

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

AND

IN THE MATTER OF

YING YI (CAROL) TAN
(161327)

CONSENT ORDER

RESPONDENT:	Ying Yi (Carol) Tan, Representative, Royal Pacific Realty (Kingsway) Ltd.
DATE OF REVIEW MEETING:	February 22, 2017
DATE OF CONSENT ORDER:	February 22, 2017
CONSENT ORDER REVIEW COMMITTEE:	R. Holmes, Q.C., Chair R. Gialloreto S. Sidhu L. Hrycan J. Daly
ALSO PRESENT:	G. Thiele, Director, Legal Services John McLachlan, Legal Counsel for the Real Estate Council

PROCEEDINGS:

On February 22, 2017 the Consent Order Review Committee ("Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Ying Yi (Carol) Tan.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Ying Yi (Carol) Tan and on behalf of the Council;

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

1. be reprimanded;

2. at her own expense, register for and successfully complete the Real Estate Trading Services 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;
3. shall 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 Ying Yi (Carol) Tan 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 22nd day of February, 2017 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

A handwritten signature in black ink, appearing to read 'R. Holmes', is written over a horizontal line.

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

Attch.

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

IN THE MATTER OF

YING YI TAN
(161327)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Ying Yi Tan ("Ms. Tan") and the Real Estate Council of British Columbia ("Council").

- A. Ms. Tan hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* ("RESA") that:
- a. she be reprimanded;
 - b. at her own expense, register for and successfully complete the Real Estate Trading Services 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;
 - c. she pay enforcement expenses pursuant to section 44 of the Act in the amount of \$1,500 within sixty (60) days from the date of the Consent Order; and
 - d. 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. Tan acknowledges and agree that the facts set forth herein are correct:
1. Ms. Tan was at all relevant times licensed as a Representative with Royal Pacific Realty (Kingsway) Ltd.
 2. Ms. Tan's licensing history is as follows:

Brokerage	Licence Level	Licence Category	Start Date	End Date
Royal Pacific Realty (Kingsway) Ltd. (X025459)	Representative	Trading, Rental	21/08/2012	Present

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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Royal Pacific Realty (Kingsway) Representative Trading 15/03/2011 21/08/2012
Ltd. (X025459)

3. On or about September 14, 2014 the Seller entered into a Multiple Listing Contract with A.L. for the sale of her property located at XXX Johnston Street in New Westminster (the "Property"). A.L. was the designated Seller's Agent.
4. On February 18, 2015 the Buyer entered into an Agreement to purchase the Property. The relevant details of the Contract of Purchase and Sale were as follows:

Price:	\$755,000
Deposit:	\$37,250 within 24 hours of all subject removal
Completion:	July 2, 2015
Possession:	July 7, 2015 vacant possession

The Seller has an agency relationship with A.L. as the designated agent licensed with List Assist Realty Ltd.

The Buyer has an agency relationship with Ms. Tan as the designated agent licensed with Royal Pacific Realty (Kingsway)

Subject to: Financing, Inspection, Title Search, Property Disclosure Statement, Insurance; all to be removed by February 26, 2015.

5. As part of the negotiations, the Seller was asked to provide vacant possession of the Property. The Seller's emailed A. L. to arrange a letter from the Buyer confirming that they or a close family member of the Buyer intended to occupy the rental unit.
6. On February 25, 201 an addendum was signed, with the Seller agreeing to complete repair deficiencies found in the property inspection by July 2, 2015.
7. On February 26, 2015 subjects were removed and the deposit was provided.
8. On March 30, 2015 the Seller emailed A.L.; following up that they required a letter from the Buyer to allow them to provide an End of Tenancy Notice to the tenants, in compliance with the *Residential Tenancy Act*.
9. On May 8, 2015 A.L. had not responded to the Seller, so they emailed him again, following up on the letter they required.
10. On May 20, 2015 A.L. emailed the Seller that he had not followed up with Ms. Tan, the Buyer's agent, about the letter the Seller required. A.L. asked the Seller if they had given notice to the tenants yet. The Seller responded that they had not, and would not act contrary to the *Residential Tenancy Act*.

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11. On May 22, 2015 A.L. emailed the Seller, asking them to speak to the tenant and let them know that an End of Tenancy Notice would be forthcoming. A.L. suggested the Seller offer the tenant a monetary incentive to move out before completion. A.L. stated that "Even though I do not have an Agency Relationship with you I was advised to suggest to you to obtain legal advice."
12. On May 26, 27, 2015 emails were exchanged between and A.L. and the Seller, trying to arrange for an appraiser to access the property, and to set up a time for a contractor to address the plumbing deficiency.
13. On June 2, 2015 Ms. Tan emailed A.L. that she had now obtained a signed letter from her Buyer, that acknowledged that they would be, or a close family member would be, moving into the basement suite.
14. On June 4, 2015 A.L. emailed the Buyer's letter to the Seller.
15. On June 30, 2015 the tenants moved out of the property and on July 2, 2015 the transaction completed.
16. Ms. Tan submitted that during the negotiations, the Buyer decided they wanted vacant possession of the property. Ms. Tan stated that [REDACTED] told her that the Seller would have no issue providing vacant possession and would provide notice to the tenants. Both Buyer and Seller initialed the Contract of Purchase and Sale with the change of "vacant possession".
17. Ms. Tan acknowledged that she did not include a Notice to Tenants clause in the contract but only made a notation on the possession date that vacant possession would be required. Ms. Tan stated that A.L. did not communicate with her that the Seller needed a written letter from her Buyers in relation to vacant possession until May 22, 2015.

Previous Discipline History

18. Ms. Tan has no previous discipline history with the Council.

C. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts herein, and without making any admission of liability, Ying Yi Tan is prepared to accept the following findings if made against her by the Council's Consent Order Review Committee:
 - (a) Ms. Tan, while acting as a designated agent, committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that:
 - (i) contrary to section 3-3(a) and 3-4 of the Rules, she failed to act in the best interest of her client and with reasonable care and skill when she did not recommend or include a "Notice to Tenants" clause in the Contract of Purchase and Sale for the Property; and

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

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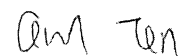
(ii) contrary to sections 3-3(a) and 3-4 of the Rules, she failed to act in the best interest of her client and with reasonable care and skill by when she did not provide written confirmation prior to May 6, 2015 that the purchaser intended to occupy the Property, and when she ought to have known that a 2 month End of Tenancy Notice had to be delivered to the tenant residing at the Property by the Seller to comply with section 49 of the *Residential Tenancy Act*.

2. Ms. Tan hereby waives her right to appeal pursuant to section 54 of the RESA.
3. Ms. Tan 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. Tan 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. Tan 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.
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.


John McLachlan, Legal Counsel
Real Estate Council of British Columbia

As to Part B only (Agreed Statement of Facts)

Dated 31, day of January, 2017


Ying Yi Tan

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

Dated 30, day of January, 2017