred in the proceeding before the RTB:

> However, the Landlord affirms she stopped using the agent in September 2023 and that the agent directed the Tenant to pay rent directly to the Landlord. She further affirms telling

[3] The RTB, in a March 11, 2024 decision regarding the Rent Notice, mentions an additional transfer of $2,500 the Tenant attempted on January 15, 2024 for the back payment of rent for October, November, and December 2023. I have no evidence of this transfer before me. I find it would be very odd for the Tenant to have attempted to transfer $7,000 to pay claimed back rent of $6,552, particularly given the Tenant had paid the October Rent to Mr. Chang on September 30, 2023. Without documentary proof of the January 15, 2024 transfer, I decline to find it occurred. In any event, that point is not particularly relevant to this proceeding.

> the Tenant on October 20, 2023, by Wechat, to not contact, nor pay rent to, the agent anymore.
>
> The Tenant affirms receiving no direction from the Landlord's agent to stop paying rent to him; she further affirms receiving no direction from the Landlord to start paying rent directly to her.
>
> …
>
> The Tenant affirms that the Landlord never provided her with contact information, and she had no way of contacting the Landlord, including after September 2023, when the Landlord's agent allegedly stopped working with the Landlord.

54. The RTB Arbitrator found that, absent documentary proof that the Complainant or Mr. Chang communicated to the Tenant that she should pay the Complainant directly, the Tenant's version of events was more plausible.

55. On March 15, 2024, Mr. Chang emailed the Complainant to advise that he was willing to pay her the amount of lost rent as a result of the rental increase issue up to November 30, 2023, which he said was the end of this management agreement.

56. Until the date of the NOAP, the Tenant continued to occupy the Property.

Submissions

57. Mr. Chang made two sets of submissions: one on December 25, 2024 and one on January 30, 2025. I have combined his arguments for ease of reference.

58. In summary, Mr. Chang argues that he may not have followed all rules completely but "made substantial efforts to mitigate potential issues and acted in good faith." He asks for the penalties issued to be reduced or rescinded. Mr. Chang argues that the NOAP fails to account for the Complainant's own contributions to the confusion in this case. He submits that the alleged contraventions of section 34 of the Rules, concerning notice of the end of his management obligations, should be set aside because the Management Agreement had been terminated effective November 30, 2023 and because the Complainant had the duty to advise the Tenant of the change in management, not Mr. Chang.

59. He further submits that there was no "harm or material prejudice" from his actions, that he acted in good faith, that his messages and the Termination Notice effectively communicated what needed communicating.

60. He makes the below submissions on the alleged contraventions.

Section 30(a) – The Rent Increase

61. Regarding the failure to issue a proper notice of rent increase, Mr. Chang argues that he communicated the rent increases to the Tenant who acknowledged the increase and the purpose of the RTB form was fulfilled. Mr. Chang further argues that the resulting harm was "negligible". He submits that the penalty is unwarranted and should be reduced or rescinded as a result.

62. Mr. Chang submits that the $10,000 penalty is too high, is disproportionate to the harm, and should be reduced. He submits that he attempted to negotiate to pay the lost rent to mitigate the harm.

Section 30(f) – The Other Tenant

63. Regarding his failure to notify the Complainant of the Other Tenant's departure, Mr. Chang submits that he did not immediately inform the Complainant, but that the "primary tenant remained in the [P]roperty and the tenancy status did not change." He submits that minor changes in the tenancy do not require immediate notification as a matter of practicality, and that he was not negligent in thinking that the change was immaterial.

64. Mr. Chang submits that this contravention did not cause any "harm or inconvenience" and it caused no material effect on the Complainant.

65. Mr. Chang also submits as follows:

> It seems that this penalty would typically be enforced and fineable due to the high likelihood that nondisclosure of information respecting real estate services would case major material loss or at least be potentially causing loss to the client. In this case, no issue or loss was caused, so it is not in line with the mandate of the BCFSA to enforce such a harsh penalty for an administrative overlook that caused zero problems.

66. He submits that a warning letter would be more appropriate for this contravention.

Section 34 –Notice of End of Management to the Complainant

67. Regarding his failure to notify the Complainant of the termination of the Management Agreement, Mr. Chang submits that notice was unnecessary because of the Termination Notice, ending his management responsibilities as of November 30, 2023. He submits this made termination "abundantly clear" and the penalty is unwarranted.

68. Mr. Chang also submits that Clause 5 of the Management Agreement requires the Complainant to pay the Management Fee to Mr. Chang on a monthly basis. Mr. Chang argues that any breach of the Management Agreement automatically terminates the Management Agreement under Clause 7. He submits that he reasonably believed that the Management Agreement was terminated because he was not receiving payments, the Tenant was expected to vacate by November 30, 2023, and the Complainant's actions indicated "an intent to take over management responsibilities after this date." He argues that because collection of rent would cease that constituted a termination under Clause 7, rendering notice unnecessary because the Complainant's "own conduct triggered an automatic termination under the contract's provisions."

Section 34 – Notice of End of Management to the Tenant

69. Regarding the failure to notify the Tenant of the end of his management, Mr. Chang submits that, because the Management Agreement had ended effective November 30, 2023, the Complainant was obliged to notify the Tenant of the change in management and not Mr. Chang. Mr. Chang submits that it was the Complainant's failure that caused the issue here, not his. Mr. Chang argues that finding a contravention imposes an unreasonable standard by requiring him to fulfill the Complainant's obligations. Mr. Chang submits that, in any event, he notified the Tenant on December 27, 2023, thus fulfilling the substantive purpose of the rule. He submits that he acted promptly and in good faith resulting in a technical shortcoming, if any, that caused no "harm or confusion" to the Tenant. Mr. Chang also refers to the December 19, 2023 RTB decision and argues that he properly prepared and served the Termination Notice. He submits that the Complainant's unconvincing testimony and the specific mention of "a major renovation" in the September 18, 2023 message from the Complainant's husband caused the RTB to invalidate the Termination Notice. He submits that he should not be punished "for the underhanded conduct" of the Complainant.

Reasons and Findings

Applicable Legislation

70. Section 56 of RESA provides that BCFSA may designate specific provisions of RESA, the Real Estate Regulation (the "**Regulations**"), or the Rules as being subject to administrative penalties, and may establish the amounts or range of amounts of administrative penalty that may be imposed in respect of each contravention of a specified provision. Pursuant to section 56(2), the maximum amount of an administrative penalty is $100,000.

71. Section 26(1) of the Rules indicates that for the purposes of section 56(1) of RESA, contraventions of the Rules listed in section 26(2) of the Rules are designated contraventions to which Division 5 (Administrative Penalties) of Part 4 of RESA applies.

72. At the relevant time, section 26(2) of the Rules identified four categories, Category A, B, C, and D, for designated contraventions for the purpose of determining the amount of an administrative penalty. Sections 30(a), 30(f), and 34 of the Rules are placed in Category C. Section 27(3) of the Rules sets out that Category C contraventions may attract a $5,000 administrative penalty for a first contravention and a $10,000 administrative penalty for a subsequent contravention.

73. Section 57(1) of RESA sets out that if the superintendent is satisfied that a person has contravened a provision of RESA, the Regulations, or the Rules designated under section 56(1)(a) of RESA, the superintendent may issue a notice imposing an administrative penalty on the person. Section 57(2) requires that a notice of administrative penalty indicate the rule that has been contravened, indicate the administrative penalty that is imposed, and advise the person of the person's right to be heard respecting the matter.

74. Sections 30(a), 30(f), and 34 of the Rules provide as follows:

> **30** Subject to sections 31 *[modification of duties]* and 32 *[designated agency]*, if a client engages a brokerage to provide real estate services to or on behalf of the client, the brokerage and its related licensees must do all of the following:
>
> (a) act in the best interests of the client;
>
> …
>
> (f) without limiting the requirements of Division 2 *[Disclosures]* of Part 5 *[Relationships with Principals and Parties]*, disclose to the client all known material information respecting the real estate services, and the real estate and the trade in real estate to which those services relate;
>
> …
>
> **34** When providing real estate services, a licensee must act with reasonable care and skill.

Analysis

75. The imposition of an administrative penalty under section 57 of RESA is a discretionary decision. A request to reconsider the imposition of an administrative penalty requires a Hearing Officer to consider not only whether a contravention of RESA, the Regulations, or the Rules has occurred, but also whether a licensee exercised due diligence, that is: took reasonable steps or precautions, to prevent the contravention of the designated sections identified in the notice of administrative penalty. Certain contraventions, such as a contravention of section 34 of the Rules, which requires an assessment of whether the licensee acted with reasonable care and skill, include a consideration of whether the licensee acted with due diligence to determine if a contravention occurred at all. A Hearing Officer may also consider information on any extenuating circumstances

that prevented compliance, or any other information the licensee believes a Hearing Officer should consider.

Section 30(a) – The Rent Increase

76. The facts establish that Mr. Chang failed to use the correct RTB Notice of Rent Increase form required pursuant to section 42(3) of the *Residential Tenancy Act*. This was determined to be the case in the January 19, 2024 decision of the RTB noted above.

77. Mr. Chang admits he failed to use the correct form.

78. I note that Mr. Chang failed to use the correct form in both March 2022 and in June 2023 in his attempts to achieve rental increases effective July 2022 and October 2023 respectively.

79. In my view, failing to use the statutorily required from to effect a change in the rent is failing to act in the best interests of the landlord.

80. Mr. Chang has not demonstrated any degree of due diligence in this regard. He has not submitted any evidence to show that he sought out the correct form or took any steps to inform himself about the correct process.

81. Mr. Chang does submit that he provided some notice within an adequate time and received confirmation from the Tenant; however, that is largely irrelevant given the failure to use the correct form entirely undermined the Complainant's claim to the increased rent.

82. I find that Mr. Chang contravened section 30(a) of the Rules by failing to act in the best interests of the Complainant by failing to use the correct form to increase the Tenant's rent in March 2022 and June 2023.

Section 30(f) – The Other Tenant

83. The facts establish that Mr. Chang did not advise the Complainant that the Other Tenant had moved out of the Property until October 25, 2023, despite knowing that the Other Tenant had moved out in September 2019.

84. Section 30(f) of the Rules, required Mr. Chang to advise the Complainant of "all known material information respecting the real estate services, and the real estate and the trade in real estate to which those services relate". In my view, a change in the tenants occupying a property constitutes material information respecting the real estate and the real estate services provided in relation to that real estate because it constitutes a material change in the occupancy of the real estate and a material change in the persons the licensee provides real estate services between.

85. Mr. Chang does not deny that he failed to notify the Complainant, only that it did not cause a material loss to the landlord.

86. I find that Mr. Chang failed to advise the Complainant of all known material information respecting the real estate services he was providing and the real estate to which those services related by failing to advise the Complainant that the Other Tenant had moved out in September 2019 contrary to section 30(f) of the Rules.

Termination of the Management Agreement

87. Mr. Chang did not provide a written notice that he was terminating the Management Agreement and the Complainant only provided a notice that she was accepting a termination of the Management Agreement in January 2024. These facts are not in dispute; instead, Mr. Chang

argues that he was not required to give any notice of the termination because the Management Agreement had been terminated effective November 30, 2023 by the delivery of the Termination Notice or as a result of the breach of the Management Agreement by the Complainant by virtue of her failure to pay the Management Fee. Mr. Chang's argument that the Management Agreement that had been terminated underpins his arguments regarding both alleged breaches of section 34; therefore, I will first address the termination issue before squarely addressing each section 34 allegation.

88. Mr. Chang submits that the termination occurred pursuant to Clause 7 of the Management Agreement. It is not clear to me if he is also arguing that termination occurred under Clause 8, because he has not pointed to that section specifically. That said, his argument with regard to the Termination Notice could be based on Clause 8 as well. As a result, I will address both clauses below.

Termination Under Clause 7 of the Management Agreement

89. I reject the argument that the Management Agreement was terminated under Clause 7 for the following four reasons.

90. First, as a matter of contractual interpretation, Mr. Chang's argument that the Management Agreement can be terminated without any notice is untenable.

91. The termination provisions of the Management Agreement are found in Clauses 7, 8, and 9. Clauses 7 and 8 envision termination either with immediate effect or "on notice", with Clause 8 having effect 30 days from the date of the notice. Clause 9 provides for the process that will occur on termination.

92. Mr. Chang argues that Clause 7 has immediate effect on the occurrence of one of the underlying events. In my view, this is both impracticable and ignores the content of the Clause itself. I note that it also fails to address the issues identified above flowing from the lack of knowledge of a triggering event.

93. It ignores the content of the Clause because Clause 7 is not drafted to have the Management Agreement terminated on the occurrence of an event but is drafted to have the Management Agreement terminated by a party. That is, the drafting of Clause 7 provides that certain events provide the justification for a party to terminate the Management Agreement. It could have stated that the Management Agreement would be terminated by the occurrence of the listed events; instead, it breaks those events down between the parties.

94. Mr. Chang's interpretation is also impracticable because it renders the Management Agreement automatically and immediately terminated if either party breaches its terms and it does so regardless of whether either party has raised an issue or even knows of the issue. This is particularly relevant in this case because Mr. Chang breached Clause 4(A) on two occasions before the alleged termination in November 2023. Clause 4(A) required Mr. Chang to strictly comply with all "laws, rules, policies and regulations of government and regulatory authorities, in carrying out the Management duties" [*sic*]. Mr. Chang breached this provision in March 2022 and again in June 2023 when he failed to give notice of the rental increase using the statutorily required Notice of Rental Increase form. In doing so, he failed to strictly comply with the *Residential Tenancy Act* in providing his management services. Notably, neither party was consciously aware of the breaches until the RTB decided the rent increases were ineffective in January 2024. If Mr. Chang's interpretation were accurate then the Management Agreement was automatically terminated in March 2022, regardless of whether the parties knew it had happened, or the Complainant had considered that grounds to effect a termination.

95. In my view, Mr. Chang's argument hinges on the peculiar drafting of Clause 7 and a superficial reading of that clause. Such a reading creates confusion by the combination of various features of Clause 7 including the following:

    a. the use of the apparently mandatory "shall be terminated", which could require termination regardless of whether the terminating party knows a triggering event has occurred or could allow one party to breach the Management Agreement to force the other to terminate it;

    b. the immediate effect of the termination without any notice provision, which makes it unclear how the parties are to know termination has occurred;

    c. the indication that the termination is to be effected by one party, which makes it unclear if it terminates when the triggering event occurs or when the terminating party does something further to that triggering event, such as give notice;

    d. the inclusion of triggering events which include both

        i. termination by the Complainant where they sell the Property, which the terminating party, the Complainant, controls and would know about; and

        ii. termination by a party where certain events happen concerning the other party, which the terminating party does not control and may not know about; and

    e. the scope of the clause covering both events that preclude future compliance, like dissolution or "insanity", and those that do not, like a breach, a criminal conviction, or a lack of insurance.

96. In my view, the wording of Clause 7 suggests that termination requires some action by the party terminating the Management Agreement. If this were not so, it would not use the words "by the [Complainant]" or "by [Mr. Chang]" in reference to the termination. In that context, the use of the apparently mandatory "shall be terminated" is then clarified by reading it as mandating that the termination take effect immediately. Reading the clause in this way reconciles a certain incongruity in the clause as drafted. This incongruity arises because the clause provides for two types of triggering mechanisms as noted in paragraph 95(d) above. First, termination by one party when they do something, which occurs when the Complainant sells the Property. Second, termination by one party when an event happens to the other party or the other party takes some action. It reconciles those because the sale of the Property requires some positive action by the Complainant which triggers the termination and the above interpretation similarly requires some positive action by the terminating party.

97. I note that this interpretation does not fit exactly with the wording of Clause 8, which provides that "…either party shall have the right at anytime to terminate…". The use of "shall have the right" in that context does suggest that same wording could have been used in Clause 7 to express a right to terminate and the simple use of "shall", as in many of the Management Agreement's other clauses, suggests that something is mandated. That said, the two following features militate against this reading:

    a. Clause 2 provides that the renewal of the Management Agreement occurs automatically by the words "shall be renewed automatically". This indicates that the Management Agreement's drafter was conscious of a need to be explicit when they intended a clause to take effect automatically and without a party taking action.

    b. Clause 14 provides that notices "shall be given in writing and shall be sufficiently given if …", which uses the mandatory phrasing to restrict the form and delivery methods for compliant notices as opposed to requiring a party to give any particular notice. That phrasing indicates that "shall be terminated" in Clause 7 is used to restrict termination under that clause to the listed instances.

98. Further, if Clause 7 required termination on the occurrence of a triggering event, as Mr. Chang argues, it would create a perverse incentive whereby either party could immediately terminate the Management Agreement simply by breaching it, rendering Clause 8 entirely pointless.

99. Therefore, the most reasonable interpretation is that a termination under Clause 7 is achieved only by the action of a party, if the triggering events occur, and not by the mere happening of the underlying events.

100. I find that the only reasonable conclusion from the above is that Clause 7 also requires notice, which pursuant to Clause 14, must be in writing. In my view, this term is implied by the wording which states that the Management Agreement "shall be terminated immediately by" a party.

101. The leading case on implied terms in contracts is *MJB Enterprises Ltd v Defence Construction (1951) Ltd*, 1999 CanLII 677 (SCC), which stated the following:

> 27 … The general principles for finding an implied contractual term were outlined by this Court in *Canadian Pacific Hotels Ltd. v. Bank of Montreal*, 1987 CanLII 55 (SCC), [1987] 1 S.C.R. 711. Le Dain J., for the majority, held that terms may be implied in a contract: (1) based on custom or usage; (2) as the legal incidents of a particular class or kind of contract; or (3) based on the presumed intention of the parties where the implied term must be necessary "to give business efficacy to a contract or as otherwise meeting the 'officious bystander' test as a term which the parties would say, if questioned, that they had obviously assumed" (p. 775). See also *Wallace v. United Grain Growers Ltd.*, 1997 CanLII 332 (SCC), [1997] 3 S.C.R. 701, at para. 137, per McLachlin J., and *Machtinger v. HOJ Industries Ltd.*, 1992 CanLII 102 (SCC), [1992] 1 S.C.R. 986, at p. 1008, per McLachlin J.
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> …
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> 29 As mentioned, LeDain J. stated in *Canadian Pacific Hotels Ltd.*, *supra*, that a contractual term may be implied on the basis of presumed intentions of the parties where necessary to give business efficacy to the contract or where it meets the "officious bystander" test. It is unclear whether these are to be understood as two separate tests but I need not determine that here. What is important in both formulations is a focus on the intentions of the actual parties. A court, when dealing with terms implied in fact, must be careful not to slide into determining the intentions of reasonable parties. This is why the implication of the term must have a certain degree of obviousness to it, and why, if there is evidence of a contrary intention, on the part of either party, an implied term may not be found on this basis. As G. H. L. Fridman states in *The Law of Contract in Canada* (3rd ed. 1994), at p. 476:
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> > In determining the intention of the parties, attention must be paid to the express terms of the contract in order to see whether the suggested implication is necessary and fits in with what has clearly been agreed upon, and the precise nature of what, if anything, should be implied.

102. As indicated above, the Management Agreement requires that it be terminated by a party and not merely that the occurrence of some event causes the termination. In my view, it is necessary for that action to include some form of notice to the other party that the terminating party is terminating the Management Agreement. I do not think that the parties could have reasonably intended otherwise in the circumstances and requiring notice is also, in my view, the only way to give business efficacy to Clause 7 and the Management Agreement as a whole.

103. I note in this regard that Clause 7 does not explicitly require notice, but Clause 8 does. In my view, that does not defeat the implication that notice is required. Clause 7 is intended to operate immediately whereas Clause 8 is intended to provide for a period between the exercise of the right

to terminate and the effective date of the termination. In my view, that could only have been expressed by stating "30 days … notice". The word "written" is not strictly necessary because Clause 14 requires all notices to be written, but I see no way that Clause 8 could have been differently worded without the word "notice".

104. Therefore, achieving termination of the Management Agreement under Clause 7 requires some notice, in writing, that termination of the Management Agreement is intended.

105. The second reason a termination could not have been achieved under Clause 7 in the way Mr. Chang submits is that the arguments that the Termination Notice, the Complainant's husband advising Mr. Chang of the intent to terminate the Tenancy Agreement, or the failure to pay the Management Fee served as a trigger under Clause 7 are not consistent with the immediate effect of a termination under Clause 7.

106. Clause 7 provides for termination effective immediately. Mr. Chang does not submit that the Management Agreement was terminated immediately by the Termination Notice or the Complainant's husband providing notice that they wished to end the Tenancy Agreement. He says it was terminated effective November 30, 2023, which would have been the last day of the tenancy had the Termination Notice been effective. Mr. Chang continued to provide property management services through October and November 2023, including collecting rent in October 2023 and corresponding with the Tenant. Therefore, Mr. Chang did not, either in his submissions here or in conduct, consider the Management Agreement terminated effective on the date the Complainant's husband told him they intended to terminate the Tenancy Agreement or the date Mr. Chang prepared the Termination Notice.

107. As a result, Mr. Chang cannot at the same time say that the Termination Notice, or the Landlord advising they wished to terminate the Tenancy Agreement, was notice under Clause 7, which would take effect immediately, and that the Management Agreement was terminated effective November 30, 2023.

108. The same reasoning applies with regard to the failure to pay the Management Fee. On Mr. Chang's account, the Complainant failed to pay the Management Fee for November 2023, breaching the Management Agreement and triggering a cancellation. As discussed below, I disagree that the Complainant breached the Management Agreement in this way, but even if she had, that termination would take effect immediately on non-payment and not at the end of November 2023.

109. The third reason a termination could not have been achieved under Clause 7 in the way Mr. Chang submits is that the Termination Notice, or the Complainant's husband advising Mr. Chang of the intent to terminate the Tenancy Agreement, do not constitute a triggering event under Clause 7.

110. Clause 7 explicitly requires the occurrence of one of a set of triggering events. In this case and on Mr. Chang's submission, none of the triggering events had actually occurred on September 18, 2023 when the Complainant's husband advised Mr. Chang that they wished to terminate the Tenancy Agreement. At that time, the tenancy was still in place; the Property had not been sold; no breaches had been identified; neither party had become incapacitated, dissolved, or criminally convicted; the Complainant had not failed to place insurance on the Property; and the Complainant had not failed to authorize repairs. Although Mr. Chang argues that the Complainant failed to pay the Management Fee, the earliest this could have occurred was November, 2023, when Mr. Chang began refusing to accept rent from the Tenant.

111. I note also that the termination of the underlying tenancy, on its own, is not a triggering event under Clause 7 and that the Management Agreement contemplates that it would persist without a tenancy being in place. This is confirmed by Clause 4(C) and (D), which contemplate advertising and showing the Property to secure new tenants. It is also confirmed by Clause 5(B), which contemplates the payment of a half a month's rent when the existing tenant moves out. In my view,

the rationale for Clause 5(B), in context is to compensate Mr. Chang for the work done to find new tenants for the Property. Finally, Clause 5(C) contemplates the Complainant paying a retainer to Mr. Chang to cover expenses in relation to the Property in the amount of $500 or "half the most recent prevailing monthly rent if [the Property] is vacant." This clause explicitly contemplates the Management Agreement subsisting without a tenant occupying the Property.

112. I will consider the issue of the termination of the Tenancy Agreement for reasons that precluded a new tenant entering the Property in the next section of these reasons in the context of Clause 8.

113. The fourth reason a termination could not have been achieved under Clause 7 in the way Mr. Chang submits is that the Complainant did not breach the Management Agreement by failing to pay the Management Fee as Mr. Chang argues.

114. Leaving aside the issues noted above regarding the requirement for notice and the immediacy of the termination, the Management Agreement requires payment of the Management Fee "on a monthly basis." Mr. Chang argues that the Management Fee was due and payable every month and that the Complainant's failure to pay that amount for November onward breached the Management Agreement, leading to a termination of the Management Agreement under Clause 7. In my view, this is incorrect.

115. What Mr. Chang's argument fails to note is that the Management Agreement provides that the Management Fee is calculated as "6% of rent + GST". The Management Agreement does not define "rent" or set the amount of rent to be charged for the Property. In my view, the only reasonable way to interpret that calculation is that it is based on the prevailing and collected rent for the Property. If this were not the case, then it would make little sense for Mr. Chang to charge an additional amount under 4(B) to cover the period where the Property was not tenanted.

116. In that regard, I note that the practice throughout the course of the Management Agreement was that Mr. Chang would deduct the monthly Management Fee from the rents collected on the Property. This occurred throughout the tenancy from July 2018 to October 2023. Notably, Mr. Chang did not provide an owner's statement for June 2018, the month after the Management Agreement was signed and the month before the Tenant and the Other Tenant took up the tenancy. In my view, Mr. Chang did not charge a management fee for this period, if he had, he would have provided evidence of that along with the statements he did provide in this proceeding. In addition, the statements provided by Mr. Chang show that he did not charge a Management Fee in November 2023. This is consistent with his position that rent was not payable, with the fact that he refused to collect rent for November 2023, and with the interpretation that, despite Mr. Chang providing management services in November 2023, the Management Fee was calculated on actual rent owing and collected for the Property.

117. Therefore, in my view, the parties understood that the Management Fee would be paid from the proceeds of the rent collected by Mr. Chang as part of his management services. As a result, the fact that, on Mr. Chang's view, rent was not to be paid or collected for November 2023, meant that no Management Fee was payable for that period and the Complainant did not breach the Management Agreement by failing to pay that amount.

118. I conclude that the Management Agreement was not terminated pursuant to Clause 7 of the Management Agreement.

Termination Under Clause 8 of the Management Agreement

119. It is not clear to me if Mr. Chang is submitting that, in the alternative to a termination pursuant to Clause 7, the delivery of the Termination Notice, or the notice from the Complainant's husband that they intended to terminate the Tenancy Agreement and use the Property themselves,

constituted termination of the Management Agreement under Clause 8. I therefore address that argument here.

120. The force of this argument comes from the fact that the Termination Notice, and the Complainant's husband's notice to Mr. Chang to issue that notice, implies that once the Tenancy Agreement ended, Mr. Chang's rental property management services would no longer be required. In other words, the nature of the reason for the termination implies that the Management Agreement would be terminated effective December 1, 2023, once the Tenant had moved out.

121. Although there is some logic to this argument, I find that these circumstances demonstrate two reasons why that argument cannot succeed.

122. First, it was not necessarily the case, viewed from late September 2023 when Mr. Chang served the Termination Notice, that the Tenant would vacate the Property on November 30, 2023. The Tenant had the right to dispute the Termination Notice by filing an application with the RTB within 15 days of the receipt of the Termination Notice. This was specified at the top of the first page of the Termination Notice. If the Tenant did so, then she could occupy the Property until at least the RTB had heard any such application and decided on it. Given this, the mere delivery of the Termination Notice, more than two months prior to the planned end of the Tenancy Agreement, did not necessarily preclude the continued need for management services at the Property after November 30, 2023.

123. Notably, this is what in fact occurred here. Mr. Chang was aware that the Tenant had disputed the Termination Notice by October 14, 2023, when she delivered the dispute package to Mr. Chang and he forwarded it on to the Complainant. That material clearly specified that the hearing of the matter was set for December 19, 2023. I note that, during October 2023, Mr. Chang was still providing management services for the Property and had been paid by the Complainant for those services through a partial withholding by Mr. Chang of the rent for that month. I note also, that Mr. Chang did not object to the material being delivered to him, as he did with the RTB material delivered to him in December. I further note that Mr. Chang had been told by the Tenant that she intended to dispute the Termination Notice and that he had told the Complainant and her husband not to collect rent for November and afterward if the Tenant stayed in the Property.

124. In my view, it is therefore not tenable for Mr. Chang to say that the Termination Notice effected an end to the Management Agreement, because it did not logically necessitate the end of the services contemplated by the Management Agreement after November 30, 2023.

125. Second and connected to the above, Clause 8 of the Management Agreement provides for termination by either party on 30 days written notice. That duration of notice would allow Mr. Chang, if he decided he did not wish to continue providing management services after the effective date of the Termination Notice and in light of the RTB proceeding commenced by the Tenant, to make the election to terminate the Management Agreement. It would also allow the Complainant to elect to terminate in late October, 2023 if the Tenant had not disputed the Termination Notice. Therefore, as a matter of practicality, the mere delivery of the Termination Notice, which could be challenged and set aside, as it was in this case, would not constitute a termination of the Management Agreement on its own and a notice of termination of the Management Agreement was necessary.

126. In my view, the same could be said for the Complainant's husband's September 18, 2023 message to Mr. Chang. I do not infer from that message an intent to terminate the Management Agreement effective November 30, 2023, regardless of how the Tenant reacted, and "take over management responsibilities after this date".

127. I note in this regard that the Complainant's evidence before the RTB on February 12, 2024 appears to have been that she "stopped using [Mr. Chang] in September 2023 and that [Mr. Chang]

directed the Tenant to pay rent directly to the [Complainant]" and that she told "the Tenant on October 20, 2023, by Wechat, to not contact, nor pay rent to, the agent." This finding and evidence gives me some pause; however, I am of the view that this, largely self-serving evidence does not reflect the underlying facts given that I have no documentary evidence that Mr. Chang told the Tenant to pay funds directly to the Complainant nor any evidence of messages between the Complainant and the Tenant. In regard to the former, I find that if they existed, Mr. Chang would have produced them in response to the allegation that he failed to tell the Tenant about the end of his management services. In regard to the latter, I find that if any such messages existed, the Complainant would have produced them to the RTB, and the RTB Arbitrator explicitly notes that no such evidence was submitted. Further, the documentary evidence in this matter, including the correspondence between the Complainant, her husband, and Mr. Chang in the fall of 2023 and in January 2024 indicate that there was substantial confusion about the status of the Management Agreement and that as late as January 2024, the Complainant determined it necessary to issue a written notice of termination of the Management Agreement. I therefore find, as the RTB Arbitrator did, that the position expressed by the Landlord in that proceeding was not credible.

128. I therefore find that the Termination Notice and the Complainant's husband's messages to Mr. Chang in September 2023 did not effect a termination of the Management Contract as alleged by Mr. Chang. In my view, a separate written notice of termination would have been required to achieve that termination.

Section 34 –Notice of End of Management to the Complainant

129. Turning to the question of section 34, the question before me is whether a reasonably prudent licensee would have failed to deliver a written notice to the Complainant to terminate the Management Agreement.

130. In my view, it was unreasonable for Mr. Chang to have concluded that the Termination Notice or the communications with the Complainant's husband in September 2023 sufficiently indicated the Complainant's intention to end the Management Agreement. Although, as indicated above, there is some logic to that conclusion, anyone familiar with the *Residential Tenancy Act* and the process for terminating a tenancy to permit an owner to use a property, could easily have foreseen a scenario in which ongoing property management services were required after November 30, 2023. Therefore, absent explicit communication from either party I do not find it was reasonable for Mr. Chang, the party to the Management Agreement with presumably greater understanding of residential tenancies, to conclude that his services were necessarily no longer required after November 30, 2023.

131. If Mr. Chang in fact believed his services should end effective November 30, 2023, perhaps because a dispute regarding the tenancy might result in rent not being paid and therefore his Management Fee not being paid, it was unreasonable for him to assume that giving notice of termination of the Tenancy Agreement was sufficient to also terminate the Management Agreement.

132. I do not agree with Mr. Chang's submission that it was "abundantly clear" that the Management Agreement would come to an end on November 30, 2023.

133. I note in this regard, that Mr. Chang was required to act in his client's best interest and to advise her of all material information regarding his real estate services. In my view, both of those duties suggest it is unreasonable for a licensee to be anything less than clear in regard to the termination of their services.

134. I also note in this regard the Complainant acknowledges Mr. Chang told her in September or October 2023 that he would stop managing the Property when the Tenant vacated. The trouble with this statement is that it was not sufficiently clear to communicate to the Complainant that

Mr. Chang considered his duties would end after November 30, 2023, as evidenced by the course of communication from October 2023 to January 2024. In my view, this verbal statement indicated instead that Mr. Chang would continue to be involved until the Tenant vacated the Property, which had not happened by the time of the termination discussions between the Complainant and Mr. Chang in January 2024.

135. I find that a reasonably prudent licensee in Mr. Chang's position would have issued a written notice of termination of the Management Agreement if they intended it to terminate on November 30, 2023.

136. I therefore find that Mr. Chang failed to act with reasonable care and skill in failing to deliver a written notice of termination of the Management Agreement to the Complainant.

Section 34 – Notice of End of Management to the Tenant

137. Similarly to the above discussion, the question before me is whether a reasonably prudent licensee in Mr. Chang's position would have failed to notify the Tenant to contact the Complainant directly.

138. Mr. Chang submits in response to this allegation that it was the Complainant's obligation to notify the Tenant, not his. In my view, this argument cannot be supported for the following reasons.

139. First, Mr. Chang's responsibilities under the Management Agreement clearly included corresponding with the Tenant about issues regarding the Property and liaising between the Complainant and the Tenant. For example, Mr. Chang attempted, although not in the proper form, to communicate rent increases from the Complainant to the Tenant and he routinely confirmed receipt of rental payments from the Tenant. In addition, he acted as the intermediary to communicate the Termination Notice to the Tenant, along with the Complainant's husband's September 18, 2023 message.

140. In my view, it therefore fell within Mr. Chang's management duties to communicate a pending change in the management of the Property to the Tenant. Mr. Chang appears to generally accept this proposition, but takes the view that, after November 30, 2023, the Complainant had the duty to communicate the change. What Mr. Chang ignores in making this submission is that he continued to have management obligations until November 30, 2023. Even if his account of the termination of the Management Agreement were correct, he had more than two months to communicate to the Tenant that she should contact the Complainant directly after November 30, 2023. Mr. Chang, knowing that he intended his management duties to end after November 30, 2023, provided the Tenant with no notice of this fact.

141. I note in this regard that over the course of October and November 2023, the Tenant delivered her RTB materials to Mr. Chang for service on the Complainant, paid the October 2023 rent to Mr. Chang, and attempted to pay rent to Mr. Chang for November 2023. Although all of this fell within Mr. Chang's usual role as the property manager during that time, it should have signaled to him that he needed to advise the Tenant of the coming change in management.

142. Therefore, even if Mr. Chang is correct, and the Management Agreement was terminated effective November 30, 2023, a reasonably prudent licensee in his circumstances still would have, before November 30, 2023, told the Tenant in writing to contact the Complainant directly thereafter.

143. I note further that, in my view, Mr. Chang's management responsibilities continued after November 30, 2023 until at least January 2024. As I found above, a reasonably prudent licensee in Mr. Chang's situation would have issued a written notice of termination of the Management Agreement if they intended to terminate the Management Agreement effective November 30, 2023. It was unreasonable for Mr. Chang to conclude that the Termination Notice was sufficient to

do so. In my view, a reasonably prudent licensee would have realized this and known that the Management Agreement continued to be in effect, absent the required written notice of termination. That leads directly to the result that Mr. Chang had the ongoing obligation to communicate with the Tenant after November 30, 2023 and absent a termination of the Management Agreement.

144. During that period, Mr. Chang failed to advise the Tenant to contact the Complainant directly until December 27, 2023, despite the Tenant continuing to attempt to pay rent by e-transfer to Mr. Chang. In those circumstances, I find that it became increasingly unreasonable for Mr. Chang to have failed to take some action in November and December 2023. That either required Mr. Chang to confirm his role as manager or terminate the Management Agreement and advise the Tenant of the change.

145. Finally, even after Mr. Chang's December 27, 2023 email, the Tenant continued to attempt to pay rent to Mr. Chang and he took no action to clarify the situation with the Tenant. The evidence also indicates, and I find, that he failed to advise the Complainant of the ongoing attempts by the Tenant to pay. In those circumstances, it was unreasonable for Mr. Chang to have failed to follow up more explicitly with the Tenant regarding his role.

146. I therefore find that a reasonably prudent licensee in Mr. Chang's circumstances would have advised the Tenant in writing, before November 30, 2023, that he was no longer managing or intended to no longer manage the Property; accordingly, Mr. Chang failed to act with reasonable care and skill.

147. As a result, I find that Mr. Chang failed to act with reasonable care and skill when he failed to advise the Tenant in writing that he was or intended to no longer manage the Property.

Penalty Amount

148. The penalty amounts issued in this case are the minimum prescribed monetary penalty amounts for first contraventions of sections 30(f) and 34 totaling $15,000, plus the minimum prescribed monetary penalty amount for a second contravention of section 30(a) being $10,000.

149. In my view, the penalty amount issued for the section 30(f) contravention was reasonable. I note in this regard that Mr. Chang did not, by the section 30(f) contravention, cause any clear harm to the Complainant. I also accept that Mr. Chang did not intend to cause harm or act in bad faith. However, I do not accept that he acted in "good faith" in regard to this contravention. In my view, demonstrating "good faith" requires more than a lack of bad faith and requires some positive action, which Mr. Chang did not take.

150. In my view, the contravention of section 30(f) created a substantial risk to the Complainant because it changed the nature of the occupancy of the Property which could have changed the likelihood of default on the payment of rent because only one tenant remained present and motivated to pay the rent. There is no question that Mr. Chang should have informed the Complainant of the change in occupancy. The fact that no damage materialized in this case from Mr. Chang's failure merely supports issuing an administrative penalty as opposed to pursuing a disciplinary proceeding and the increased sanctions that could come with that. If the Complainant had been harmed, Mr. Chang could have faced a much larger penalty at a discipline hearing with regard to this contravention.

151. I do note that an order for remedial education may have been in appropriate in regard to the section 30(f) contravention, but given the contravention impacted a core duty to his client and is echoed by his communication failures under sections 34, I do not find that a monetary penalty is inappropriate.

152. I note that Mr. Chang has previously received a letter of advisement for a contravention of the predecessor to section 30(f) shortly before the conduct in this matter occurred. In my view, this weighs against the argument that a warning letter is appropriate and in favour of the issuance of an administrative penalty for this contravention.

153. I further note that this contravention continued for four years, until Mr. Chang advised the Complainant's husband in October 2023 that the Other Tenant had moved out.

154. I therefore confirm the administrative penalty for the section 30(f) contravention.

155. Regarding the section 34 contraventions, I find that Mr. Chang did cause some harm to the Complainant and the Tenant by creating ongoing confusion regarding his role. This confusion was caused by his lack of communication from October 2023 to January 2024 and largely led to the Complainant's attempts to evict the Tenant for non-payment of rent. I reject Mr. Chang's argument that he acted in good faith in regard to the section 34 contraventions. As noted above, establishing good faith requires more than an absence of bad faith; Mr. Chang would need to show he took some positive action to avoid this situation. In my view, Mr. Chang assumed the Management Agreement would be terminated on November 30, 2023 and that everyone else understood this, despite the mounting indications to the contrary. Mr. Chang cannot be said to have acted in good faith in the face of obvious misunderstandings by the Tenant and the Complainant.

156. In my view, the section 34 and section 30(f) contraventions and the background facts demonstrate a consistent course of conduct in which Mr. Chang views his role and duties as limited and consistently fails to effectively communicate with his client and other parties. I note in this regard that Mr. Chang failed to inquire with the Complainant or her husband about the exact reasons they wanted to terminate the Tenancy Agreement when the RTB form had check boxes corresponding to planned occupation by the landlord, the landlord's child, or the landlord's parent. I view that failure as emblematic of Mr. Chang's communication failures and his view of his limited role as a licensee.

157. It does not appear that Mr. Chang has appreciated that his failure to communicate is what has caused the problems in this case.

158. I therefore find that the penalty amounts issued in relation to the section 34 contraventions are warranted. I confirm the administrative penalties for the section 34 contraventions.

159. Regarding the section 30(a) contravention, Mr. Chang clearly failed to implement the rent increase properly. This caused the Complainant harm. I do not accept Mr. Chang's argument that the harm was as small as he portrays it because the harm is ongoing and will continue until the end of the Tenancy Agreement because rent increases are limited by statute. The statutory limit on rent increases means that a failure to properly increase rent on one occasion will limit the ability to increase it later. This fact also limits the mitigating value of Mr. Chang's offer to pay the deficiency in rent up to November 30, 2023 given the impact of his failure continued well beyond that date.

160. I do accept that Mr. Chang may have acted negligently, but in good faith. He took the positive action to attempt the rent increases and the Tenant confirmed his messages, but he failed to effect them properly using forms he should have known to use.

161. That said, given Mr. Chang's conduct stems from a fundamental failure to understand RTB processes, which I take to be a basic requirement of a residential rental property manager, I am of the view that a $10,000 penalty would be appropriate in the case of a subsequent contravention of section 30(a); however, for the following reason, I conclude that I am required to cancel the administrative penalty for the section 30(a) contravention.

162. The sanction issued in this case for the section 30(a) contravention was $10,000, being the amount prescribed for a subsequent contravention of section 30(a). Mr. Chang was previously issued an administrative penalty on May 28, 2024 for a contravention of section 30(a). The conduct that led to that administrative penalty occurred in July and August 2022.

163. Section 57(2)(d)(i) of RESA provides that, if the recipient of an administrative penalty does not request an opportunity to be heard, they are deemed to have admitted the misconduct alleged in the notice. Mr. Chang did in fact request an opportunity to be heard and therefore was not deemed to have contravened section 30(a) as alleged in the May 28, 2024 notice. Instead, he was determined to have contravened section 30(a) on November 5, 2024 when I issued a decision to confirm the administrative penalty: *Chang (Re)*, 2024 BCSRE 86.

164. In this case, Mr. Chang contravened section 30(a) by failing to issue the required RTB rent increase form in March 2022 and again in June 2023. The first of those two failures occurred several months before after the conduct at issue in the May 28, 2024 administrative penalty and the second occurred more than a year after the conduct at issue in the May 28, 2024 administrative penalty. The conduct all preceded the issuance of the May 28, 2024, administrative penalty, which obviously predates the November 5, 2024 decision confirming the penalty.

165. Generally, for a person's conduct to be considered a "subsequent" contravention it is not sufficient that the conduct in the first case preceded the conduct in the second. It is not even sufficient that the person be found liable and sanctioned in the first case before they are found liable and sanctioned in the second. For the contravention to be "subsequent", the contravening conduct must occur after the person has been found liable and sanctioned for the conduct in the first case. This proposition is sometimes known as "Lord Coke's Rule" and has applied for in the context of criminal penalties since at least the 17th Century: see *R v Skolnick*, [1982] 2 SCR 47 at p 53 citing *O'Hara v Harrington*, [1962] Tas SR 165 at p 169.

166. The rationale for this rule was stated in *R v Cheetham*, 1980 CanLII 2978 (ON CA) at p 113 as follows:

> "However it may be expressed, the rationale for the rule is plain. It is expected that the conviction and penalty for the initial offence and the peril of a more severe penalty for a subsequent offence will be present in the mind of the offender and guide his future conduct.

167. Lord Coke's Rule has been found to apply to regulatory sanctions and not just criminal ones unless the statute under which the sanction is imposed expressly provides otherwise: *Mitran v British Columbia (Superintendant of Motor Vehicles)*, 2001 BCSC 500.

168. An example of statutory wording that has been found to oust Lord Coke's Rule is in *Skybar Ltd v British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 62. In that case, the Court of Appeal considered whether a breach of a condition of a Liquor Primary Licence for a nightclub for was a "first" or "second" contravention within the meaning of the regulatory scheme. Both contraventions were for overcrowding and happened on separate nights about a month apart. The licensee was fined in relation to the first contravention. The fine was payable because of Skybar Ltd's admission by waiver, which occurred about a month after the conduct giving rise to the second contravention had occurred. The second contravention was then confirmed approximately nine months later. The licensee was penalized for the second contravention on an increased scale on the basis of that it was "second" within the meaning of the legislation. The relevant regulations in that case contained definitions for when contraventions were "first", "second", or "subsequent" which relied on the date of the commission of the contravention and also contained a definition of a "finding of contravention" related to the date of the agreement to a finding of a contravention or the date of a determination by the regulator. The Court concluded that these definitions indicated that "the question of whether a contravention is a first, second, or subsequent contravention depends on the timing of the commission of the

contraventions, not on the timing of a finding that they have been committed": para 14. Therefore, the Court determined that the legislation explicitly ousted Lord Coke's Rule and the second contravention was "second" within the meaning of the scheme.

169. RESA and the Rules contain no specialized definition of the word "subsequent" or of the word "contravention" that would apply in this case. There are definitions of "contravention" in sections 43 and 49 of RESA, but those only apply within those sections and are therefore not relevant here. Further, there is nothing in the drafting of section 26 or 27 of the Rules that indicate any intention contrary to Lord Coke's Rule. I therefore find that Lord Coke's Rule applies to section 27 of the Rules and for a contravention to be subsequent there must be a preceding contravention for which the licensee was found liable before they committed that subsequent contravention.

170. As a result, the contravention of section 30(a) in this case, having happened before the previous administrative penalty and the decision on that penalty, is not subsequent and therefore cannot attract the increased monetary penalty of $10,000. Having made this finding, I decline to address the issue that some of the conduct at issue dates from before the conduct that gave rise to the May 28, 2024 issued notice of administrative penalty.

171. My authority in this matter includes only the power to confirm or cancel the administrative penalties issued. If I cancel the administrative penalty, I may refer the matter to a discipline hearing if I am "satisfied that issuing the notice [of discipline hearing] is more appropriate than imposing the administrative penalty".

172. In my view, matters are more appropriate to deal with by way of discipline hearing where there is an issue as to whether the administrative penalty was the appropriate form of regulatory intervention, as opposed to another type of order under section 43(2) of RESA. It may also be more appropriate to issue a notice of discipline hearing where there are unresolvable factual disputes that must be resolved by way of oral evidence or the procedural powers that accompany discipline hearings are required, though I do note that opportunities to be heard under section 57 of RESA could proceed orally in whole or in part in appropriate circumstances under section 126.1 of RESA.

173. In my view, the nature of the section 30(a) contravention, Mr. Chang's culpability for it, and the consequences of it do not indicate that proceeding by way of a discipline hearing would be more appropriate than issuing an administrative penalty. Either mode of proceeding could have been appropriate and nothing about the discipline hearing process appears to favour it over the administrative penalty process.

174. I note in this regard that, while Mr. Chang does submit that a warning letter might be a more appropriate response in regard to some of the contraventions, in my view that does not address the question of whether a discipline hearing is more appropriate than an administrative penalty. In any event, as indicated above, I find that the penalties issued in this case, absent the concern regarding Lord Coke's Rule, were appropriate.

175. I therefore cancel the administrative penalty for the section 30(a) contravention and decline to issue a notice of discipline hearing for that contravention.

Conclusion

176. I find that Mr. Chang contravened the following sections of Rules as follows:

    a. Section 30(a) by failing to increase the rent under the Tenancy Agreement using the form required under the *Residential Tenancy Act* in March 2022 and June 2023;

    b. Section 30(f) by failing to promptly advise the Complainant that the Other Tenant had moved out of the Property in September 2019;

c. Section 34 by failing to advise the Complainant in writing that the Management Agreement was terminated; and

d. Section 34 by failing to advise the Tenant in writing to contact the Complainant directly with regard to the Tenancy over the period from September 2023 to January 2024.

177. I confirm each of the $5,000 administrative penalties for the contraventions of sections 34 and 30(f), totaling $15,000.

178. I cancel the administrative penalty for the contravention of section 30(a) of the Rules on the basis that the contravention is not “subsequent” within the meaning of the Rules.

179. The administrative penalties of $15,000 are now due and payable to BCFSA.

DATED at North Vancouver, BRITISH COLUMBIA, this 10 day of March, 2025.

“Original signed by Gareth Reeves”

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Gareth Reeves
Hearing Officer