

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

AND

IN THE MATTER OF

**DIANA CHARLENE DELANEY
(140486)**

CONSENT ORDER

RESPONDENT:	Diana Charlene Delaney, Managing Broker, Delaney Properties Ltd.
DATE OF REVIEW MEETING:	May 17, 2017
DATE OF CONSENT ORDER:	June 23, 2017
CONSENT ORDER REVIEW COMMITTEE:	R. Holmes, Q.C., Chair E. Mignosa T. Styffe M. Leslie
ALSO PRESENT:	E. Seeley, Acting Executive Officer G. Thiele, Director, Legal Services Esther Jeon, Legal Counsel for the Real Estate Council

PROCEEDINGS:

On May 17, 2017, an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Diana Charlene Delaney was considered by the Consent Order Review Committee (the "Committee") but not accepted. On June 16, 2017, a revised ASF acceptable to the Committee was submitted by Diana Charlene Delaney.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by the Council and by Diana Charlene Delaney.

NOW THEREFORE, the Committee having made the findings proposed in the attached ASF, and in particular having found that Diana Charlene Delaney committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* (RESA), orders that:

1. Diana Charlene Delaney be reprimanded;

2. Diana Charlene Delaney pay a discipline penalty to the Council in the amount of \$5,000 within ninety (90) days of the date of this Order;
3. Diana Charlene Delaney, at her own expense, register for and successfully complete the Rental Property Management Remedial Education Course, as provided by Sauder School of Business at the University of British Columbia in the time period as directed by the Council;
4. Diana Charlene Delaney provide real estate services in respect of trading, rental property management and strata management services and engage in managing broker responsibilities in a manner that meets the requirements of the RESA, the Regulations, Rules, bylaws and all other applicable legislation(s) (the "Requirements");
5. Diana Charlene Delaney be subject to an audit, at her expense, to confirm compliance with the Requirements in accordance with the conditions on her licence as set out in **Schedule A** to this Order (the "Conditions"); and
6. Diana Charlene Delaney pay enforcement expenses of this Consent Order to the Council in the amount \$1,500 within sixty (60) days from the date of this Order.

If Diana Charlene Delaney fails to comply with any term of this Order, the Council may suspend or cancel her licence without further notice to her, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 23rd day of June, 2017 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



R. Holmes, Q.C., Chair
Consent Order Review Committee

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

IN THE MATTER OF

DIANA CHARLENE DELANEY
(140486)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Diana Charlene Delaney ("Ms. Delaney") and the Real Estate Council of British Columbia ("Council").

- A. Ms. Delaney hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* (the "RESA") that:
1. she be reprimanded;
 2. she be liable to pay to the Council a discipline penalty in the amount of \$5,000.00 within ninety (90) days from the date of this Order;
 3. at her own expense, register for and successfully complete the Rental Property Management Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period directed by the Council;
 4. she will provide real estate services in respect of trading, rental property management and strata management services and engage in managing broker responsibilities in a manner that meets the requirements of the RESA, the Regulations, Rules, bylaws and all other applicable legislation(s) (the "Requirements");
 5. she be subject to an audit, at her expense, to confirm compliance with the Requirements in accordance with the conditions on her licence as set out in **Schedule A** to this Order (the "Conditions");
 6. she pay enforcement expenses pursuant to section 44 of the RESA in the amount of \$1,500.00 within sixty (60) days from the date of the Consent Order; and
 7. if she fails to comply with any of the terms of the Order as set out above, a Discipline Committee may suspend or cancel her licence without further notice to her pursuant to section 43(3) and 43(4) of the RESA.
- B. As a basis for this Order, the Council and Ms. Delaney acknowledge and agree that the facts set forth herein are correct:

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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1. Ms. Delaney was at all relevant times licensed as a managing broker with Delaney Properties Ltd. ("Delaney Properties").
2. Ms. Delaney's licensing history is as follows:

Start Date	End Date	Brokerage	Licence Level	Licence Category
03/06/2016	Present	Delaney Properties Ltd. (X030770)	Managing Broker	Trading, Rental, Strata
01/04/2015	03/06/2016	Delaney Properties Ltd. (X030770)	Managing Broker	Rental, Strata
01/04/2013	31/03/2015	Delaney Properties Ltd. (X030770)	Managing Broker	Rental, Strata
12/04/2011	01/04/2013	Century 21 Executives Realty Ltd. (X026640)	Representative	Rental, Strata
12/04/2009	11/04/2011	Century 21 Executives Realty Ltd. (X026640)	Representative	Rental, Strata
12/04/2007	11/04/2009	Century 21 Executives Realty Ltd. (X026640)	Representative	Rental, Strata
28/02/2007	11/04/2007	Century 21 Executives Realty Ltd. (X026640)	Representative	Rental, Strata
31/08/2006	28/02/2007	Century 21 Executives Realty Ltd. (X026640)	Managing Broker - Strata Representative - Rental	Rental, Strata
11/01/2006	31/08/2006	Century 21 Executives Realty Ltd. (X026640)	Representative	Rental, Strata
12/04/2005	11/01/2006	Century 21 Executives Realty Ltd. (X026640)	Representative	Rental

3. This matter relates to the management of a rental property located at #X-XX00 Heritage Drive, Vernon, B.C. (the "Property") by Delaney Properties.
4. By way of background, on or about February 20, 2008, the owners of the Property (the "Owners") entered into a rental property management agreement with Century 21 Executives Realty Ltd. ("Century 21") with respect to the Property (the "Service Agreement"). Ms. Delaney, licensed as a representative with Century 21 at the time, was the designated rental property manager.
5. On March 25, 2013, Century 21 advised the Owners that effective April 1, 2013, the Service Agreement will be assigned to Ms. Delaney's new brokerage, Delaney Properties. The Owners provided their written authorization to transfer their funds held in trust by Century 21 to the trust account of Delaney Properties.
6. On March 27, 2013, Century 21 assigned the Service Agreement to Delaney Properties.
7. On April 1, 2013, Delaney Properties became licensed with the Council. Also on April 1, 2013, Ms. Delaney's licence was transferred from Century 21 to Delaney Properties and upgraded to managing broker.

8. On May 22, 2015, Delaney Properties entered into a residential tenancy agreement with D.S. and J.S. (the "Tenants") on behalf of the Owners for a one-year term at \$975.00 per month in rent, commencing June 1, 2015 (the "Tenancy Agreement").
9. An addendum to the Tenancy Agreement was struck setting out that there would be one cat in the Property. The Tenancy Agreement stipulated that a pet damage deposit was not applicable. The Owners were not consulted on allowing a cat in the Property, nor would they have agreed to waive the pet deposit had they been made aware of the cat.
10. On June 4, 2015, Ms. Delaney sent an e-mail to the Owners, reporting that the Tenants had moved into the Property, and that they wished to stay long term and pay additional \$100.00 per month in rent if the Owners were willing to renovate the Property by installing new floors and appliances.
11. On June 4, 2015, the Owners confirmed that they were willing to renovate the Property as requested by the Tenants in exchange for increase in rent by \$100.00 per month.
12. On June 5, 2015, Ms. Delaney replied to the Owners and said: *"This is great news, the tenants will be thrilled. Yes, I will have them sign a new agreement at the rent of \$1,075.00"*.
13. From June 11, 2015 to July 2, 2015, Ms. Delaney corresponded further with the Owners about renovations and provided various quotes for replacing appliances and floors.
14. The Owners say that on or about June 12, 2015, they spoke to Ms. Delaney, discussed some quotes, and confirmed once again that the tenants would pay additional \$100.00 per month upon completion of the renovations, and that Ms. Delaney would execute a new lease agreement with the Tenants to reflect the increase in rent.
15. In July 2015, the Owners completed the said renovations, the total cost of which amounted to approximately \$3,445.79.
16. On August 19, 2015, the Owners received a monthly statement by e-mail from Delaney Properties and noticed that the Tenants only paid \$975.00 in rent for August 2015, not \$1,075.00.
17. On August 19, 2015, the Owners e-mailed Ms. Delaney's administrative assistant and asked when the Tenants would start paying the additional \$100.00 per month in rent. There was no response.
18. On August 27, 2015, the Owners sent an e-mail to Ms. Delaney asking when the Tenants will start paying \$1,075.00 in rent. There was no response from Ms. Delaney.
19. On September 1, 2015, the Owners sent another e-mail to Ms. Delaney requesting a response to their question. There was no response from Ms. Delaney.
20. From September 3, 2015 to September 17, 2015, the Owners were out of the country. They did not receive a call or e-mail from Delaney Properties during this time.
21. On September 18, 2015, the Owners called Delaney Properties and they were advised by Ms. Delaney's assistant that the Tenants refused to pay the increase in rent. They were also

advised that Ms. Delaney would call them later that day. Ms. Delaney did not call the Owners that day.

22. On September 21, 2015, the Owners called Ms. Delaney. Ms. Delaney explained that the Tenants refused to honour the agreement to increase the rent by \$100.00 because *"they [had not] signed anything"*. Ms. Delaney disclosed at this time that the verbal agreement with the Tenants to increase the rent was not reduced to writing.
23. Also on September 21, 2015, the Tenants e-mailed Ms. Delaney and requested reimbursement for cleaning expenses that were allegedly incurred when they moved into the Property. The Tenants also explained that they learned after the fact that unless there is an agreement in writing, rent can only be increased by 2.9% after the first year.
24. On September 22, 2015, Ms. Delaney responded to the Tenants describing the details of their verbal agreement and said: *"Now you see the predicament that you have put me in, as now you want them to further reimburse you \$200-\$300 for cleaning when you moved in, when the owners have put out \$3,500 to upgrade the unit"*.
25. On September 28, 2015, the Owners e-mailed Ms. Delaney and stated, among other things, that the shortfall in rent as a result of her mistake was at least \$1,000.00. The Owners also asked Ms. Delaney to send all documentation regarding the management of the Property.
26. There was no response from Ms. Delaney.
27. On October 13, 2015, the Owners asked Ms. Delaney for a response to their September 28, 2015 e-mail.
28. There was no response from Ms. Delaney.
29. On October 23, 2015, the Owners asked Ms. Delaney for a response to their September 28, 2015 e-mail.
30. On October 29, 2015, Ms. Delaney responded to the Owners, apologized for the delay and explained that she had been trying to *"figure out how to resolve the issues"*. Ms. Delaney attempted to convince the Owners that the current rent of \$975.00 was justifiable and that she was managing the Property at a reduced rate. Ms. Delaney proposed that she issue *"a 10 day notice to vacate each month that they are late with their rent"*, and with three such notices, the Tenants could be evicted. Ms. Delaney disclosed in this e-mail that the Tenants had been paying rent late every month since June 2015.
31. Prior to this communication, the Owners were not aware that the Tenants were late in paying rent every month.
32. On or about November 8, 2015, the Owners sent a letter to Ms. Delaney with a detailed response, rejected her proposal and set out the following two alternative options for restitution:
 - (i) One option was for Delaney Properties to continue managing the Property but pay the deficiencies in rent to the Owners until the end of the Tenancy Agreement or until the Tenants vacate the Property, whichever occurs first;

- (ii) The other option was to terminate the Service Agreement, with a payment of \$1,000 from Delaney Properties to the Owners.
 - 33. In the November 9, 2015 letter, the Owners again requested that Ms. Delaney provide all documentation relating to the management of the Property, and asked for a response by November 16, 2015. Ms. Delaney did not respond to by that date.
 - 34. On November 23, 2015, the Owners e-mailed Ms. Delaney to follow up on their letter dated November 9, 2015.
 - 35. By e-mail dated November 30, 2015, Ms. Delaney sent notice by e-mail to the Owners terminating the Service Agreement. She did not offer any payment to the Owners.
 - 36. Effective January 31, 2016, the management of the Property was transferred from Delaney Properties to RE/MAX Commercial Solutions ("RE/MAX"). In the process of transferring the file, further deficiencies in the management of the Property were discovered:
 - (i) Ms. Delaney did not complete a move-in condition inspection together with the Tenants at the start of the tenancy. Ms. Delaney says that they could not "*see everything upon initial walk through*" and hence, provided a copy of the move-in condition inspection report for the Tenants to complete but it was not returned to her;
 - (ii) Ms. Delaney did not seek the Owners instructions on allowing a pet in the Property. The Owners only learned at the time of transferring the file that Ms. Delaney allowed a cat in the Property, which was alarming but more so because a pet deposit was not collected.
 - 37. Ms. Delaney does not have a previous discipline history with the Council.
- C. Proposed Acceptance of Findings and Waiver
- 1. Based on the Agreed Statement of Facts herein, Ms. Delaney is prepared to accept the following findings if made against her by the Council's Consent Order Review Committee:
 - (a) Ms. Delaney, in her capacity as managing broker of the said brokerage and as the rental property manager for the Property, committed professional misconduct within the meaning of section 35(1)(a) of the RESA, in that contrary to section 6(2)(b) of the RESA and section 3-1(1)(b) of the Rules, she failed to ensure that the business of the brokerage was carried out competently and in accordance with the RESA, regulations, rules and bylaws. In particular:
 - i. contrary to sections 3-3(a), 3-3(b), 3-3(c) and 3-4 of the Rules, she failed to act in the best interests of the client, failed to act in accordance with the lawful instructions of the client and acted outside of the scope of authority given by the client, in that she:
 - 1. allowed the Tenants to possess a cat in the Property without authorization from the Owners;

2. waived the pet deposit for the Tenants without authorization from the Owners;
 3. failed to secure a written agreement with the Tenants to increase the monthly rent by \$100.00 in exchange for renovations on the Property, contrary to the Owners' instructions to have the agreement in writing; and
 - ii. contrary to sections 3-3(a) and 3-3(f) of the Rules, she failed to act in the best interests of the client and failed disclose to the client all known material information respecting her property management services, in that she:
 1. failed to disclose to the Owners that the verbal agreement with the Tenants to increase monthly rent by \$100.00 was not reduced to writing;
 2. failed to disclose to the Owners that the Tenants refused to honour the verbal agreement for higher rent, despite numerous requests from the Owners for explanation on why the Tenants continued to pay the lower rent following completion of renovations on the Property;
 3. failed to disclose to the Owners that the Tenants had been paying rent late each month, which information was not disclosed to the Owners until almost five months after the commencement of the tenancy;
 4. failed to provide the Owners with documents relating to the management of the Property despite their repeated requests to do so; and
 - iii. contrary to section 3-3(a) and 3-4 of the Rules, she failed to act in the best interests of the client and with reasonable care and skill, in that she failed to complete a move-in condition inspection with the Tenants at the start of the tenancy in accordance with section 23 of the *Residential Tenancy Act*.
2. Ms. Delaney hereby waives her right to appeal pursuant to section 54 of the RESA.
3. Ms. Delaney acknowledges that she has been advised that she has the right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Ms. Delaney acknowledges and is aware that the Council will publish the Consent Order and penalty herein in its Report from Council newsletter, on the Council's website, and on CanLII, a website for legal research.
5. Ms. Delaney acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the RESA, to appeal any decision of the Council, including this Agreed Statement of Facts, Proposed Acceptance of Findings, and Waiver and Consent Order.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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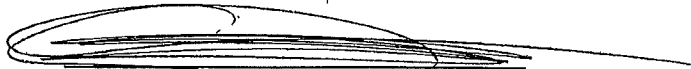
6. The Agreed Statement of Facts and Proposed Acceptance of Findings contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. Such agreed statement of facts and proposed acceptance of findings cannot be used in any other proceeding of any kind.



Esther Jeon, Legal Counsel
Real Estate Council of British Columbia

As to Part B only (Agreed Statement
of Facts)

Dated 16 day of June, 2017



Diana Charlene Delaney

As to Parts A, B, and C, (proposed penalty, Agreed
Statement of Facts, Proposed Acceptance of
Findings and Waiver)

Dated 14 day of June, 2017

SCHEDULE A: THE CONDITIONS

- 1) At her own expense, Ms. Delaney will be subject to an audit to ensure that her provision of real estate services and her conduct as a managing broker are in compliance with the Requirements. The audit will be conducted within six months from the date of this Order and at the expense of Ms. Delaney. Any follow-up audit(s) will be conducted at the Council's discretion and at the expense of Ms. Delaney; and
- 2) If Ms. Delaney fails to comply with the Requirements as directed in Term A.4 of this Order, a discipline committee may, by order, suspend or cancel Ms. Delaney's licence without giving her further notice or the opportunity to be heard, pursuant to section 43(4) of the RESA.