Citation: ☼ Said v. Meadow Ridge Classic Realty 2014 BCPC 0129

Date: ☼20140616
File No: C9740
Registry: Port Coquitlam

2014 BCPC 129 (CanLII)

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BETWEEN:

MOSTAFA SAID

CLAIMANT

AND:

MEADOW RIDGE CLASSIC REALTY (1974) LTD.

DEFENDANT

REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE T.S. WOODS

Appearing on their own behalf:	M. Said
Counsel for the Defendant:	C. Spratt
Place of Hearing:	Port Coquitlam, B.C.
Dates of Hearing:	November 30 & December 10, 2012; March 7 & 8, July 12 & September 16, 2013
Date of Defendant's Written Submission:	November 22, 2013
Date of Claimant's Written Submission:	January 10, 2014
Date for Defendant's Written Reply Submission:	January 24, 2014
Date for Claimant's Written Surreply Submission:	February 7, 2014
Date of Judgment:	June 16, 2014

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INTRODUCTION

[1] In 2005, the claimant Mostafa Said ("Mr. Said") began planning a one-year extended dream vacation with his wife and young children. The plan was for the entire family to travel to Egypt, the country of Mr. Said's birth. That plan ultimately came to fruition; however, as he put it in his written submission filed at the conclusion of trial, because of what unfolded while the family was abroad, the dream vacation ultimately turned into a "complete nightmare". I quote from that written submission:

> "I'm a simple family man how in trusted the care of my home to a professional property manager … and I returned home and it was a complete nightmare the house was in disrepair and so much damage was done … After the initial chock many people advised me to seek legal advice. Several lawyers told me I had a very good case and I should sue for both physical damages as well all the emotional trauma attached. I found this impossible to do because the money involved on paying for lawyer my only hope for justice was to forget about the emotional part, fix some of the things my self and lower the amount and go to small claims court. Again I could not afford a lawyer and I did my best to represent my case without the knowledge on how the system worked. I had a house under the care of a professional and was destroyed while under her care." (at pp. 1-2)

[2] I have reproduced Mr. Said's words here exactly as they were set out in the written argument he submitted to the court. His first language is quite plainly not English but, like his testimony at trial, Mr. Said's written argument nevertheless well conveys his distress and sense of grievance at what he considers to have been a total failure on the part of his property management firm to live up to its obligation to take proper care of his home while he and his family were abroad.

[3] My role, as trial judge in this action—after weighing the evidence and considering the arguments presented by both sides—is, as an impartial judicial arbiter, to determine:

(a) whether the evidence heard at trial as a whole proves facts that bear out the allegations Mr. Said makes, as claimant, against the defendant;

(b) whether the facts proven at trial establish a cause of action against the defendant;

(c) whether the evidence heard at trial proves facts that support the defences set up by the defendant to resist Mr. Said's claims;

(d) in all the circumstances, whether Mr. Said has suffered proven losses attributable to the actionable conduct of the defendant for which the law can furnish him a remedy (or remedies); and, if so

(e) the appropriate remedy (or remedies) that should be granted to Mr. Said.

[4] Before getting to the general shape and contours of the parties dispute, I make the preliminary point that, partway into the parties' relationship, Homelife Classic Realty Ltd. ("Homelife") changed its name to Meadow Ridge Classic Realty (1974) Ltd. ("Meadow Ridge")—the named defendant in this action. Accordingly, in these reasons for judgment, despite the fact that the company began its dealings with Mr. Said as Homelife, I shall refer generally to the defendant as Meadow Ridge.

THE PARTIES' DISPUTE IN BROAD STROKES

[5] In furtherance of the Said family's above-noted extended vacation plan, in late 2005—after exploring various alternatives—Mr. Said engaged Meadow Ridge to serve

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as the manager of his house and property [redacted] in Maple Ridge, B.C. (the "Family Home") during the time of the family's planned absence from Canada.

[6] More particularly, on December 8, 2005, Mr. Said and Meadow Ridge entered into a written contract with one another (the "Property Management Contract"): Exhibit 2, tab 1. Pursuant to the Property Management Contract, Meadow Ridge undertook (among other things) to locate a tenant for the year or so that Mr. Said and his family would be out of the country, place the tenant in the Family Home, collect rent and generally oversee the tenancy for Mr. Said's benefit. Mr. Said, in turn, undertook (among other things) to pay Meadow Ridge a fee for those services based on a percentage of the gross monthly rent generated by the Family Home while he was abroad and while it was under Meadow Ridge's management.

[7] The Said family departed Canada for Egypt in mid-December, 2005. Before leaving, Mr. Said carried out a number of repairs and improvements to the Family Home to ready it for occupation by a tenant. Mr. Said was present when the home was inspected by Meadow Ridge before the family's departure. In due course, while the Said family was vacationing in Egypt, Meadow Ridge did locate and place a tenant in the Family Home. Her name is Sherri Fontaine ("Ms. Fontaine"). Ms. Fontaine, two other adults, three children (and various others at various times) occupied the premises from February 2006 until January 2007. Ms. Fontaine paid some, but not all, of the rent for which, as tenant, she was responsible during that time.

[8] Meadow Ridge contends that partway through 2006 while the Said family was abroad, it assigned its property management portfolio and team, including its rights and

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obligations under the Property Management Contract, to another real estate company, Keller Williams Results Realty Ltd. ("Keller Williams"). Thus, one of Meadow Ridge's arguments in resisting the claims asserted against it in these proceedings is that, as assignor of its rights and obligations under the Property Management Contract to Keller Williams, Meadow Ridge should not bear liability for some or all of the losses that Mr. Said may be able to prove he have suffered as a result of alleged failures of performance by the property managers under the Property Management Contract. Questions for determination in this regard include whether Meadow Ridge has tendered sufficient proof of that assignment and whether Mr. Said consented to it.

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[9] Communications between Mr. Said and Meadow Ridge while he and his family were abroad—which were conducted mainly (though not exclusively) through managing broker Carole Caffrey ("Ms. Caffrey") and broker Jolanta Teszka ("Ms. Teszka")—were sporadic and irregular. When he and his family eventually returned to Canada after their extended vacation was ended, Mr. Said says that, to his considerable surprise, they found the Family Home to be in a severely degraded condition.

[10] The burden of the evidence called by Mr. Said and his witnesses was to the effect that, in the vernacular of our time, the Family Home was "trashed" by Ms. Fontaine and her guests and invitees who occupied it during the family's absence. Both the house itself and its grounds, Mr. Said testified, were extensively damaged, resulting in the need for him to spend considerable amounts of money and invest substantial quantities of his own time to repair the house and property before it was suitable again for habitation. Anyone who would cause such damage and disrepair could not, on any analysis, be a suitable tenant, he contends; similarly, Mr. Said argues that a firm of

property management professionals that would permit such damage and destruction to occur on its watch cannot possibly have fulfilled its property management duties to him as its client. Mr. Said alleges in his Notice of Claim and argued at the conclusion of trial that his losses are attributable to the failure of Meadow Ridge to "use due diligence in selecting tenants and in managing the rental premises".

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[11] For its part, Meadow Ridge denies in its Reply and final argument all of Mr. Said's claims, saying that if it (and not Keller Williams) is bound by the Property Management Contract, it neither "breached any agreement with the Claimant [nor] breached any duty of care or was negligent as alleged or at all". Meadow Ridge further contends that "in all dealings it had with the subject property and with [Mr. Said] it acted in accordance with the prevailing standard of care of a reasonably prudent property manager in the circumstances and at the time". Meadow Ridge also "denies that [Mr. Said] has suffered loss or damage, as alleged or at all" and it contends, in the alternative, that if Mr. Said *did* suffer any loss or damage, he brought it wholly or partially upon himself and failed to take adequate steps to mitigate that loss or damage.

THE GENERALLY GOVERNING LAW

[12] It is common ground that the relationship between Mr. Said and Meadow Ridge is contractual and given definition as to the parties' rights and obligations by the Property Management Contract. In keeping with this, Mr. Said has brought his action against Meadow Ridge in contract.

[13] Where duties may be said to be owed by one party to another under contract and tort concurrently (in this case by Meadow Ridge to Mr. Said), provisions in the contract

that affect or (in particular) *limit* those duties govern: ***B.G. Checo International Ltd. v. British Columbia Hydro & Power Authority*** [1993] 1 S.C.R. 12. This principle has recently been recognised in other decisions of this court flowing out of property management disputes: see, for example, ***Aville Enterprises Ltd. v. Colliers Macaulay Nicolls Inc.***, [2011] B.C.J. No. 2311 (Prov. Ct.) per Dhillon P.C.J.

[14] In the present case, the various duties owed by Meadow Ridge to Mr. Said are indeed contractually constrained, as to Meadow Ridge's liability, to proof by Mr. Said of circumstances amounting to "wilful conduct or gross negligence" on its part: see the Property Management Contract, Exhibit 2, tab 1, p. 2, para. 4(a):

> "[Meadow Ridge] shall not be liable [to Mr. Said] for any error of judgment, except in cases of wilful misconduct or gross negligence."

[15] The key to that provision for present purposes is its reference to "gross negligence". Mr. Said has not argued that Meadow Ridge intended to cause him to suffer losses and engaged in wilful misconduct in its role as property manager so as to bring about those losses. Rather, I infer from his arguments overall that he accepts that for breaches by Meadow Ridge of the Property Management Contract to be actionable, those breaches must attain the stature of gross negligence. Mr. Said does indeed contend that Meadow Ridge carried out its obligations to him under the Property Management Contract in a grossly negligent manner.

[16] In ***Aville Enterprises***, Dhillon P.C.J. held that "gross negligence" is established in a property management dispute by evidence that demonstrates that, by its acts and omissions, a property manager's performance amounts to a "marked departure or

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significant deviation from the ordinary standards by which reasonable and competent property managers would behave in similar circumstances" (at para 28). Employing and adapting the well-known, three-part formulation for finding negligence, I acknowledge accordingly that in order to make out his contractual claim against Meadow Ridge in the present case, Mr. Said must establish that Meadow Ridge:

(a) owed a duty of care to him in connection with the contractual obligations it assumed under the Property Management Contract;

(b) breached that duty of care by falling so far short of the requisite standard that its relevant acts and/or omissions amounted to a marked departure or significant deviation from what conformity with that standard care mandated; and

(c) caused him to suffer losses that can be shown to have resulted from a marked departure or significant deviation in its property management performance from what the standard of care required of it in the circumstances.

THE PROPERTY MANAGEMENT CONTRACT

[17] While, as has been acknowledged already, the legal analysis in this case will eventually call for recourse, to some degree, to principles of negligence, Mr. Said's Notice of Claim makes it clear that his claim against Meadow Ridge has been brought in contract. His relationship with Meadow Ridge was defined formally and contractually a short time before he and his family left Canada. To the extent that his provable losses

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can be traced to the acts or omissions of Meadow Ridge—operating largely though not exclusively through Ms. Caffrey and Ms. Teszka—an understanding of the parties' rights and obligations under the Property Management Contract will be fundamental to determining liability for those losses.

[18] The Property Management Contract is styled a "Residential Management Agreement." It was drafted by Meadow Ridge and executed on December 8, 2005. Mr. Said is defined in the Property Management Contract as the "Owner" and Ms. Caffrey and Ms. Teszka "of Homelife Classic Realty Ltd." (now Meadow Ridge) are defined, collectively, as the "Agent". It is not disputed that the Property Management Contract was executed by Ms. Caffrey and Ms. Teszka as representatives, and on behalf, of Homelife (now Meadow Ridge).

[19] The term of the agreement is for one year, commencing on the date of execution. It is structured to be self-renewing, automatically on an annual basis, unless one or the other of the parties gives notice of termination in writing within specified time parameters. Of greatest importance for the purposes of this action are the terms described below.

[20] Under the Property Management Contract, Meadow Ridge agreed:

- to rent, lease, operate and manage the Family Home;
- to use due diligence in the management of the Family Home and to furnish the services of its organization for the renting, leasing, operating and managing of the Family Home;

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- to collect rents and other amounts each month and to render monthly statements of receipts, expenses and charges to Mr. Said;
- to deposit all receipts collected for Mr. Said (less any sums properly deducted) in a trust account in a bank or trust company separate from Meadow Ridge's account.
- to maintain full and detailed records covering the management of the Family Home;
- to deal with day-to-day complaints;
- to secure the prior approval of Mr. Said for all expenditures in excess of $200 for any one item, except monthly or recurring operating charges and/or emergency repairs in excess of an unstated maximum, if in Meadow Ridge's opinion such repairs were necessary to protect the Family Home from damage or to maintain services to the tenants as called for in their leases; and
- to report "directly" to Mr. Said on "all matters".

[21] Under the Property Management Contract, Mr. Said agreed:

- to give Meadow Ridge the authority and power, at his expense, to:
    - advertise the Family Home for rent;
    - sign, renew, modify and/or cancel leases and/or rental agreements for the Family Home;
    - terminate tenancies and sign and serve in his name such notices as were appropriate;
    - institute and prosecute actions;
    - evict tenants and recover possession of the Family Home from tenants;

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- sue in his name to recover rents and other sums due;
- settle, compromise and release such actions or suits or reinstate tenants when expedient;
- make repairs and alterations to, and decorate, the Family Home, and to purchase and pay for supplies and services to protect the Family Home from damage or to "maintain services to the tenants as called for in their leases", provided however that Mr. Said retained the right to approve, in advance, non-recurring, non-emergency expenditures exceeding $200 each;
- hire, discharge and supervise all labour and employees required for the operation and maintenance of the premises;
- make contracts for electricity, gas fuel, water, window cleaning, ash or rubbish hauling and such other services as Meadow Ridge deemed necessary with Mr. Said assuming the obligation under such contracts upon termination of the Property Management Contract; and
- to engage in promotional activities at his expense to secure tenants for the Family Home.

[22] Mr. Said further agreed with Meadow Ridge under the Property Management Contract that he would:

- pay any amounts incurred by Meadow Ridge by way of disbursements in the course of managing the Family Home that exceeded the amounts collected by it on account of rent and other "receipts";
- relieve Meadow Ridge of liability "for any error of judgment, except in cases of wilful misconduct or gross negligence";

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- save Meadow Ridge harmless from "all damage suits in connection with the management of the [Family Home]" and from liability from injury suffered by employees and others;

- carry, at his own expense, "necessary public liability insurance" to confer equal protection upon Meadow Ridge, as a co-insured, as is conferred by that insurance upon Mr. Said himself; and

- recognise Meadow Ridge as the broker in any pending negotiations for the sale of the Family Home and to pay a commission to Meadow Ridge in the event such a sale were to be consummated.

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ALLEGED BREACHES, BY MEADOW RIDGE, OF THE PROPERTY MANAGEMENT CONTRACT

Selection of an Unsuitable Tenant for the Family Home

[23] The Family Home was unoccupied when Mr. Said and his family departed for Egypt in mid-December of 2005. As it was obliged to do, Meadow Ridge set about to locate a tenant to rent the Family Home and, in due course after placing advertisements in a local newspaper, received two expressions of interest—one from Ms. Fontaine and her entourage, that is, two other adults and three children under 10. (There was no evidence placed before the court regarding the other applicant or why that applicant was not selected.) After satisfying itself that Ms. Fontaine was a good candidate to become Mr. Said's tenant, on January 31, 2006, Meadow Ridge entered into a Residential Tenancy Agreement on Mr. Said's behalf with her (the "Fontaine Tenancy Agreement"): Exhibit 2, tab 9. The tenancy commenced, on a month-to-month basis, on February 2, 2006.

[24] It is, or should be, beyond controversy on the whole of the evidence before me that Ms. Fontaine proved in due course to be a grossly unsatisfactory and unsuitable tenant for the Family Home. There are numerous photographs—some taken by representatives of Meadow Ridge—that prove that over the course of the tenancy, the condition of the Family Home deteriorated markedly, both indoors and outdoors: see, for example, Exhibit 1, pp. 29-41, Exhibit 2, tabs 50-51 and Exhibit 7.

[25] The state of disrepair and disarray of the Family Home that developed over the course of Ms. Fontaine's tenancy attracted the regulatory attention of the District of Maple Ridge and in January of 2007 the District wrote to the "Resident" at the Family Home noting that an onsite inspection had revealed "an accumulation of tires, metal, bike parts and other miscellaneous items" and "3 unlicensed vehicles" at the Family Home: Exhibit 2, tab 51. An order was made that that debris be removed within 14 days. Sometime that month, Ms. Fontaine and her family vacated the Family Home, leaving the District's order unfulfilled and Mr. Said's property in what the evidence overwhelmingly establishes was a deplorable condition. Moreover, Ms. Fontaine and her family decamped at that time without paying all of the outstanding rent.

[26] The visibly deteriorating state of Family Home was a matter of concern to Meadow Ridge at least as early as October/November of 2006—sufficiently so that for that and other reasons, in December, 2006, Ms. Caffrey recommended to Mr. Said that Ms. Fontaine be given an eviction notice: see *Trans*., March 8, 2013, pp. 77-78, 81 and 83.

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[27] Over the course of the tenancy, Ms. Fontaine brought other persons into the Family Home, as residents, without obtaining Mr. Said's consent. Indeed, the evidence strongly suggests that she sublet individual rooms to transient subtenants and modified individual bedroom doors to make them individually lockable in order that she could create private, individual spaces for those subtenants: see, for example, Exhibit 2, p. 37-38 and *Trans.*, December 10, 2012, p. 30 and March 8, 2013, pp. 21 and 77-81. Mr. Said testified that mail for at least 15 people, unknown to him, continued to arrive at the Family Home for a period after Ms. Fontaine vacated it: *Trans*., March 8, 2013, p. 21. And he testified that his neighbours were angry with him because, during his absence, the Family Home had become a place where questionable people congregated: *Trans*., November 30, 3012, p. 33, March 7, p. 44 and 73, and March 8, 2013, pp. 21-23 and 35-36.

[28] Ms. Fontaine also made numerous modifications to the interior of the Family Home—modifications that Mr. Said considers to be unsightly and non-functional—without first obtaining Mr. Said's written consent as she was required to do under the Fontaine Tenancy Agreement: see Exhibit 2, tab 9, p. 13, para. 15. She then sought rent concessions as compensation for those unauthorised "improvements": see Exhibit 2, tab 39. Meadow Ridge simply passed that request for rent concessions on to Mr. Said, and was seemingly oblivious to the fact that the actions taken by Ms. Fontaine to modify and paint and otherwise significantly reconfigure aspects of the Family Home were subject to Mr. Said's prior approval on the basis of the terms of the Fontaine Tenancy Agreement that Meadow Ridge itself had drafted and then had Ms. Fontaine execute.

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[29] Mr. Said contends that in placing the unsatisfactory and unsuitable Ms. Fontaine and her entourage as tenants in the Family Home, Meadow Ridge clearly breached its obligations to him under the Property Management Contract.

[30] I agree.

[31] Under the Property Management Contract, Meadow Ridge undertook to "rent, lease, operate and manage" the Family Home and to use "due diligence in the management of [the Family Home]". There can be no room for doubt that a threshold element of "due diligence" and "management" in a property management context is the proper vetting of tenants. The finding of a tenant who will reliably take care of the property in question while in occupation of it and who will pay the rent owing therefor represents the centrepiece of a property management company's obligation to its client owner. If the property management company gets that part of its assignment right, then, barring something unusual, most of the rest should flow smoothly and with minimal difficulty. On the other hand, if the property management company gets that part of its assignment *wrong*, then the detrimental consequences for the client owner can be disastrous. This is why, when vetting prospective tenants, property managers must properly be held to a comparatively high standard of diligence.

[32] That, I venture to say, is nothing more than a matter of common sense. For a discussion of the absence of a need, often, for expert evidence to assist the court in ascertaining the standard by which the conduct of property managers should be assessed, see ***Aville Enterprises*** at para. 29*ff* and the cases cited therein.

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[33] Contrary authorities (all but one unreported) were tendered by Meadow Ridge on this point—that is, ***Koehler v. Century 21 – Bob Sutton Realty (P.G.) Ltd.*** (25 October 1999), Prince George SM07171 (Prov. Ct. of B.C.); ***Meehan v. Dixon***, 2008 BCSC 87; ***Stankiewicz v. Pebbles Realty Property Management Ltd.*** (24 October 2004), Vancouver 200382212 (Prov. Ct. of B.C.) and ***Verma v. Performance Realty Ltd.*** (1 October 2012) Surrey C67241 (Prov. Ct. of B.C.). However, all of those cases are in my view readily distinguishable from the case at bar which, like ***Aville Enterprises***, presents evidence for the court's consideration that reflects more numerous and more egregious departures from reasonable standards of performance on the part of the subject property management entity than are seen in those other cases.

[34] A trial judge of ordinary experience does not, in my view, require the assistance of an expert witness to assist him or her in determining—where (as here) proof of a multiplicity of egregious acts and omissions badly compromise the record of performance by a property management entity of its contractual duties—that a property manager's performance falls so far short of what is reasonable to expect in the circumstances as to amount to gross negligence. In this connection I invoke and place reliance upon the words quoted below of Dhillon P.C.J. found at para. 33 of ***Aville Enterprises***—words which apply equally to the case at bar:

> "… I am satisfied that the specific acts or omissions alleged are so plainly put that the trier of fact does not require an expert opinion on the applicable standard of care or assistance to from a ready-made inference or conclusion on the evidence."

[35] Ms. Fontaine completed an "Application for Tenancy" form prepared by Homelife (now Meadow Ridge): see Exhibit 2, tab 7. As it was filled in by her, the form raises

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many unheeded red flags. Much of the information that the form requires a prospective tenant to supply is simply not provided. Many spaces are left blank. For example, there is no information given about any present or previous employment—either for Ms. Fontaine or her unnamed spouse. Moreover, apart from a reference to "CIBC", none of the requested banking information is supplied. Nor is any credit card information given. The application Ms. Fontaine completed thus gives the reader no sense of whether, or how, she could pay the rent to be charged for occupation of the Family Home. This is of particular concern because Ms. Fontaine's application discloses that her previous rent had been $700/month and the rent for the Family Home was to be more than twice that—namely, $1,495 per month.

[36] Meadow Ridge's witnesses testified that they derived comfort about Ms. Fontaine as a prospective tenant from the three referees she identified on the application form. Only two were proven to have been actually contacted: a Richard Austman (described as Ms. Fontaine's former landlord) and a Mark Gallway (a realtor). A call was placed to a third—one Angel Robson—but Ms. Caffrey's notes on the form state only that a message was left. Ms. Caffrey had no recollection of what Ms. Robson had to say, and her notes on the form record nothing; she could only speculate unhelpfully that Ms. Robson had given a positive endorsement of Ms. Fontaine as a possible tenant. (That speculation is but one example of a tendency I witnessed in Ms. Caffrey's testimony, and in Ms. Teszka's, to err routinely on the side of giving evidence favourable to Meadow Ridge's interests in this action wherever memory failed them or wherever a point was ambiguous or less than clear.)

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[37] Ms. Caffrey testified that she recorded the results of her telephone interviews with Mr. Austman and Mr. Gallway in cryptic notes on the face of the application form: see Exhibit 2, tab 7. Both referees, she said, were positive in their assessment, and Mr. Austman—who Ms. Fontaine identified as a former landlord—also provided a letter of reference (although, as is the case with the application, the surname given for her in that letter was "Allen" and not "Fontaine")—see Exhibit 2, tab 2.

[38] No one at Meadow Ridge seems to have asked any questions as to why the tenant who ultimately identified her surname as "Fontaine" on the Fontaine Tenancy Agreement seemed to have had dealings with others, including her previous landlord, under the name "Allen". Indeed, I pause to say parenthetically that the court is left to wonder whether the Ms. Allen about whom reference checks were made was, indeed, the Ms. Fontaine who ultimately moved into the Family Home. The evidence on that point is far from clear and does not rule out a "bait and switch" strategy to secure the tenancy at the Family Home for someone who could not have done so based on her own reputation. In any event, in my judgment, this kind of failure to be vigilant for such red flags and follow up on them undercuts Meadow Ridge's contention that, when vetting tenants, it acted as would a "prudent property manager in the circumstances".

[39] It should be obvious that the enthusiastic endorsement of a former landlord who is seeing a tenant on her way out of his own premises and into new ones ought to be viewed somewhat warily. The evidence does not disclose the reasons why Ms. Fontaine left the house where she previously resided as Mr. Austman's tenant. Significantly, neither he nor any other referee given by Ms. Fontaine was called by Meadow Ridge to testify at trial.

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[40] Ms. Caffrey's testimony was to the effect that Marc Galway's endorsement of Ms. Fontaine gave her particular comfort, given that he, apparently, is a realtor. However, her four-word note of her conversation with him is entirely conclusory ("great reference from Marc"): see Exhibit 2, tab 7. It reports no detail at all as to what formed the basis for his positive assessment (or hers). Importantly, when she testified Ms. Caffrey gave no such detail either: *Trans.*, March 8, 2013, pp. 40-41). And, as I have noted above, Mr. Galway was not called by Meadow Ridge as a witness.

[41] While Ms. Caffrey claimed to have conducted a check of Ms. Fontaine's credit, she produced no credit report and, improbably (given the problems that developed with this tenancy eventually, including Ms. Fontaine's ultimate departure without paying her rent) Ms. Caffrey testified that the Fontaine credit report was shredded in keeping with a general policy at Meadow Ridge to destroy such material when tenancies come to an end: *Trans.*, March 8, 2013, pp. 41-42. I consider it fair to ask: What property management company would shred a defaulting tenant's credit report in circumstances where rent payment problems, and numerous other problems, had arisen over the course of a problem tenancy (whatever the company's general policy may have been)? I do not believe that in these circumstances I can treat as proven Meadow Ridge's unsubstantiated contention that Ms. Caffrey conducted a credit check and obtained a favourable report about Ms. Fontaine. Her evidence on this point is simply not sufficiently credible to discharge Meadow Ridge's onus of proof on this important point.

[42] Ms. Fontaine's application makes reference to her having a pit bull terrier, a piece of information that might reasonably be expected to have put Meadow Ridge on inquiry, given the somewhat unenviable reputation that that particular breed of dog has

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acquired among some members of the community at large. Meadow Ridge apparently did not do so.

[43] Had Meadow Ridge followed a practice of checking prospective tenants online—and, in particular, had Ms. Fontaine's reference on her tenancy application to her pit bull terrier reinforced the perceived need for such inquiry on Meadow Ridge's part (and thus triggered it)—Meadow Ridge would certainly have acquired information that would have been useful to it in assessing Ms. Fontaine's candidacy for becoming a tenant at the Family Home. However, it was not Meadow Ridge's practice in early 2006 to do Google searches as part of the process of vetting tenants for its clients' properties (as it is now). Accordingly, Meadow Ridge did not come across the following information posted by the CBC on the Internet, dating back to December of 2004 (a printout of which was included among Mr. Said's produced documents and which is found in Exhibit 1 at p. 26):

> "**Siblings taken from B.C. home where dogs mauled boy**
>
> **Last Updated: Friday, December 31, 2004 | 8:21 AM ET**
> **CBC News**
>
> The three surviving children of the woman whose three-year-old son was mauled to death by dogs in her own home, have been taken away by authorities in British Columbia.
>
> - INDEPTH: Dangerous dogs
>
> *Sherri Fontaine says the B.C. Ministry of Children and Family Development has decided her children cannot live with her because they are in danger*.
>
> Fontaine was sleeping in her home in Maple Ridge, at the time the dogs attacked her son Cody, on Monday morning.
>
> She says she believes the little boy got up early and let the dogs - three Rottweilers and a collie - out of the locked basement.

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> In a highly emotional scene outside a Port Coquitlam courthouse on Thursday, Fontaine family members said they didn't want the children returned to their home.
>
> Clutching a framed portrait of the smiling toddler, Cody's 18-year-old stepsister expressed her grief at the loss of the child. The teen and other members of the family have had their names protected by court order.
>
> She said she's concerned about Cody's three young siblings.
>
> The other children have been in the care of an older relative, since the tragedy. Another extended family member said the surviving children are trying to heal after being the ones who found their little brother dead after the attack.
>
> *Sherri Fontaine has refused to talk to media. She has a history of criminal convictions involving drug possession and drug trafficking. She's served jail time and has been barred from owning firearms.*
>
> Outside court the dead boy's grandmother said even though Sherri Fontaine loves her children dearly, she should not get them back for now.
>
> "Until this is all over the kids are better off where they're being put now. I'm not putting blame, but to try and deal with three little ones, along with her own grief, this way the little ones are going to get the counselling that they need."
>
> A judge has ruled the surviving children will remain where they are at least until their mother is able to hire a lawyer and make a second court appearance in January.
>
> The RCMP says it is still investigating the mauling and has not yet made a decision on whether to lay charges.
>
> Two of the four dogs have been put down." (emphasis added)

[44] It goes without saying that this online CBC news story—posted online and visible to all the wide world approximately a year before Ms. Fontaine made her application to Meadow Ridge to move in as a tenant at the Family Home—was not received into evidence for the truth of its contents. However, it does speak to what was readily discoverable about Ms. Fontaine had Meadow Ridge carried out a Google search or taken other steps to obtain a more complete understanding of the person who they were going to place in the Family Home while Mr. Said and his family were out of the country.

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[45] Further, it is reasonable to infer that, had it conducted such inquiries and learned what was to be learned about Ms. Fontaine (whether the information was accurate or not), Meadow Ridge would have made further inquiries and likely would have declined to approve Ms. Fontaine as a tenant for Mr. Said's Family Home, given the potential risks associated with her apparent background and history. I make that inference for the purpose of my analysis of the facts in this action.

[46] Meadow Ridge did not pursue any such inquiries and chose to rely instead on a half-completed application form coupled with the cursory, incomplete and inconclusive investigation of her references that I have described above. Consequently, it approved Ms. Fontaine and her entourage as tenants for the Family Home without the benefit of easily discoverable information that, at the very least, would have put it on notice of her potential unsuitability and led to a more searching assessment of her candidacy before proceeding further.

[47] I am satisfied that Meadow Ridge's efforts in vetting Ms. Fontaine as a suitable tenant for the Family Home fell short of what would be expected of a reasonably prudent property manager.

[48] Beyond all of the foregoing, there is the additional fact that while some shallow inquiries were made by Meadow Ridge in the course of its efforts to vet Ms. Fontaine's candidacy as a suitable tenant, the Fontaine Tenancy Agreement shows that of the six persons slated to be in occupation of the Family Home, three were adults—that is, Ms. Fontaine and two, unidentified others. There is nothing in the evidence to suggest that Meadow Ridge carried out *any* background checks or performed any other due

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diligence inquiries whatsoever about either of those two other adults. This too is an example of Meadow Ridge's performance falling short of what would be expected of a reasonably prudent property manager.

[49] In my opinion, in failing to acquaint itself sufficiently with Ms. Fontaine and her co-tenants through a process of diligent inquiry, Meadow Ridge breached its contractual obligation to Mr. Said under the Property Management Contract to "use due diligence in the management of the [Family Home]".

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Failure to Adequately Monitor the Condition of the Family Home During the Fontaine Tenancy

(a) The state of the Family Home at the outset

[50] Considerable persuasive evidence was given at the trial of this matter regarding the degraded state of the Family Home at the time Ms. Fontaine and her entourage decamped from it, without paying rent, in January of 2007. However, it is first contended by Meadow Ridge witnesses that, even before a tenant was found for the Family Home in early 2006, it was in a significantly deteriorated state and that, accordingly, some of the problems with the property that lie at the bottom of Mr. Said's complaints were present from the beginning: see, for example, Meadow Ridge's written submission at para. 126 d.

[51] I reject the evidence given by the Meadow Ridge witnesses in that regard. While Mr. Said admits that the Family Home was not in perfect condition when Mr. Said and his wife and children left for Egypt in mid-December of 2005, I am quite satisfied based on the evidence he and his witnesses gave that, by then, a good deal of updating work

had been done to ready it for occupation by a tenant and that it was entirely fit to be rented out.

[52] Meadow Ridge has no "condition inspection" report or photographs prepared at the commencement of Ms. Fontaine's tenancy to substantiate its claim that there were meaningful deficiencies at the property (with one of the toilets, for example) already in existence. Ms. Teszka—who did the initial walk-through with Mr. Said—could not remember preparing such a condition inspection report. The best she could manage was to testify that it was her usual and ordinary practice to create such reports and to take photographs during such inspections: *Trans*., September 16, 2013, pp. 53-54. Yet, such inspections and the reports that document them are mandated by law: ***Residential Tenancy Act***, R.S.B.C. 1996, c. 406, s. 23. Those reports are also mandated under the record-keeping provisions of the Property Management Contract: see Exhibit 2, tab 1, p. 1, para. 2 (d).

[53] In any event, the most powerful point that cuts against the suggestion that the Family Home was in a not insignificant state of disrepair before it was rented to Ms. Fontaine is the fact that Meadow Ridge inspected the property, took it on, opened a property management file, committed itself contractually to manage it during Mr. Said's absence and they found a tenant for it. Moreover, it went on to execute the Fontaine Tenancy Agreement with Ms. Fontaine on behalf of Mr. Said and secured Ms. Fontaine's agreement that the Family Home was "in good order, repair, and [in] a safe, clean, and tenantable condition": Exhibit 2, tab 9, para. 9. Any deficiencies that may have existed at the beginning of the tenancy would have to have been relatively

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insignificant in nature; were it otherwise, Meadow Ridge would have either insisted that they be remedied or declined the assignment.

[54] I find, accordingly, that to the extent Mr. Said's testimony and the photos found at Exhibit 1, pp. 29-41, Exhibit 2, tabs 50-51 and Exhibit 7 reveal misuse, damage, destruction, unauthorised modifications and accumulations of clutter and debris, the Family Home acquired the great bulk of those attributes over the course of Ms. Fontaine's tenancy there and after Mr. Said and his family had left Canada.

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(b) Ongoing monitoring of the Family Home

[55] The evidence of what Mr. Said discovered upon his family's return in early 2007—found in his testimony and that of his witnesses, together with the documentary evidence (including photographs)—persuades me, as I have said, that during her tenancy Ms. Fontaine and her entourage defiled and degraded the Family Home to a very significant degree. She did so through a combination of passive neglect and active, destructive behaviour (including the making of unauthorised, unsightly and often non-functional repairs and modifications, some apparently aimed at enabling her to arrange unauthorised sub-tenancies).

[56] The defence evidence regarding the monitoring by Meadow Ridge of the Family Home and, particularly, the frequency and timing of inspection visits is confused, confusing and contradictory. What is plain to me, however, is that effective and contractually compliant monitoring would have led to the detection of the problems with the Fontaine tenancy early and thus enabled Meadow Ridge to intervene so as to protect Mr. Said's investment in the Family Home.

[57] A shadowy figure who has only surfaced in documentary evidence and the testimony of others—one Magdy Al Touny ("Mr. Al Touny")—became part of the defendant's property management team and performed some of the inspections during the course of the Fontaine tenancy. He was mentioned periodically during the testimony of witnesses on both sides and his name comes up in documents that have been placed in evidence by both parties. Frequently, Meadow Ridge witnesses sought to introduce hearsay evidence regarding things that Mr. Al Touny said or did not say, or did or did not do during the course of his involvement with Meadow Ridge's management of the Family Home on behalf of Mr. Said. Mr. Said, too, sought on some occasions to invoke Mr. Al Touny's inadmissible, out-of-court statements in support of some of his arguments and factual contentions.

[58] There is some suggestion that Mr. Al Touny had an involvement in periodic inspections of the Family Home during the Fontaine tenancy. Indeed, at para. 30 of its written argument, Meadow Ridge refers to Ms. Caffrey's testimony that Mr. Al Touny had, by April 2006, assumed responsibility "for everything involved with managing the [Family Home]". This testimony is not corroborated by admissible documentary evidence; indeed, it is called into question if not wholly contradicted by correspondence Mr. Al Touny had with Mr. Said's wife in October, 2006, in which Ms. Said expressed surprise at hearing from him and asked him who he was: Exhibit 2, tabs 40-41.

[59] Without Mr. Al Touny having become directly involved in the trial of this dispute in some fashion, it is impossible for the court to properly appreciate or understand the true nature and scope of his role and the sufficiency of his efforts. Nevertheless, Mr. Al Touny's place in the puzzle of this case and his surprising absence from the

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proceedings calls for some comment in these reasons for judgment and it is opportune for me to offer that comment at this point in the narrative.

[60] Subsequent to the unfolding of the events at issue in this case, Mr. Al Touny apparently moved to Dublin. While the cost and inconvenience of securing his testimony at trial would therefore have been considerable, and perhaps even prohibitive, to the extent that Mr. Al Touny's evidence is part of what Meadow Ridge would ordinarily be expected to invoke to support its claim that it went about its duties on behalf of Mr. Said in a prudent and reasonable manner, I consider it telling that Meadow Ridge did not seek to introduce his evidence in some way.

[61] Plainly, relations between Mr. Al Touny and Meadow Ridge eventually became troubled. For example, Mr. Al Touny provided evidence to the Real Estate Council of British Columbia upon which the Council relied in part in investigating a complaint lodged with it by Mr. Said in relation to certain of the matters in issue in these proceedings. That complaint led to a disciplinary warning being issued to Ms. Caffrey by the Council as regulator in relation to its conclusion that she had failed to properly communicate with Mr. Said about the alleged assignment of Meadow Ridge's property management portfolio to Keller Williams: see Exhibit 1, pp. 13-14. Notwithstanding that, however, I say again that Mr. Al Touny was a part of the property management team whose performance in managing the Family Home is under close scrutiny in these proceedings. No application was brought by Meadow Ridge for leave to place affidavit evidence from him before the court, or to have him testify (and/or be cross-examined) by a video link (so as to save the expense of bringing him from Dublin to Canada to testify). To the extent that Mr. Al Touny did not appear as a witness in these

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proceedings, I draw the adverse inference that had he done so his testimony would not have been congenial to the interests of Meadow Ridge.

[62] In its written submission, under the headings "Due Diligence in Managing the Property from December 2005 to April 2006," and "Due Diligence in Managing the Property Generally from May 2006 On", Meadow Ridge dwells mainly on issues other than the frequency and sufficiency of its monitoring and inspection practices (such as the alleged assignment of its rights and obligations to Keller Williams, the collecting of rents and security deposits for example, and so forth).

[63] Meadow Ridge concedes in its submission that the first inspection visit it conducted of the Family Home after Ms. Fontaine and her entourage moved in at the beginning of February, 2006, took place sometime in April of that year—potentially two months later: see para. 77 d. Ms. Caffrey also testified that her usual practice was to conduct "regular" inspections of properties under her management which, to her, emphatically did not mean monthly inspections but, rather, meant inspection visits at intervals of up to three months: *Trans*., March 8, 2013, pp. 34-35.

[64] This evidence does not describe practices which accord with para. 8 of the addendum to the Fontaine Tenancy Agreement—prepared on a Meadow Ridge form—which Ms. Caffrey executed on behalf of Mr. Said. That paragraph and para. 19 of the agreement proper provide for extensive rights of inspection, including regular visits at intervals as short as every 30 days, as deemed necessary by Meadow Ridge: Exhibit 2, tab 9, pp. 13 and 15. Unquestionably, the Fontaine Tenancy Agreement provided for regular inspections and for inspections in circumstances where "red flag" observations

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placed Meadow Ridge on notice of problems with the way the Family Home was being cared for.

[65] I turn now to the evidence that speaks to Meadow Ridge's record of monitoring and inspection and some of the occasions when its representatives might reasonably have been expected to recognise the need to undertake an active and purposeful assessment of the Fontaine tenancy and the condition of the Family Home.

[66] Ms. Fontaine's initial rent cheque was returned NSF, leading Meadow Ridge on February 8, 2006 to threaten to demand keys and threaten to re-key the premises if it did not receive cash from Ms Fontaine by February 9th: see Exhibit 2, tab 12. The tenancy at that point was barely a week old and already clearly in trouble. This constitutes an early and significant red flag.

[67] Other early events in the course of the Fontaine tenancy should also, in my view, have served as red flags calling for greater scrutiny. One would have thought that the report of a rat infestation in the Family Home "soon after [Ms. Fontaine] moved in," for example, might have served as an early trigger for an inspection visit (see *Trans*., March 8, p. 59). However, there is no evidence that that early red flag provoked any such action.

[68] The documentary evidence tendered by Meadow Ridge includes some early 48-hour inspection notice forms that were apparently delivered to the Family Home in the first few weeks of the Fontaine tenancy—in part to ensure that services such as Hydro had been transferred out of Mr. Said's name and into Ms. Fontaine's name. However, these forms are most noteworthy:

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(a) for the fact that their repeated and successive issuances by Meadow Ridge to Ms. Fontaine reveal an apparent lack of cooperation on Ms. Fontaine's part to permit inspection: see Exhibit 2, tabs 13, 14 and 15; and

(b) for the absence of any similar notice documents or records of regular inspection visits (or attempts to arrange and conduct such visits) throughout the bulk of the remainder of the tenancy.

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[69] Indications that Ms. Fontaine had begun to do work on the Family Home and its grounds began to appear early in the tenancy (in April of 2006)—see, for example, the invoices from that period that she sought to have reimbursed at Exhibit 2, tab 20. Yet, the evidence before me does not reveal that the work done in this regard was ever approved in advance by Mr. Said or even that his approval for it had been sought. This was so despite the fact that Meadow Ridge had stipulated for Mr. Said's benefit in the Fontaine Tenancy Agreement that advance written approval for such works was required: see, for example, Exhibit 2, tab 9, paras. 15 and 21. Recall that the Fontaine Tenancy Agreement is a completed copy of Meadow Ridge's own form and that this prior authorisation requirement resonates with the prior authorisation stipulations in the Property Management Contract: Exhibit 2, tab 1, pp. 2 and 4. Wholly out of keeping with the spirit and the letter of paras. 15 and 21 of the Fontaine Tenancy Agreement, Ms. Fontaine performed the subject modifications without prior approval for them and then Meadow Ridge reported them to Mr. Said on April 28, 2006, *post facto* and in the context of a request that he pay for the materials and services associated with them:

> "Also the tenant did a lot of clean-up around your land and would like a small payment for the dump fees. They will transport the garbage themselves and supply the invoices." (Exhibit 2, tab 24)

[70] A review of the note and invoices found at Exhibit 2, tab 20, shows that, contrary to the impression left by the above-quoted extract from Ms. Caffrey and Ms. Teszka's e-mail to Mr. Said, Ms. Fontaine was in late April seeking reimbursement not only for dump fees but for various other material costs. She was also indicating that more such expense claims were looming. This, too, should in my view have been recognised by Meadow Ridge as another early sign that Ms. Fontaine had a tendency to act unilaterally in ways which were potentially harmful to Mr. Said's interests and which conflicted with her obligations under the Fontaine Tenancy Agreement. Apparently this red flag, too, went unremarked.

[71] A much fuller account of the extensive work done at the Family Home without prior authorisation—given, this time, by Ms. Fontaine herself in a lengthy letter to Mr. Said dated October 6, 2006, seeking reimbursement by way of rent concessions for that work—appears at Exhibit 2, tab 39. In that letter Ms. Fontaine refers to having "done several things that I think that you would be very happy with". The letter goes on to outline extensive modifications to the Family Home and grounds in the past tense, including:

(a) the finishing of the outside of the garage with plastic, tarpaper and siding;

(b) the replacement of the flooring in the kitchen and bathroom;

(c) the replacement of the toilet;

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(d) the painting of the bathroom “dark green”;

(e) the painting of the bricks on the fireplace and the application of gold leaf paint to the mortar between the bricks;

(f) the replacement of the carpet on the stairs inside the house;

(g) the complete clearing of the backyard of vines and blackberries;

(h) the partial replacement of a part of the back yard deck; and

(i) the installation of a fence in the front yard and the painting of the same.

[72] I infer from the number and extent of the projects enumerated in Ms. Fontaine’s October 6th letter that the subject modifications would have taken considerable time to perform. How could such extensive *de facto* renovations to the Family Home proceed without being detected by Mr. Said’s trusted property managers? During cross-examination, Ms. Caffrey conceded that Mr. Said had not given his “permission” for such modifications in advance; and while she contended that the requirement for such permission as set out in the Fontaine Tenancy Agreement had been put to Ms. Fontaine verbally in relation to some of those modifications before they were conducted, she also testified that there was no documentary record of that: *Trans*., September 16, 2013, pp. 35-38. In this and in numerous other ways, Meadow Ridge clearly breached its contractual duty to “maintain full and detailed records covering the management of the property”: Exhibit 2, tab 1, p. 1, para. 2(d).

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[73] Upon receiving advice while still abroad of the existence of Ms. Fontaine's letter and its contents from Mr. Al Touny, Mr. Said's wife wrote back in evident exasperation, questioning how such work could have been done without prior authorisation and reminding Meadow Ridge of the requirement for such prior authorisation in the Fontaine Tenancy Agreement: see Exhibit 2, tab 41. There is no evidence as to what response, if any, was given by any Meadow Ridge personnel to that anguished communication.

[74] I could go on to canvass other documents and testimony that, like the evidence reviewed in the paragraphs above, speak to the facts that, (a) there were red flags aplenty from early days concerning the Fontaine tenancy and its potential to cause losses to Mr. Said and, (b) those red flags did not prompt the required action on the part of Meadow Ridge. I see no need to do so. The law is clear that where there is substantial support in the record for a trial judge's findings and the inferences drawn from them, the trial judge does not make a reversible error by failing to refer to every item of evidence that was adduced: see, for example, ***Buchan v. Ortho Pharmaceutical (Canada) Ltd.*** (1986), 54 O.R. (2d) 92 at 99 (C.A.) and ***Delgamuukw v. R.*** (1993), 104 D.L.R. (4th) 470 at 563-564 (B.C.C.A.).

[75] The red flags already noted in these reasons, in my respectful view, would have put any property manager, acting reasonably, on notice of a need to monitor the Family Home closely, including by way of an increased frequency of inspection visits.

[76] The evidence given by the Meadow Ridge witnesses at trial in defence of their inspection visits and general monitoring of the Family Home over the course of the Fontaine tenancy is vague and contradictory. Nothing, as it was unfolding, seemed to

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be capable of deflecting Ms. Caffrey from her general practice of conducting inspection visits at wide intervals. Her testimony that she inspected the Family Home in September of 2006 and found its condition, inside and out, to be "good" is not credible. Much, if not most, of the unauthorised work referred to in Ms. Fontaine's letter of October 6th would have to have been in progress or completed by that September when Ms. Caffrey says she inspected the Family Home; at the very least one would expect that she would have reacted forcefully to the discovery of that unauthorised work then and there and stepped up her own scrutiny of the Fontaine tenancy generally. The fact that she did not do so and then, at trial, sought to convey to the court that she saw nothing in September 2006 to give her concern, left me with the impression that either the September visit did not occur at all or that it was exceedingly cursory.

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[77] Neither is my confidence in Ms. Caffrey's contention that the Family Home and grounds were in good condition in September 2006 at all bolstered by her recourse to photographic evidence found at Exhibit 2, tabs, 46-49. As the following extract from her testimony makes plain, she did not take the photographs, doesn't know who did, and could not properly link them to the state of the Family Home and its grounds at any particular time (having, at various points in that testimony, claimed that they represented the state of the property in the summer, the fall and possibly April of 2006): *Trans*., March 8, 2013, pp. 74-75.

> "Q Ms. Caffrey, I'd like to turn to tab 30 of Exhibit 2.
> A This tab?
> Q Yeah. Do you know what these photographs are under tab 30? Take a moment to look at them.
> A I didn't take the photographs. They're photographs from summer of 2006.
> Q Okay. So, what are they photographs of, Ms. Caffrey?

A The exterior of the home, [redacted].
Q Okay. And you say you didn't take them?
A No, I didn't take the photographs.
Q Do you know who took them?
A I'm not sure who took them.
Q Do you know how they -- when you first saw these photographs?
A I have no knowledge of seeing them 'til they were entered into evidence.
Q Okay. Do you have any -- do these photographs look anything like what you recall the property look --
A Yes, they look like the property as I viewed it in September of 2006.
Q What about April of 2006?
A I -- I'm not certain about April, but in September, yes."

[78] Meadow Ridge does acknowledge that there were signs of deterioration evident at the Family Home by the fall of 2006: see para. 82 of its written submission. By the "fall" Meadow Ridge must be taken to mean later than September when, as noted above, Ms. Caffrey claimed that everything was still fine there. But for the reasons I have outlined above, I am satisfied that the deleterious effects that the Fontaine tenancy was having upon the Family Home must have been plainly evident long before the fall. However, because of a general pattern of inadequate scrutiny and neglect in the face of numerous red flags, that deterioration was permitted by Meadow Ridge to continue unabated until Ms. Fontaine finally left the premises in early 2007.

[79] The kinds of documents that might have been called in aid by Meadow Ridge to refute that inference (such as inspection reports) are said to have been lost by Meadow Ridge, and no satisfactory explanation for their loss has ever been offered. At best, Ms. Caffrey and Ms. Teszka could do no more than testify as to their usual and ordinary practice of preparing and maintaining such reports, and to their perplexity at not being able to find them as part of their preparation for defending Mr. Said's claims. In such circumstances—where the maintenance of such records is not only expressly

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addressed in the Property Management Contract (Exhibit 2, tab 1, p. 1, para 2(d)) but mandated by s. 23 of the ***Residential Tenancy Act***—I cannot do other than draw the adverse inference that had such documents been available, they would not have been helpful to Meadow Ridge in advancing its defences.

[80] Much has been said in argument on behalf of Meadow Ridge about the difficulties a landlord faces in evicting a troublesome tenant. For example, Meadow Ridge raises that point in order to attempt to deflect fault away from itself, suggesting that most of the harm to the Family Home must have been done after eviction proceedings were commenced by Meadow Ridge against Ms. Fontaine.

[81] However, as I have explained, indications of general degradation and unauthorised renovation activity were already there to be observed and noted well before December of 2006, when Meadow Ridge admits that it formally began the eviction process and commenced efforts to get Ms. Fontaine out of the Family Home.

[82] Beyond that, however, and despite her growing knowledge of the growing problems at the Family Home, Ms. Caffrey when preparing her e-mail notifying Mr. Said of the commencement of eviction proceedings cites the non-payment of rent as the sole rationale for the eviction: see Exhibit 2, tabs 47-48. In that e-mail Ms. Caffrey refers to having "been to the house a number of times" but not once to the disturbing things that she and Mr. Al Touny had observed on those occasions.

[83] I will say it again for emphasis: Ms. Caffrey is wholly silent about the condition of the Family Home in her December 11th e-mail. Yet, elsewhere in her testimony Ms. Caffrey admitted that as early as October/November of 2006, she and Mr. Al Touny

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were becoming increasingly concerned about the deteriorating condition of the property and about other unauthorised people being there: *Trans.*, March 8, 2013, pp. 77-83.

[84] There is nothing in the evidence to suggest that these concerns were ever conveyed to Mr. Said or treated as a basis for intervention to curtail the harms resulting to the Family Home. It was not until about December 11, 2006 that a positive action plan to secure Ms. Fontaine's departure was set in motion and, to the extent that Meadow Ridge explained its decision to proceed with that plan, it cited non-payment of rent *and nothing else* in support of it when communicating with Mr. Said: Exhibit 2, tabs 47-48. One cannot but conclude that Ms. Caffrey realised that the deteriorating condition of the Family Home that was known to her reflected poorly on Meadow Ridge's property management performance and that she felt little inclination to deal frankly with Mr. Said about that deterioration, despite Meadow Ridge's obligations under the Property Management Contract to both manage the property diligently and to "report directly to [Mr. Said] on all matters".

[85] Rather than raising arguments in its favour then, the fact that Meadow Ridge knew (as would any firm of property managers) that eviction proceedings can be quite protracted works to shows that it was important that Meadow Ridge monitor carefully and then act swiftly on the evidence it had that Ms. Fontaine was a problem tenant. It did not do so, though the writing was on the wall from as early as February 8, 2006, when Ms. Fontaine's first rent cheque failed to clear. More red flags followed but were not heeded. The December 11th communication (Exhibit 2, tabs 46-47) to Mr. Said about eviction proceedings was, at best, hopelessly incomplete in its articulation of the

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grounds for Meadow Ridge's concerns; at worst, it was deceptive and misleading in its omission of any reference to worsening conditions at the Family Home.

[86] Altogether, in my view the evidence has clearly established a failure on the part of Meadow Ridge to perform sufficient ongoing monitoring of the Family Home over the course of the Fontaine Tenancy, coupled with a failure to act decisively to preserve the Family Home in proper condition for Mr. Said's benefit. As I have noted, Meadow Ridge was put on inquiry by numerous red flags and failed to respond to them by increasing its scrutiny and then acting on its findings. This failure represents, in my opinion, a breach on the part of Meadow Ridge of its duties under the Property Management Contract to "use due diligence in the management of the premises" as para. 2(a) of that agreement obliged it to do.

DO MEADOW RIDGE'S BREACHES AMOUNT TO GROSS NEGLIGENCE?

[87] I have previously acknowledged that, on the authorities, for Mr. Said to succeed in his claim for breach of the Property Management Contract he entered into with Meadow Ridge, he must prove that Meadow Ridge's breaches of that agreement attained the status of gross negligence.

[88] I will say straightaway that I am fully satisfied that, cumulatively, Meadow Ridge's various breaches as revealed in the evidence discussed above constitute gross negligence. That is, I am fully satisfied that Meadow Ridge's performance fell so far short of the "ordinary standards by which reasonable and competent property managers would behave" in managing the Family Home that its performance can legitimately be

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characterised as constituting a "marked departure or significant deviation" from those standards: ***Aville Enterprises*** at para. 28.

[89] I will not repeat in detail what I have recounted earlier in these reasons. I have found that Meadow Ridge carried out a cursory and inadequate evaluation of Ms. Fontaine's suitability as a tenant for the Family Home. It gathered far too little information and failed to take account of various red flags associated with her application. It did not discover very worrisome information about her history that was eminently discoverable upon reasonable inquiry. It made no efforts at all to learn anything about the suitability of the other two adults who comprised one-third of her entire entourage. In my judgment, if Ms. Fontaine's application had been properly vetted she would have been quickly recognisable as a potentially unsuitable tenant and the problems that resulted from her tenancy at the Family Home could have been avoided.

[90] Once installed in the Family Home, one after another red flag suggesting that Ms. Fontaine was and would be a problem tenant continued to pop up. Her first rent cheque bounced. She was uncooperative with Meadow Ridge's efforts to gain access to the Family Home to ensure an orderly transition of utility accounts from Mr. Said's name into hers. She reported a rat infestation very soon after moving in. In seeking reimbursement of certain expenses Ms. Fontaine revealed a tendency as early as April of 2006 to carry out works and modifications on the property without first having secured prior authorisation from Mr. Said or for Meadow Ridge acting as his property manager. These red flags did not prompt closer scrutiny. Meadow Ridge persisted with a woefully inadequate pattern of monitoring of the Family Home—so inadequate that Ms. Fontaine

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was able to carry out wholesale renovations to the house and grounds without being detected.

[91] The evidence is clear that the Family Home, while not perfect, had been properly prepared for occupation by tenants, and that Meadow Ridge was pleased to take the assignment to place a tenant into it during the Said family's extended holiday and then collect its fees for "managing" the Family Home. The property was fit for occupancy and not in any need of modification, much less wholesale renovation. Ms. Fontaine and Meadow Ridge both conceded as much in the Fontaine Tenancy Agreement when they agreed (with Meadow Ridge acting as Mr. Said's agent), at para. 9, that the Family Home was "in good order, repair, and [in] a safe, clean, and tenantable condition". Somehow, Ms. Fontaine was able nevertheless to embark upon and then perform extensive modifications to the Family Home and its grounds that the photographic and other evidence adduced at trial prove were grotesque, unsightly and non-functional while it was Meadow Ridge's responsibility to manage the Family Home diligently for his benefit. When she was finished with it, the Family Home was barely habitable. The Family Home could not and would not have been transformed into the wreck to which Mr. Said and his family returned if Meadow Ridge had exercised proper care in selecting a suitable tenant and then overseen the tenancy and intervened from an early point when the first of many danger signs began to manifest themselves.

[92] Where a property management firm is charged, contractually, with the responsibility to "use due diligence in the management of the premises" during a client's absence and permits those premises to be defiled and degraded to the point of being virtually uninhabitable, there is no room for argument that the property management

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firm's breaches constitute gross negligence. Meadow Ridge's breaches of the Property Management Contract amount to nothing less.

MEADOW RIDGE'S ASSIGNMENT ARGUMENT

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[93] As I have acknowledged earlier in these reasons, Meadow Ridge denies liability for some or all of any losses suffered by Mr. Said as a result of any breaches of obligations under the Property Management Contract he might be able to prove by contending that its rights and its obligations to Mr. Said under that agreement were assigned to Keller Williams in April of 2006. (In fact, the stated effective date of the purported assignment is May 4, 2006: see Exhibit 2, tabs 21 and 24.) In its Reply, Meadow Ridge pleads that defence by specifically invoking the provision in the Property Management Contract which states that that contract "shall be binding upon the successors and assigns of [Meadow Ridge]". It also alleges, at para. d of its Reply, that:

> "In or about April, 2006, [Mr. Said] was advised and acknowledged that Keller Williams Results Realty Ltd., property management division, would be taking over the [Property Management Contract] from [Meadow Ridge]"

[94] In its written submissions, Meadow Ridge appears implicitly to concede that the Property Management Contract is a species of agreement that cannot be assigned by one party without the other party's consent. For example, at par. 79, counsel argues:

> "… even though there is no written acknowledgement from Mr. Said to assign the [Property Management Contract] from [Meadow Ridge] to Keller Williams *there is evidence to support that Mr. Said consented to the assignment.*" (emphasis added)

[95] Unquestionably, the Property Management Contract fits within that category of agreements for which consent to assignment must be given. The Property Management Contract was one that Mr. Said entered into with Meadow Ridge based upon what he perceived to be Meadow Ridge's particular skill and knowledge in the property management realm as represented by, among others, Ms. Caffrey. Mr. Said testified that he considered other property management firms when planning his year-long vacation and, on the basis of his impressions formed during a meeting with Ms. Caffrey, chose to engage Meadow Ridge to look after the Family Home during his pending lengthy absence from Canada: *Trans*., November 30, 2012, p. 28. The evidence thus bears out that personal considerations influenced Mr. Said's decision to engage Meadow Ridge by contract to serve as his property management firm.

[96] In ***Sullivan v. Gray***, [1942] 3 D.L.R. 269 at 271 (Ont. H.C.), Hogg J. stated this in relation to such contracts:

> "The law is well established that where the skill or knowledge or some other personal quality of a party with whom a contract has been made is a material ingredient of the contract, the contract can be performed by the contracting party alone, and not by an assignee."

[97] And somewhat more forcefully, the Supreme Court of Canada in the early case of ***R. v. Smith*** (1883), 10 S.C.R. 1 declined in the following emphatic terms to admit the possibility of vicarious performance of such contracts without consent:

> "…[t]hat a party who enters into a contract for the performance of work is note entitled by a mere assignment to another person to substitute the assignee for himself, so as to delegate to the assignee his own rights and liabilities under the contract, without the consent to the other party to th e agreement is a proposition of law so well established that it requires scarcely any authority to support it. In such a case there is no privity of

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> contract—not contractual relation of any kind—between the assignee and the party for who the work is to be performed." (at p. 55)

[98] Did Mr. Said consent to the purported assignment, by Meadow Ridge, of its rights and obligations under the Property Management Contract, to Keller Williams? Meadow Ridge admits that its efforts to secure a *written* consent from Mr. Said were unsuccessful. However, it argues that, nevertheless, "there is evidence to support that Mr. Said consented to the assignment" (para. 79 of its written submissions).

[99] I cannot accept that submission.

[100] To begin, Meadow Ridge does not appear to have appreciated the distinction between obtaining a party's consent to an assignment and obtaining an acknowledgement from the party of what is presented or announced unilaterally as a *fait accompli*. This is clear from the documentation that it employed when purporting to secure the consent of Ms. Fontaine. Nowhere on the form does the word "consent" appear—rather, it provides simply that "[a]ll parties hereby *acknowledge* a change in management agency to occur on or before May 4th 2006" (Exhibit 2, tab, 21, emphasis added).

[101] I note in passing that no document remotely resembling the "Residential Tenancy Agreement Addendum" sent to Ms. Fontaine, constituting an addendum in similar terms to the Property Management Contract, was ever sent to Mr. Said. And, more importantly, there is certainly no document in evidence that constitutes proof of any effort on the part of Meadow Ridge specifically to obtain Mr. Said's *consent* (written or otherwise) to the purported assignment.

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[102] Consent and acknowledgement are, for present purposes, very different things. As Melvin J. stated in ***Rounis v. Malaspina Students' Union***, [2000] B.C.J. No. 2475 (S.C.)—a case that applies ***Sullivan v. Gray***:

> "*Adding a new party to the contract or changing the parties to the contract ultimately creates a new offer which requires the acceptance of the defendant in order to form a contract.* The invitation to tender, under the heading of "Ownership & Operating Personnel" and under the heading of "Financial Disclosure", demonstrates the information that was required by the defendant in order to accept a proposal for the service to be provided." (at para. 24, emphasis added)

[103] The reference in the final sentence in passage to information being required by a party who stands to be affected by an assignment in order to enable that party to give informed consent to it has application to the case at bar. Ms. Caffrey and Ms. Teszka of Meadow Ridge purported to provide Mr. Said a *fait accompli* notification of the purported assignment of its property management portfolio, including (implicitly) the Property Management Contract, in a throwaway paragraph near the end of an e-mail dated April 28, 2006. The paragraph read as follows:

> "Also, you will be receiveing paperwork regarding out changeover to a company called Keller Willaims which will take place on May 4th 2006. We are in a new location about 3 mins from the lougheed office. The address will be supplied to you by mail. our old phone number is still in service and we have asecond number 604-460-1668" (Exhibit 2, tab 24)

[104] I draw attention to the fact that this e-mail announcement was sent, without accompanying information, by Meadow Ridge to its client on the other side of the globe a mere six days before the assignment was said to take effect.

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[105] Mr. Said's reply, sent a few days later, contains no suggestion of consent on his part to a change for which, in truth, his consent had not even been sought. Rather, in parallel with what is highlighted in ***Rounis***, Mr. Said sought information from Ms. Caffrey and Ms. Teszka in a way that makes it plain that any consent he might ultimately be prepared to give (if asked) was dependant on receiving more information:

> "… also about changing over I like you to tell me more about that chang please is that you mean you are no longer with Home life [the former name of Meadow Ridge] ?? please Explain in more details …" (Exhibit 2, tab 26)

[106] I pause to note that this request for information is entirely consistent with Mr. Said's overall approach to the Property Management Contract. That Mr. Said and his family were concerned to ensure that the people who he knew and had entrusted with the day-to-day work of managing the Family Home—that is, Ms. Caffrey and Ms. Teska—comes through clearly and graphically in the e-mail that Mr. Said's wife sent (Exhibit 2, tab 41) in reply to one she received from Mr. Al Touny on October 5, 2006 (Exhibit 2, tab 40) seeking payment after the fact for the unauthorised renovations and modifications performed by Ms. Fontaine at the Family Home. Ms. Said's reply, dated October 8, 2006, begins as follows:

> "Hello and thank you for your Ramadan wishes. I am a bit confused, firstly, who are you? Has Carole passed our property to you to handle? This is not necessarily a problem but it would be nice to be informed …" (Exhibit 2, tab 41)

[107] Returning to Mr. Said's request for information relating to the "changeover," the record shows that he testified he did not receive any information about that "changeover" from Ms. Caffrey or Ms. Teszka, apart (possibly) from some rather

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vaguely recalled words of comfort from Ms. Caffrey in a subsequent e-mail (which he could not locate) to the effect that the "changeover" ought not to give him any concern: *Trans*., March 7, 2013, pp. 23-25. Ms. Caffrey, however, could not recall responding to Mr. Said's request for information and no e-mail or other document constituting a response was placed in evidence by Meadow Ridge: *Trans*., March 8, 2013, p. 68. Neither were any documents of the kind that one might image would be provided in a response to a request for such information—such as a prospectus or outline of how Keller Williams might be positioned and qualified to discharge the obligations of Meadow Ridge to Meadow Ridge's clients, how the trust accounts in which Mr. Said's net rent proceeds were held were to be dealt with, etc.—ever tendered to the court by Meadow Ridge in support of its assignment defence.

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[108] Notwithstanding all of this evidence—evidence that appears to vitiate or render uninformed any hint of consent on Mr. Said's part that might possibly be inferred, otherwise, from acquiescence—Meadow Ridge nevertheless presses its argument that the assignment of the Property Management Contract from it to Keller Williams received Mr. Said's consent. It relies particularly on the extract below of Mr. Said's evidence-in-chief in this regard, given on November 30, 2012, some six years after the events in question:

> "A Yes. He emailed us after, telling us that -- no, that was not him. I think it was Mrs. Caffrey, I'm not exactly sure, that we have some change of company which we are not aware of. He said -- or she said that we changing company and something along the side of it's not really a big deal of some sort. I said okay. She said something about giving me paper. I never get anything. I never got any paper in regard to that. And my wife after --
> THE COURT: I think you said you said that was okay with you on the telephone or something?

A No, on the email. Like she emailed me or I believe Mr. Touny email or Mrs. Caffrey. I'm not sure exactly. I didn't -- didn't have my memory on that, saying that we changed company from HomeLife to Keller Williams and nothing will change for you, everything will stay the same. So I didn't think anything of it.
THE COURT: She said that in an email?
A In an email. Few months after --
THE COURT: And did you indicate that that was okay with you?
A She -- well, she email and I said what's it to me? She said it's nothing to you really. It's just between us as companies and I going to send you something. I never got anything of -- like I was trying to understand if I have to change, if there is anything changed when you change companies, but I never got any -- any explanation from Mrs. Caffrey.
THE COURT: What I'm trying to understand, Mr. Said, is whether you did or said anything to indicate that it was okay that they changed companies.
A Yes, I did.
THE COURT: Okay. Probably in an email?
A In an email.
THE COURT: Okay.
A But, again, I don't know what that -- to me, when they change company is that has anything to do with -- with the contract that I have with Mrs. Caffrey or not. I have no idea.
THE COURT: And you say a contract with Ms. Caffrey. Do you mean her as a representative of HomeLife?
A As a property manager or as a representative, to me what's it affect me when I have the company change? What that affect me if you managed -- like, the way to manage the house, that's... I didn't understand the meaning of that, but I didn't think of it." (at pp. 31-32)

[109] Several things can be said about this testimony. First, it does indeed contain statements in which Mr. Said appears to say that he gave his grudging "okay" to the change of companies. But all of his evidence in this passage is couched in repeated references to the information he requested but never received—that is, the information that he requested in his e-mail found at Exhibit 2, tab 26, which drew no reply other than, perhaps, a "don't worry about it, everything will be okay" response from Ms. Caffrey.

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[110] In my judgment, Mr. Said's quoted testimony cannot be taken to be evidence of him having given his informed consent to the assignment of the Property Management Contract—a contract that, manifestly, is one which personal considerations guided him to enter into with Meadow Ridge to begin with. Recall that Mr. Said was never even *asked* for his consent to the assignment. He was thousands of miles away, did not receive the information he requested and, ultimately, at most acquiesced or did not object to a *fait accompli* announcement of a pending "changeover" that was never fully explained to him. Consent to the assignment of a property management agreement like the one at issue in this case cannot be obtained by the use of a skeletal, last minute, negative option tactic like the one employed here by Meadow Ridge. In sum, Mr. Said's words as set out in the passage upon which Meadow Ridge places such reliance (quoted above) must be interpreted in the round and within the context of the applicable law. When those words are interpreted in that way I am satisfied that they do not amount to "consent" of the nature and kind that the law, as expressed in cases like ***Sullivan v. Gray***, ***R. v. Smith*** and ***Rounis v. Malaspina Students' Union***, requires.

[111] Beyond that, I cannot be at all satisfied that Mr. Said ever truly appreciated that, from and after May 4, 2006, Ms. Caffrey and Ms. Teszka were purportedly dealing with him through the corporate vehicle of Keller Williams. Meadow Ridge argues, at para. 79(c) of its written submission that "correspondence and documents sent to Mr. Said [were] all in the name of Keller Williams rather than Homelife [Meadow Ridge's former name] and Mr. Said did not question it". That submission is roundly contradicted by Meadow Ridge's own evidence. See, for example:

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(a) the numerous e-mails that were exchanged after May 4, 2006 *and up to mid-December, 2006*, between Ms. Caffrey, Ms. Teszka and/or "Chloe" on the one hand and Mr. Said on the other. In those e-mails, Ms. Caffrey, Ms. Teszka and Chloe's shared e-mail handle remained (as it had been throughout the time before May 4th) "*Property Management Services, Homelife Classic Realty Ltd" <pmsgirls@hotmail.com>*". The post-May 4th e-mails in question are found at Exhibit 2, tabs 28, 31, 32, 44, 46, 47 and 48; and

(b) the trust reconciliations and credit memos that continued to be issued by "HomeLife Realty Prt Mgmt Trust 2006" after May 4, 2006 in relation to the Family Home found at Exhibit 2, tabs 29 and 34,

[112] Altogether, based on the evidence and the authorities I have canvassed in the preceding paragraphs, I am satisfied that:

(a) the Property Management Contract was the type of agreement that Meadow Ridge could only assign to Keller Williams with Mr. Said's informed consent;

(b) Mr. Said did not give informed consent for that assignment; and, accordingly,

(c) Meadow Ridge remains fully liable for any losses suffered by Mr. Said that were caused by breaches, by the property managers, of the obligations cast upon them by the Property Management Contract.

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DAMAGES

[113] Mr. Said testified that he had spent at least $20,000 to cover material and labour costs he incurred in restoring the Family Home to a habitable condition following the Fontaine tenancy and then devoted a further $50,000 worth of his time and that of others who assisted him to the effort: *Trans*., December 10, 2012, pp. 32-33. As is required under Rule 1(4) of the ***Small Claims Rules***, he has expressly waived recovery of the amount by which his damages exceed the $25,000 jurisdictional limit of the Provincial Court.

[114] In its submission, Meadow Ridge rightly criticises the quality of Mr. Said's evidence with regard to his claim for damages, stating (for example) that "to prove a claim for damages for repair ordinarily the claimant must show on the balance of probabilities that he actually incurred the costs of repair or provide evidence of the true estimate of the costs of repair" (at para. 121) and "the type of documentary proof one would ordinarily expect would be invoices for work done, materials and goods supplied as well as proof of payment by credit card, cheque, money order or bank statements if cash payments were made" (para. 122)

[115] Mr. Said does not pretend that his claim for damages is fully backed up by receipts, invoices and proper documentation. He was candid in his testimony about having failed to maintain and, thus, tender to the court, all of the documentary material he recognises he needs to corroborate his testimony regarding the expenses he has incurred in attempting to put the Family Home right. The documentary evidence regarding estimates he has been given is equally confused and confusing.

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[116] But Mr. Said did give what I took to be truthful oral testimony in this regard to the effect that the expenses associated with remedying the harms caused to the Family Home far exceed $25,000. It must not be forgotten that he is an unrepresented, lay litigant who did not have the advantage of legal training or a legal advisor or advocate to assist him in preparing for and conducting his trial. As such, I consider that he must be shown a certain measure of tolerance and understanding where such deficiencies exist in the formal proof he tenders of his damages claim in a court which holds itself out as being accessible to in-person litigants who are not schooled in the ways of the law. In showing him that tolerance, however, I also must remain mindful of Meadow Ridge's interests and of Mr. Said's subsisting obligation to prove his damages on a balance of probabilities.

[117] But I must be clear: This is not a case in which there is no evidence of damages tendered to the court. There are some invoices and bills and estimates (see Exhibit 1, p. 2 and 28, and Exhibit 2, tabs 52-54, Exhibit 4 and Exhibit 6). There is Mr. Said's testimony regarding what he has spent and done (mentioned above). There is Mr. Said's graphic descriptions of the deplorable state of the Family Home given during his testimony (see *Trans.*, *passim*), concurred in to some degree by Meadow Ridge witnesses who were prepared to acknowledge at least that, toward the end of the Fontaine tenancy, the condition of house and grounds was indeed deteriorating. There is Ms. Fontaine's catalogue of unauthorised renovations found at Exhibit 2, tab 39—extensive renovations and modifications that were not approved and that Mr. Said said he spent much time and money reversing. All of this amounts to *some* evidence of damages suffered by Mr. Said—in the form of the degraded condition of the Family

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Home—that can be traced causally to Meadow Ridge's gross negligence in placing an unsuitable tenant in that home and then failing to properly monitor the tenancy and intervene to prevent that degradation.

[118] And then there are the photographs found at Exhibit 1, pp. 29-41, Exhibit 2, tabs 50-51 and Exhibit 7. About those, Meadow Ridge argues:

> "… the photographs that Mr. Said put into evidence [are] insufficient to prove anything but the condition of the Property after Ms. Fontaine vacated [the Family Home] … the photographs do not prove what needed to be repaired or the costs of repair." (at para. 120)

[119] That submission has some merit, so far as it goes. Photographs do not have the same probative value as invoices and estimates. But that is not to say that they have no probative value at all. Thus, the concession embedded in the submission—that being that the photographs prove "the condition of the [Family Home" after Ms. Fontaine vacated [the Family Home]"—is an important one. It is an acknowledgment of an inescapable truth: the photographs of a severely degraded residential property following the end of a tenancy reveal the compromised condition the property was in when the tenant leaves.

[120] I have already dealt, earlier in these reasons, with the argument raised in more than one place in Meadow Ridge's submission that suggests that the Family Home was, to some degree in a meaningfully compromised state from the outset of the Fontaine tenancy. If that were so, I have reasoned, Meadow Ridge would not have taken on the assignment of managing the property and it (on behalf of Mr. Said) and Ms. Fontaine would not have agreed in the Fontaine Tenancy Agreement that the property was ""in

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good order, repair, and [in] a safe, clean, and tenantable condition". I find, therefore, that the great majority of the destruction and debasement of the Family Home revealed in the evidence before the court in this case was caused by Ms. Fontaine and her entourage while the house and grounds were Meadow Ridge's property management responsibility.

[121] I do not believe that I require expert evidence to be able to fairly infer from the photographs exhibited in this case that the horrors wrought during the course of the Fontaine tenancy upon the Family Home, given the supporting content of Mr. Said's testimony and the estimates and invoices (such as they are), would require repair and restoration costs in the tens of thousands of dollars. A reading of the transcript of his testimony given on December 10, 2012, at pages 8-18—discussing photographs that ultimately were made exhibits—does not cover everything by any means but it does give some sense of the scope and magnitude of the devastation Mr. Said returned home to find.

[122] I must acknowledge again that Mr. Said has, unquestionably, furnished the court with a less than satisfactory platform from which to operate in assessing his damages. But, I hasten to say, he has not furnished no platform at all. The platform he has provided to the court still allows an "order of magnitude", rough assessment of what it would cost to restore and repair the harms that befell the Family Home as a result of Meadow Ridge's breaches of the Property Management Contract.

[123] What order of magnitude figure ought I to set, then, in what unavoidably is a broad strokes analysis in determining Mr. Said's damages at large? Mr. Said wishes

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me to award the full principal amount recoverable under the ***Small Claims Act***, R.S.B.C. 1996, c. 430, namely, $25,000. He testified that what he has in fact incurred and will incur in the future amounts to a figure that much greater than that.

[124] I turn for some guidance in this connection to the assistance that Meadow Ridge provided to Mr. Said when he pursued Ms. Fontaine in a claim for damages he brought against *her* before a tribunal constituted under the ***Residential Tenancy Act***. Ms. Caffrey "represented" Mr. Said in that proceeding and together they advanced a claim seeking "a monetary award of $25,000 for damage to the rental unit [i.e., the Family Home]": see Exhibit 2, tab 56. While that claim was ultimately unsuccessful, I consider it to be significant that Ms. Caffrey actively supported Mr. Said in asserting a claim for $25,000 as compensation for the same losses as are at issue in these proceedings. She did so, formally, in a quasi-judicial setting and not as counsel or even as an agent but on behalf of Keller Williams as Mr. Said's co-applicant. In her testimony at trial she sought to distance herself from the Residential Tenancy Branch proceeding and claimed that she had little recollection of her involvement in the process. However, she did admit that the joint application had been supported by photographs, estimates and the like of the kind that Mr. Said has placed before the court in the present case: *Trans.*, September 16, 2013, pp. 16-18.

[125] While I lack the evidence necessary to fix a precise figure on account of the cost of doing the repairs and restoration made necessary by the harms caused to the Family Home due to Meadow Ridge's breaches of the Property Management Contract, I can nevertheless confidently infer from the whole of the evidence that they exceed the court's monetary limit of $25,000. The documentary evidence found in Exhibit 2, tab 56,

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that proves Ms. Caffrey's willingness to represent both Mr. Said and Keller Williams in a quasi-judicial proceeding seeking a monetary award for Mr. Said of $25,000 "for damage to the [Family Home]" against Ms. Fontaine lends added support to my conclusion that an award in that amount would be just and proper and would not over-compensate Mr. Said for the losses he suffered and for which he rightly asserts his claim in contract against Meadow Ridge.

[126] For all of the foregoing reasons, therefore, I fix Mr. Said's damages at $25,000.

ANCILLARY AWARDS

Court Ordered Interest

[127] By my assessment, Meadow Ridge's imprudent act in putting Ms. Fontaine into the Family Home as Mr. Said's tenant without properly assessing the appropriateness of her candidacy represents the beginning of a cascading series of further acts and omissions that, as I have said, amount cumulatively to grossly negligent breaches of Meadow Ridge's obligations to Mr. Said under the Property Management Contract. The Fontaine Tenancy Agreement that formally consummated the landlord/tenant relationship was executed on January 31, 2006: see Exhibit 2, tab 9. Accordingly, I fix January 31, 2006 as the date of breach. Meadow Ridge is liable to Mr. Said for court ordered interest, to be calculated by the registry from January 31, 2006 to the date of judgment.

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Fees

[128] As the successful party, Mr. Said is entitled to recover as against Meadow Ridge filing fees and service fees of $156 and $20, respectively.

Reasonable Expenses

[129] Finally, as the successful party, Mr. Said is entitled under Rule 20(2) of the ***Small Claims Rules*** to recovery of his "reasonable expenses" from Meadow Ridge associated with the prosecution of his claim against that defendant.

[130] In this regard I would invite the parties to confer with one another in the hope, if not the expectation, that they will reach a consensus as to what Mr. Said's properly claimable, reasonable expenses are. If the parties are unable, despite their best efforts, to reach such an agreement, then they may schedule an appearance before the Registrar to have those expenses determined.

SUMMARY AND PAYMENT ORDER

[131] After considering all of the evidence before me against the background of the applicable law, I have concluded that the claimant, Mr. Said, has proven in these proceedings that the defendant, Meadow Ridge, breached various obligations it owed to him under the Property Management Contract. I have also concluded that those breaches were of such a magnitude that they amounted to gross negligence and, hence, entitle Mr. Said to recover damages from Meadow Ridge for the losses he has suffered as a result of those breaches.

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[132] By reason of Meadow Ridge's failure to prove that Mr. Said consented to its purported assignment of its rights and obligations under the Property Management Contract to Keller Williams, I have held Meadow Ridge liable for the totality of the damages claimed by Mr. Said in this action. In so doing, I make no comment, finding or determination with respect to any future entitlement Mr. Said may have, in the course of execution, to pursue any corporate successor(s) of Meadow Ridge, or any other persons or entities who or which may be potentially liable on the judgment granted herein against Meadow Ridge in the event that the pursuit of such successors, persons or entities is permitted or necessitated.

[133] I have fixed the damages payable by Meadow Ridge to Mr. Said for its breaches of the Property Management Contract, as to principal, at $25,000. That amount, together with filing and service fees of $156 and $20 respectively, court ordered interest and Mr. Said's reasonable expenses (if then known), are payable within 14 days of the filing of this judgment unless, within that period, Meadow Ridge files and serves upon Mr. Said an application under Rule 11(2) to appear before me to seek an extension of the time, pursuant to Rule 11(2), to pay those amounts and any amounts that are, at that time, still unknown.

[134] Orders accordingly.

_____

Thomas S. Woods, P.C.J.

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