

File # 13-194 and 14-409

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

IN THE MATTER OF
DENISE RENEE DECARY
(155734)

CONSENT ORDER

RESPONDENT: Denise Renee Decary, Representative,
Haven Management Company Ltd.
dba Haven Properties, while licensed
with 338249 B.C. Ltd. dba Homelife
Peninsula Property Management

DATE OF REVIEW MEETING: May 26, 2016

DATE OF CONSENT ORDER: June 1, 2016

CONSENT ORDER REVIEW COMMITTEE: C. Brown
M. Leslie
J. Nagy, Chair

ALSO PRESENT: R.O. Fawcett, Executive Officer
G. Thiele, Director, Legal Services
J. Gossen, Legal Counsel for the Real
Estate Council

PROCEEDINGS:

On May 26, 2016 the Consent Order Review Committee (the "Committee") resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver ("ASF") submitted by Denise Renee Decary.

WHEREAS the ASF, a copy of which is attached hereto, has been executed by Denise Renee Decary 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 Denise Renee Decary committed professional

misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. the licence of Denise Renee Decary be suspended for thirty (30) days;
2. Denise Renee Decary, 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 in the time period as directed by the Council;
3. Denise Renee Decary pay enforcement expenses of this Consent Order to the Council in the amount of \$1,500.00 within sixty (60) days from the date of this Order.

If Denise Renee Decary 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 1st day of June, 2016 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE



J. Nagy, 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
DENISE RENEE DECARY
(155734)

AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

The following agreement has been reached between Denise Renee Decary ("Ms. Decary") and the Real Estate Council of British Columbia (the "Council").

- A. Ms. Decary hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that her licence be suspended for thirty (30) days, that she, 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 as directed by the Council. Further, she agrees to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,500.00 within sixty (60) days from the date of the Order herein. Ms. Decary further consents to an Order that if she fails to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel her licence without further notice to her pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.
- B. As a basis for this Order, Ms. Decary acknowledges and agrees that the facts set forth herein are correct:
- Ms. Decary was at all relevant times licensed as a representative with Homelife Peninsula Property Management.

- Ms. Decary's licensing history is as follows:

Brokerage	Licence Level	Licence Category	Start Date	End Date
Haven Management Co. Ltd. (X009491)	Representative	Trading, Rental	14/11/2014	Present
*** Unlicensed ***			28/05/2014	13/11/2014
338249 B.C. Ltd. dba Homelife Peninsula Property Management (X026922)	Representative	Trading, Rental	22/09/2009	27/05/2014
338249 B.C. Ltd. dba Homelife	Representative	Rental	24/09/2008	22/09/2009

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

Peninsula Property Management
(X026922)

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3. In or about November 2013, Ms. Decary arranged to show a property located on 26th Avenue, Surrey (the "Property") to a prospective tenant. Ms. Decary was unable to attend so she sent D.P., a former licensee, to view the property with J.K. (the "Tenant").
4. The Tenant made a second appointment to view the property with Ms. Decary who directed the Tenant to make a credit application online on the brokerage's website. Ms. Decary also told the Tenant that the Property was a new listing so the Tenant needed to make a credit application through another property. The credit application was made on November 23, 2013.
5. Ms. Decary negotiated the terms of the lease on behalf of the landlord of the Property with Ms. Decary's home address as the address for service for the landlord.
6. On December 9, 2013, Ms. Decary arranged for a move in inspection to be conducted with her unlicensed assistant and the Tenant. Ms. Decary also advised the Tenant to bring a cheque for the security deposit of \$1,750.00, which was made out to Ms. Decary. The Tenant also provided \$300 cash to cover the pro-rated rent for December 2013, as the Tenant moved in near the end of that month. Ms. Decary provided receipts for the security deposit and the \$300 in cash to the Tenant. The security deposit for the Property was not cashed by Ms. Decary nor was it provided to her brokerage.
7. On or about January 24, 2014, the Tenant contacted Ms. Decary's brokerage to resolve some matter in regards to the Property. The brokerage had no record of the Tenant being a client of the brokerage or the Property being part of its inventory for rental properties. The brokerage contacted Ms. Decary who advised them that she as a licensee had sold the property and was providing free rental property management to the owner. The brokerage was able to contact the owner of the Property and have him sign on as a client of the brokerage.
8. On April 18, 2014 the brokerage became aware that Ms. Decary was providing rental property management for other properties outside of her brokerage.
9. D.P. sent the brokerage an email detailing the rental property management he said Ms. Decary was conducting outside of her brokerage. The brokerage was able to confirm that Ms. Decary was providing rental property management services outside of her brokerage from old clients of the brokerage who canceled their contract with the brokerage in order to manage the property themselves.
10. On May 27, 2014 the brokerage terminated the licence of Ms. Decary.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

11. On May 29, 2014 the Council received a complaint from a property owner about a neighbor who was a former tenant at a property located on Russell, Avenue, White Rock. The caller informed the Council that this property was currently being shown by Ms. Decary who was unlicensed at the time.

12. The Brokerage identified that Ms. Decary had been providing rental property management services outside of her brokerage for the following additional properties:

5X- 2728 158th Street, Surrey
202XX 27th Avenue, Langley
198XX 32nd Avenue, Langley
202XX 27th Avenue, Langley
166XX 19th Avenue, Langley
1XX - 16469 64th Avenue, Surrey
197XX 20th Avenue, Surrey
198XX 32nd Avenue, Surrey
192XX 80th Avenue, Port Kells
Soho Unit
18XX Lilac Drive

13. On June 27, 2014 the Council conducted an interview with Ms. Decary who acknowledged that she was providing rental property management outside of her broker to the following properties:

5X-2738 158th St.
X-2729 158th St.
30XX 161A St.
2X-15977 26th St. (subject property)
37XX Devonshire
2XX-2450 161A St.
173XX Hillview Pl.
3X-3039 156th Ave.

12. Ms. Decary stated that the properties for which she provided rental property management services were former clients of D.P.'s who constituted a group of investors. Ms. Decary stated that she advertised their properties and helped find tenants if required. Ms. Decary stated that she was just trying to "help out" former clients of D.P.'s and now understood that she could not provide rental property management services outside of her brokerage.

13. Ms. Decary stated move in and move out inspections for these properties were mostly done by her unlicensed assistant or by D.P. Ms. Decary further stated that all the funds received for these properties were sent directly to the owners by way of cheque or direct deposit.

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

14. On or about April 27, 2014 Ms. Decary showed a property located on 204th Street, Surrey (the "Property") to prospective tenants.
15. On May 1, 2014 the tenants emailed Ms. Decary noting that they wanted to reserve the right to sub-lease the basement.
16. On May 2, 2015 the landlord agreed to their tenancy which reserved the right to rent out the basement suite if a suitable tenant was located.
17. On May 5, 2014 the tenants entered into a one year fixed term tenancy agreement, with occupancy starting on June 1, 2014.
18. On May 23, 2014 the tenants emailed Ms. Decary informing her that they had found a couple who wished to sub-lease the basement suite. Ms. Decary instructed them to contact her brokerage so that they could be added to the lease.
19. On May 30, 2014 the tenants entered into a month-to-month lease of the basement suite with the couple.
20. On or about March 3, 2015 the landlord gave notice that the basement suite was illegal and needed to be vacated by May 1, 2015.
21. In her response to Council, Ms. Decary stated that at no time did she make representations to the tenants as to whether the basement suite was a legal suite or not, despite her knowing that the tenants were looking into renting out the suite if they could find suitable tenants.

Discipline History

12. Ms. Decary has no prior discipline history with the Council

C. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Denise Renee Decary is prepared to accept the following findings if made against her by the Council's Consent Order Review Committee:
 - (a) Denise Renee Decary committed professional misconduct within the meaning of section 35(1)(a) of RESA in that she:

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- i. engaged in rental property management services outside of her brokerage, when she provided rental property management services on behalf of the owners of properties (the "Rental Properties") who were not clients of the brokerage at the time she provided those

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

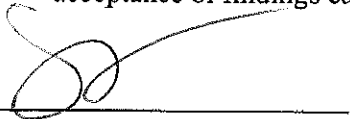
- services, contrary to section 7(3)(a) of RESA;
- ii. failed to ensure she had written service agreements, signed by the client and an authorized signatory of the brokerage prior to commencing to provide real estate services in respect of the Rental Properties, contrary to section 5-1 of the Council Rules;
 - iii. signed a Residential Tenancy Agreement as agent for the owner of a property for which she was providing rental property management services, without the written authority of the owner, contrary to section 5-3(1) of the Council Rules;
 - iv. provided real estate services with the assistance of an unlicensed individual not engaged by the brokerage, contrary to section 7(5)(a) of the RESA; and
 - v. provided real estate services while her licence was inoperative, contrary to section 20 of RESA.

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- i. when, while acting as a rental property manager on behalf of a client of the brokerage, she failed to disclose a material latent defect to the tenants of the property prior to them entering into the tenancy agreement, namely that the property, which was the subject of the tenancy agreement, contained an unauthorized which she knew or ought to have known that the tenants intended to sub-lease, contrary to section 5-13 of the Council Rules.
2. Ms. Decary hereby waives her right to appeal pursuant to section 54 of the *Real Estate Services Act*.
 3. Ms. Decary acknowledges that she has a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
 4. Ms. Decary 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. Decary acknowledges and is aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the *Real Estate Services Act*, 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

AGREED STATEMENT OF FACTS, PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER

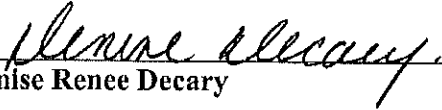
the Council and for that purpose only. Such agreed statement of facts and proposed acceptance of findings cannot be used in any civil proceedings.



Jessica S. Gossen, Legal Counsel
Real Estate Council of British Columbia

As to Part B only (Agreed Statement of Facts)

Dated 30 day of May, 2016



Denise Renee Decary

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

Dated 13th day of May, 2016