

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Allen v. Khinda*,
2024 BCSC 1263

Date: 20240715
Docket: S241816
Registry: New Westminster

Between:

Felicia Allen

Plaintiff

And

Mejor Singh Khinda

Defendant

And

Felicia Allen

Defendant by way of Counterclaim

Before: The Honourable Madam Justice Duncan

Reasons for Judgment

The Plaintiff/Defendant by way of
Counterclaim, appearing on her own behalf:

F. Allen

Counsel for the Defendant:

J. Gill

Place and Dates of Trial:

New Westminster, B.C.
October 24–27, February 22 and
March 28, 2024

Place and Date of Judgment:

New Westminster, B.C.
July 15, 2024

Introduction

[1] The plaintiff, Felicia Allen, leased a barn, six outside stalls and a paddock (or field) from the defendant, Mejr Khinda. The facilities were located on property he had purchased in June 2021 on 192nd Street in Surrey. The parties entered into the lease on June 28. The lease commenced on July 1, 2021.

[2] The landlord-tenant relationship deteriorated rapidly. Ms. Allen paid rent for three months, then ceased payments because Mr. Khinda did not make the improvements to the leased area that she had expected. Mr. Khinda twice tried to evict Ms. Allen for failure to pay rent, first under the *Residential Tenancy Act*, S.B.C. 2002, c. 78 and then under the *Commercial Tenancy Act*, R.S.B.C. 1996, c. 57. Both efforts were unsuccessful.

[3] Ms. Allen's use of the facilities on Mr. Khinda's property came to an end in January 2023 when the SPCA removed her horses from the property.

[4] Ms. Allen claims against Mr. Khinda for fraudulent misrepresentation as well as breach of the covenant of quiet enjoyment. The pleadings are dense and prolix. The heart of the fraudulent misrepresentation claim is the allegation that Mr. Khinda told her she could operate her horse rescue and equestrian therapy business from the premises. Then in early 2022 she learned that she could not obtain a business licence. Ms. Allen claims for losses as a result.

[5] Ms. Allen also alleges that Mr. Khinda assaulted her verbally and physically on numerous occasions, but does not plead the corresponding torts. She says he deliberately placed nails and screws in the driveway to impede her ability to use it without puncturing the tires on her vehicle; flooded the area around the barn; cut off the electricity; and installed some kind of listening device in an air conditioning unit in the barn.

[6] Mr. Khinda denies all of Ms. Allen's allegations and counterclaims for unpaid rent between October 2021 and January 2023. From Mr. Khinda's perspective, Ms. Allen was in a hurry to lease the barn from him and thereafter became a

problematic tenant who initiated unpleasant interactions with members of his family, let her large dog chase his small dog and his young son, swore at his elderly mother and failed to pay rent.

Background

[7] Some context is required before turning to the evidence of the parties.

[8] Ms. Allen was involved in litigation concerning another commercial lease at the time of the events leading to the formation of the lease in this matter. It related to property in Port Coquitlam where she kept her horses before moving to Mr. Khinda's property. Ms. Allen commenced an action against her Port Coquitlam landlord, Surjit Singh Parmar, on April 30, 2021 (New Westminster Registry Action No. 237939). The pleadings in that case were marked as exhibits in this trial.

[9] Ms. Allen maintained that she had worked things out amicably with her former landlord and was in no rush to move her horses from the Port Coquitlam property. But on July 6, 2021, a week after Ms. Allen had secured the lease at Mr. Khinda's property, Justice Riley declared Ms. Allen wrongfully in possession of the lands and premises of the Port Coquitlam defendants, effective August 1, 2021.

[10] Mr. Khinda bought the property on 192nd Street in Surrey in June 2021. It included a house, the shop or barn that was the subject of the lease, and land. The purchase was by way of an assignment of the contract of purchase and sale. He planned to live in the house with his family after doing some minor renovations.

[11] There was a residential tenant in the house when Mr. Khinda purchased it. As well, the former owner had rented out parking spaces for storage of trucks, trailers and the like. The parking spaces were in the vicinity of the barn and they were in use in June 2021 when Ms. Allen viewed the barn and adjacent paddock area. The vehicle storage facility was a cash business. Mr. Khinda continued collecting rent for storage until the fall of 2021, when someone complained to the City of Surrey. He ceased the vehicle storage business when the bylaw officer told him to.

Overview of the Evidence

Ms. Allen

[12] On June 28, 2021, Ms. Allen saw Mr. Khinda’s Facebook posting for a “storage/shop for rent”. Ms. Allen said the price was listed as \$1,500 per month, but she was unable to produce the posting reflecting that price.

[13] Ms. Allen and Mr. Khinda texted back and forth on Facebook Messenger about the rental. Ms. Allen noted that the barn was set up for horses and said “you will have your money if you can include a bit of acreage with it”. She wrote that nobody was going to take it for a shop or storage but she would rent it for horses.

[14] Ms. Allen arranged to meet with Mr. Khinda that evening to view the property. She described Mr. Khinda as well dressed, clean shaven and very polite. She said she told him he spoke classically good English; “Shakespearean” English.

[15] Ms. Allen pointed out that none of the stalls had rubber mats in them and Mr. Khinda said “no problem, you tell me where to get them”. She observed that some of the fencing around the field adjacent to the barn was rotting and it would not work for her. Ms. Allen said Mr. Khinda told her not to worry, he had a fencing company and they were going to put up new fencing. He pointed at his work truck which said M and M Fencing on the side.

[16] Ms. Allen said Mr. Khinda wanted extra money for two “lean to” structures, each of which could potentially hold three outside stalls. Ms. Allen pointed out several deficiencies in those structures. Again, Mr. Khinda said “no problem”, he would fix that. She noted there were gates missing and offered to bring hers. He said he would put them up for her.

[17] Ms. Allen saw the potential to rent the “lean to” structures as outside stalls to boarders; they consisted of posts and a roof, but were otherwise open to the weather.

[18] Mr. Khinda offered a three-year lease, with the outside stalls included, starting at \$2,200 per month then going up \$200 in year two and again in year three.

Ms. Allen thought it was a lot of money for what it was, but she liked the idea of a three-year lease. If everything was done as Mr. Khinda had assured, it would look nice and it would allow her to revive her equestrian therapy business, which had languished due to the COVID-19 pandemic. Ms. Allen was concurrently interested in a facility in Langley, but the lease was only for one year.

[19] Ms. Allen agreed to pay \$2,200 per month for the barn, the two outside stalls and the field. She drew up the lease on the spot by hand, which included a drawing of the two areas included in the lease. She took a picture of it for Mr. Khinda and kept the original for herself.

[20] The document was entitled “lease agreement for land and barns on [address omitted] 192 Street, Surrey between Mejour [Khinda] and Felicia Allen”, with their respective driver licence numbers noted. It then stated “for large red barn, all property area and six stalls on the paddocks, area below is included”. Ms. Allen then drew the red barn, the two structures with three outside stalls each, and three areas of land.

[21] The terms continued with “Mejour will prepare 3 stalls by removing plastic and putting wood on and cleaning, will install gates (Felicia will bring gates), will put door on stall in red barn. Felicia will look after manure disposal”.

[22] On the second page, it set out the rent for the first year at \$2,200, the second year at \$2,400 and the third year at \$2,600 per month. Ms. Allen noted “Mejour will apply for farm status. Felicia will run her business Epona Stable and Farms. Felicia can put her business sign up and Mejour will make an area where students will park”.

[23] The agreement was noted to begin on July 1, 2021 with a \$500 cash deposit. The parties signed it and Mr. Khinda acknowledged receipt of \$500 towards the July rent.

[24] Ms. Allen retained the original lease. Mr. Khinda took a photograph of it for his records. The two copies are identical, but for one detail. On Ms. Allen's original it says "Ends July 1, 2024". On Mr. Khinda's photograph of the lease, there is no end date stipulated.

[25] Ms. Allen said problems with Mr. Khinda began almost immediately. She found rubber mats for the stalls, but he would not pay for them. She was not comfortable bringing her horses over when the lease began on July 1 because he had not done the work he promised, but Riley J. had issued a writ of possession to her former landlord for August 1 so she had to move the horses by then.

[26] Ms. Allen and Mr. Khinda had not discussed when rent was due. She thought if she paid it on the first of the month, she would have more leverage against him to do the work he had promised. She paid a deposit on June 28 and paid the balance on July 1. By September, she was nervous because the outside stalls were not ready and some of the fencing was falling down.

[27] Ms. Allen paid the rent for October but told Mr. Khinda that she was going to run out of money because she could not operate her business. At that point, she said he began making comments about her dog being a problem. She felt that he knew she had signed a three-year lease and had to pay whether he did anything or not.

[28] At some point, which was unclear in Ms. Allen's evidence, she said Mr. Khinda wanted to use an area beside the barn to store fence panels for his business. She said he started to lean heavy panels against the barn and the building would shake, which would scare the horses. Ms. Allen also said Mr. Khinda wanted to take over the manure pit, which was part of the area she leased.

[29] Ms. Allen wanted parking for her students near the barn, in accordance with the terms of the lease. She said Mr. Khinda wanted to use the entire parking area for his vehicle storage business. In October 2021, Ms. Allen became aware that bylaw officials had shut down the vehicle storage business.

[30] In November 2021, there was flooding due to heavy rains in the Fraser Valley and barn space was at a premium. Ms. Allen filed a claim for specific performance to get Mr. Khinda to do the work he was supposed to do to get her business up and running as she had nowhere else to go. Mr. Khinda served her with a residential tenancy eviction notice. Ms. Allen believed this was because bylaw officials had ordered him to get rid of the vehicle storage business.

[31] In December 2021, the parties appeared before Mr. Justice Ball. He ordered Ms. Allen to vacate the premises within 30 days, in an effort to put an end to the parties' disagreements. Ms. Allen appealed. The Court of Appeal allowed the appeal as it exceeded the court's jurisdiction on the application: *Allen v. Khinda*, 2022 BCCA 322.

[32] At trial, Ms. Allen alleged that during this continuum of late 2021/early 2022, at times unspecified, Mr. Khinda was violent towards her and caused her to break a rib or a wrist. The evidence was unclear as to which, but the mechanism appears to have been, or may have been, a fall in or near the manure pit.

[33] By late 2021, Ms. Allen had run out of money and relied on charities to feed her animals. They remained in Mr. Khinda's barn until the SPCA seized them in January 2023.

[34] On January 28, 2023, Ms. Allen said Mr. Khinda became extremely violent towards her. She fled to the neighbour, who called police. Police apprehended her under the *Mental Health Act*, R.S.B.C. 1996, c. 288. She felt traumatized, and was scared about what would happen to her animals. The barn was windowless with little ventilation, although that was the state it was in when Ms. Allen rented it.

[35] Ms. Allen alleged that at various unspecified times, Mr. Khinda had cut up hoses, causing flooding, and had cut off electricity to the barn. Her mini horse fell in the barn, which Ms. Allen attributes to the lack of lighting. Sadly, the mini horse suffered a serious injury and ultimately had to be euthanized.

[36] Ms. Allen was released from hospital the same day she was apprehended under the *Mental Health Act*. She went back to the barn the next day with two friends. She says Mr. Khinda either attacked or tried to attack one of them. Neither testified as a witness in this trial. The SPCA became involved and apprehended all of Ms. Allen's animals except her dog. Ms. Allen ended up in a homeless shelter. It appears that she had been living in her vehicle or perhaps the barn up until that time, but her evidence in this regard was unclear.

[37] Ms. Allen wanted to get her belongings from the barn but when she went back, they were all gone. She estimates approximately \$90,000 worth of saddles, power tools, a generator, artwork and her business records were gone. Ms. Allen also alleges that she lost income from Mr. Khinda's failure to fix the six outside stalls. She had planned to rent them all out and was counting on that money but it never materialized. She tendered in evidence copies of inquiries from people about her equine therapy business which she said failed because of Mr. Khinda's actions.

[38] Ms. Allen relied on a number of photographs to substantiate her allegations. One of them was of an air conditioner that was installed in the wall of the barn. She believed that Mr. Khinda was recording her conversations through a device in the air conditioner. She suspected this because she would have a conversation with someone and then receive a text on her cell phone which contained detailed references to what she had been talking about. To the best of her knowledge, these texts were from Mr. Khinda.

[39] Ms. Allen also alleged that once Mr. Khinda failed to obtain a writ of possession following a show cause hearing pursuant to the *Commercial Tenancy Act* before Justice Armstrong (*Allen v. Khinda*, 2022 BCSC 815, argued on February 18, 2022 and decided on May 18, 2022) he made it as difficult as possible for her to come and go from the barn area. She said Mr. Khinda deliberately put nails and screws into the driveway surface to cause flat tires. She videotaped him making an indentation in the driveway and covering it up with rocks. Ms. Allen can

be heard yelling out to Mr. Khinda, who looked directly at the camera before continuing with what he was doing.

[40] Ms. Allen called police on a number of occasions during the tenancy as well as after her horses had been removed. On June 16, 2023, six months after the SPCA seizure, she asked police to go to the barn with her and videotape or photograph what was in there. They showed her a video of the interior of the barn, devoid of anything that belonged to her.

[41] On cross-examination, Ms. Allen said she was currently unemployed. Her last job was running the equestrian therapy business. During the COVID-19 pandemic, she worked for the federal government, answering questions about MyAccount for the Canada Revenue Agency. She did not recall how much she earned. She agreed her income would be on her tax returns but, despite her job answering questions about MyAccount, she did not know how to access her own tax returns.

[42] Ms. Allen agreed she had extensive experience with commercial leases over her years of working with horses. She would hear about a barn or see an ad for one, meet with the landlord, discuss what was for rent and what required fixing, and then a lease would be written, usually by the landlord.

[43] Ms. Allen insisted she was on good terms with the previous landlord in Port Coquitlam, despite the ongoing litigation. She resisted the suggestion that she was in a hurry to lease new property because of the litigation and her previous landlord's efforts to evict her. She said she had a viable option at a farm in Campbell Valley, but could not provide any details about that potential arrangement.

[44] Ms. Allen did not have a business licence in Port Coquitlam, largely because COVID-19 prevented her from doing much business. Ms. Allen thought it was necessary for her to get one at Mr. Khinda's property once the bylaw officer investigated the vehicle storage business and shut it down, but could not get one as her planned endeavours did not meet the criteria of a home-based business.

[45] Ms. Allen acknowledged that installing new fencing and providing mats for the horse stalls, the two most expensive extras, were not spelled out in the lease. She said Mr. Khinda owned a fencing company and it seemed obvious to her that there was a bad fence and he would fix it. As to providing the mats for the stalls, Ms. Allen said there was an element of trust that he would do as he said, so she did not include that in the lease.

[46] Ms. Allen reported Mr. Khinda's assaults on her to the police. Mr. Khinda tendered a series of Facebook Messenger texts between his daughter, who was proficient in written English, and Ms. Allen. The dispute over the manure pit was an obvious source of frustration between the parties. Ms. Allen alluded to an injury in these messages, but absent from the correspondence was any accusation by Ms. Allen that Mr. Khinda had assaulted her or otherwise caused the injury.

[47] Ms. Allen was aware in November 2021 that Mr. Khinda was trying to evict her because the bailiff slid a five-day notice under the barn door. She commenced this litigation in response to the five-day notice, because she thought the bailiffs would take everything. She also wanted to seek specific performance so Mr. Khinda would do the improvements he promised to do and she could get her business up and running and pay back rent.

[48] Ms. Allen acknowledged that she did not pay rent from November 2021 until January 2023, when her horses were removed by the SPCA. She did not make any inquiries about a business licence until March 2022 because the property was too derelict for her to carry on her business. She denied that she signed the lease with Mr. Khinda because she had nowhere else to go. She denied that she amended her claim against Mr. Khinda to include fraudulent misrepresentation after learning she could not get a business licence as she would not be operating a home-based business. Ms. Allen said she made that amendment in August 2023, long after learning she could not obtain a business licence.

[49] Mr. Gill, counsel for Mr. Khinda, took Ms. Allen through parts of her notice of civil claim. At para. 35, she pleaded she could not get a licence because of the

neglected condition of the area she had leased, not because it was not a home-based business. Ms. Allen said she believed what Mr. Khinda told her, that she could run her business on his property. She denied the assertion that she just wanted a place to stable her horses and not a place to run her business.

[50] Ms. Allen acknowledged that she had not provided any financial information about her income or her business during the pretrial process. She applied to adjourn the first trial date in October 2022, when she still had access to her belongings in the barn. Ms. Allen said the trial management judge told her she did not have to provide documents. She insisted that if everything had not been stolen, she could provide documentation to show she had received boarding income in the past.

[51] Ms. Allen's claim includes loss of equipment and materials as well as jewellery and clothing, three laptop computers, a solid marble table top, a pottery collection and paintings. She denied it was unusual to have those types of things in a barn as she always decorated her office.

[52] Ms. Allen was reminded of her evidence that the barn was in poor condition when she leased it and keeping expensive things there seemed inconsistent with that observation. She said she regarded the lease as a long-term commitment. Ms. Allen denied that she removed the items herself.

Police Witnesses

[53] Corporal Imran went to the Khinda property on March 1, 2023 with Constable Kandola in response to a request to keep the peace while Ms. Allen gathered her belongings. Corporal Imran was very familiar with Ms. Allen and disputes at the property. Corporal Imran spoke with Harveen, Mr. Khinda's daughter. Harveen said there was no property of Ms. Allen's in the barn and her father did not want Ms. Allen in the barn because the family had their things in there. Corporal Imran did not look in the barn.

[54] Sergeant Lachapelle was called to the property on June 16, 2023. He went there with Ms. Allen and Sergeant Bahi. Ms. Allen stayed in the car. Sergeant

Lachapelle and his colleague walked to the back of the property and spoke with Mr. Khinda. Sergeant Bahi spoke in Punjabi with Mr. Khinda, but Mr. Khinda spoke to Sergeant Lachapelle in English.

[55] Mr. Khinda told Sergeant Lachapelle he did not want Ms. Allen in the barn. Sergeant Bahia went in the barn and took a video. It appeared to Sergeant Lachapelle, from the video, that there was construction going on inside the barn, with walls being framed and drywalled.

[56] There were bales of hay outside the barn. Mr. Khinda said they belonged to Ms. Allen and she was welcome to them, but she would need a friend to pick them up for her.

[57] Sergeant Lachapelle acknowledged, on cross-examination, that there were multiple police files relating to disputes on the property. He was not aware that Ms. Allen had vacated the property in January 2023. He was aware that one report had been submitted to the Crown for charge approval but there were no outstanding charges at the time of trial.

Mr. Khinda

[58] Mr. Khinda testified through an interpreter. He operates M and M Fencing. The company builds wooden fences. He bought the property on 192nd Street in June 2021 to live on and as an investment. A realtor presented the deal to him as an assignment. He paid \$4.15 million for it. Completion was set for June 15, 2021 but he required an extra ten days to complete because of financing.

[59] Mr. Khinda did a few days of renovation to the flooring in the house and probably placed the ad for the barn around the purchase date. He advertised it for \$2,200 per month. His daughter wrote the ad for him.

[60] Ms. Allen responded to the ad and they exchanged messages and talked over the phone. She came to the property and seemed in a rush as they viewed it together. She agreed to everything and said it was very important for her to get the

property. Mr. Khinda did not ask her much. He observed that she was his mother's age, which from his perspective seemed to mean that she was trustworthy, although Ms. Allen implied that meant he could take advantage of her.

[61] Mr. Khinda offered to have a contract prepared by his notary the next day, but Ms. Allen said she could not come back the next day due to an urgent matter. Ms. Allen said she had significant experience with leases. She drafted the terms and sketched out the drawing of the area to be leased.

[62] Ms. Allen told Mr. Khinda that she would help him obtain farm status and pay less taxes. He was unaware of this designation. He said she did not really explain her business, just that she was going to bring her horses over and put up a sign. He agreed.

[63] Mr. Khinda said he would fix what she requested. One was a portion of fence missing in the middle section of the field. He also fixed one or two doors, presumably in the barn, although he did not specify where, and he cleaned up the chicken manure and put gravel down in the area.

[64] Mr. Khinda denied that he discussed buying mats for the stalls with Ms. Allen. His understanding of "putting wood on", a term noted in the lease, meant to fix the missing spaces in the fence, specifically the dividers in the middle of the field. He said the outside fence was good but some sections in "the middle parts" were broken. I understood him to mean the internal fences that divided the field into three sections.

[65] Mr. Khinda and an employee fixed the fence and installed some new posts. Ms. Allen did not ask them to fix anything else and she seemed happy for the first three months. Things began to deteriorate one day. She phoned him and said she slipped and fell and asked him to take her horses out of the barn. He did so. Then she said she could not pull the wheelbarrow to take out the manure. He said not to worry, he would help her out for a month with that task. He parked his bobcat

outside the barn and told her to put manure into the bucket. Ms. Allen did that for a few days, then started to dump manure in an area where she was not allowed to.

[66] The landlord-tenant relationship deteriorated further when Ms. Allen failed to pay rent for November 2021. Mr. Khinda said Ms. Allen would yell obscenities at his mother and other family members. She had a large dog that would get loose and scare his son and the Khinda's small dog.

[67] Mr. Khinda tried to evict Ms. Allen through residential tenancy proceedings, but learned it was the wrong route to go. He engaged a bailiff to give her notice for non-payment and carry out eviction proceedings.

[68] Mr. Khinda said Ms. Allen became involved in altercations or disputes with the truck drivers who parked on his property. Not long after, a bylaw officer visited and he shut down the parking business.

[69] Mr. Khinda was aware at some point that his neighbours complained to the SPCA about the health of Ms. Allen's horses. The SPCA came to check on them but Ms. Allen was not there. SPCA officials asked the Khinda family to give the horses hay and water for one day if Ms. Allen did not return. Mr. Khinda took the horses out to the field the next day and the SPCA took them away. About 20 to 25 days later he noticed the barn door was open, the barn was empty except for hay bundles and Ms. Allen was gone.

[70] Mr. Khinda said Ms. Allen called the police on him about 30 or 40 times. He contacted police once or twice in relation to her large dog which she released at him and his family.

[71] On cross-examination, Mr. Khinda did not know what could be done on the property he had purchased. Ms. Allen was the first person who contacted him about renting the barn and she said she needed it urgently so he did not speak with anybody else.

[72] Mr. Khinda did not check with any authority about what use could be made of the barn on his property. He denied Ms. Allen's assertion that he was originally asked \$1,500 for the barn and then added \$700 on for the two outside facilities. He denied that he brought up farm status for favourable tax treatment. He denied that he was looking for a tenant who could bring farm status, he simply placed an ad to rent out a barn/workshop on his property.

[73] Mr. Khinda denied removing stall doors in January 2023. He denied that his neighbours complained about dust and traffic from the parking venture. He assumed that it had been Ms. Allen who complained to the bylaw officer about the parking, but fairly acknowledged that one of his neighbours might have made the complaint. He denied that the bylaw officer's direction to shut down the parking venture was the reason he decided to evict Ms. Allen.

[74] Mr. Khinda denied repeatedly stacking wood against the barn and scaring Ms. Allen's horses. He said he did it once and Ms. Allen did not complain.

[75] Ms. Allen asked Mr. Khinda about flooding outside the barn. Mr. Khinda said she deliberately left the water on for 24 hours and he shut the water off because it had pooled around the barn. When he went to shut the water off she would tie her dog nearby, which he took as a threat.

[76] Mr. Khinda does not recall when he learned Ms. Allen could not run a business on his property. He agreed he made no effort to inquire on her behalf if she could do so or obtain a business licence.

[77] Ms. Allen played the video clip she took of Mr. Khinda crouching in the driveway, which she maintained demonstrated he was putting nails and screws in to puncture her tires. Mr. Khinda explained that he was installing underground pipes to irrigate some new hedging, which can be seen in the background of the video. He denied placing nails and screws in the driveway, observing that he used the same driveway and a nail or a screw "would not ask" whose car was passing over.

[78] Ms. Allen suggest to Mr. Khinda that he fraudulently advertised his company was BBB approved, when it was not. Mr. Khinda said the BBB reached out to him but he was too busy working to resolve the issue.

[79] Mr. Khinda acknowledged there were problems with the electrical feed to the barn, which required a new feed from the main house. He offered a solution to avoid the expensive repair but Ms. Allen ran a generator in the barn for power.

[80] On re-examination, Mr. Khinda said an entire new fence would cost about \$20,000 to install.

The law

Fraudulent Misrepresentation

[81] The Court of Appeal in *Wang v. Shao*, 2019 BCCA 130 at para. 24, leave to appeal to SCC ref'd, 38704 (14 November 2019) confirmed the test that a claimant must satisfy to succeed in a claim for fraudulent misrepresentation:

- (a) the wrongdoer must make a representation of fact to the victim;
- (b) the representation must be false in fact;
- (c) the party making the representation must have known the representation was false at the time it was made;
- (d) the misrepresenter must have intended the victim act on the representation; and
- (e) the victim must have been induced to enter into the contract in reliance upon it.

[82] Additionally, the victim must have suffered a detriment: *Van Beek v. Dodd*, 2010 BCSC 1639 at para. 42.

[83] Justice Romilly in *Van Beek* at para. 54 spoke to the 'knowledge' component of the test: "[t]he plaintiffs must prove that the defendant must have, at the time, either known the representation was untrue or made it recklessly without an honest belief in its truth". In terms of the defendant intending the victim to act on the representation, "the defendant's motive is immaterial. The plaintiffs do not need to establish that the defendant intended to cheat or injure them": *Van Beek* at para. 58.

[84] Regarding inducement, the following statement from *Battrum v. MacKenzie*, 2010 BCSC 1285 is relevant:

[24] The test of materiality of the representation and reliance on it is a subjective one; it is not a matter of asking whether a reasonable person would have relied on the representation, but whether this plaintiff relied upon it in the circumstances of this case.

[85] Even a half-truth or an incomplete statement may be actionable: *Battrum* at para. 10.

The Covenant of Quiet Enjoyment

[86] The covenant of quiet enjoyment “is implied into any lease”: *Stearman v. Powers*, 2014 BCCA 206 at para. 18.

[87] The Court in *Stearman* described the relevant considerations as follows:

[18] ... Richard Olson, in *A Commercial Tenancy Handbook* (looseleaf), describes the covenant for quiet enjoyment as a right to “exclusive occupancy of the premises without interference by the landlord”. (At 3.20.1; my emphasis.) The author cites *Firth v. B.D. Management Ltd.* (1990) 73 D.L.R. 4th 375, in which this court observed:

To establish a breach of the covenant of quiet enjoyment the appellant [tenant] must show that the ordinary and lawful enjoyment of the demised premises is substantially interfered with by the acts of the lessor. It is conceded by counsel that the question of whether there has been a substantial interference is a question of fact. Mere temporary inconvenience is not enough – the interference must be of a grave and permanent nature. It must be a serious interference with the tenant's proper freedom of action in exercising its right of possession: see *Kenny v. Preen* [1963] 1 Q.B. 499 (C.A.).

Similarly, when one considers whether a landlord's acts can be construed as a derogation from its grant, the appellant must demonstrate that there has been some act which renders the premises substantially less fit for the purposes for which they were let. [At 379-80; emphasis added.]

[Emphasis in *Stearman*.]

[88] Richard Olson in *A Commercial Tenancy Handbook* (Toronto: Thomson Reuters, 2004) (loose-leaf updated 2024, release 1) at §7:16 provides:

... one of the essential elements of a tenancy is the tenant's right to exclusive possession... A landlord will often reserve certain rights of access for

maintaining or repairing building systems, emergencies or other specific purposes. A landlord which denies access by the tenant to the premises by changing the locks or some other deliberate act will, unless entitled to do so as a result of a breach of the lease by the tenant, have breached the covenant of quiet enjoyment.

[Internal references omitted.]

Credibility and Reliability of the Parties

[89] At times in her closing submissions, Ms. Allen referred to things that were not in evidence. I am satisfied she did so because she did not have legal representation, not because she was trying to deceive the court.

[90] Ms. Allen’s position is that Mr. Khinda was a fraud artist whose representations caused her to enter into a lease, after which time he failed to carry through with his promised repairs and she learned that she could not obtain a business licence.

[91] I find that Ms. Allen attempted to paint a picture of the evidence to suit her narrative that Mr. Khinda took advantage of her. As one example, her evidence that he spoke classically good or Shakespearean English flies in the face of Mr. Khinda’s reliance, for the most part, on a Punjabi interpreter to assist him with his evidence. And when Mr. Khinda spoke in English, his Punjabi accent was very pronounced.

[92] Overall, despite Ms. Allen’s insistence otherwise, I find that she was anxious to secure the lease on Mr. Khinda’s property quickly. She was facing eviction from the Port Coquitlam premises where her animals were housed and needed a new place to care for them as soon as possible. This explains why Ms. Allen drafted the lease on the spot instead of taking Mr. Khinda up on his offer of having his notary draw up the lease document the next day. I am satisfied that Ms. Allen kept the original lease and altered it by adding July 1, 2024 as the end date, to make it look like a three-year lease.

[93] Ms. Allen’s evidence that Mr. Khinda agreed to supply rubber mats for the stalls and install a new fence is simply not believable. Ms. Allen conveyed the impression that since Mr. Khinda had a fencing business it was somehow implied

that he would replace the fencing, but I am satisfied by Mr. Khinda's evidence that the lease spelled out some small repairs to parts of the fence, not a complete fence replacement. That would have been a \$20,000 improvement to an area of the property that was leased for \$2,200 per month.

[94] Ms. Allen's evidence was vague in many aspects. As one example, I cannot ascertain whether she injured a rib or a wrist, how she did so or when it happened. I do not find that Ms. Allen was actively misleading the court—it may well be that if she had counsel to assist her, the narrative would have been easier to follow.

[95] Similarly, it is difficult to reconcile how Ms. Allen worked for MyAccount but could not produce records of her tax assessments. Ms. Allen insisted that she lost everything in the barn, including her computers and cell phones, yet she managed to preserve the video clip of Mr. Khinda allegedly booby trapping the driveway. Her evidence left more questions than answers overall.

[96] By contrast, Mr. Khinda gave a straightforward version of events. He made fair concessions on cross-examination, primarily concerning who might have complained about the parking venture on his property. I accept his account that he was installing a watering system for the hedges along the driveway when Ms. Allen took a video of him, not burying screws and nails to sabotage Ms. Allen's car.

Application of the law to the facts

Fraudulent Misrepresentation

[97] Returning to the test from *Wang*, Ms. Allen must prove five elements on a balance of probabilities to succeed in a claim for fraudulent misrepresentation:

- (a) the wrongdoer must make a representation of fact to the victim;
- (b) the representation must be false in fact;
- (c) the party making the representation must have known the representation was false at the time it was made;
- (d) the misrepresenter must have intended the victim act on the representation; and
- (e) the victim must have been induced to enter into the contract in reliance upon it.

[98] As I understand Ms. Allen's submissions, Mr. Khinda made a representation of fact to her that she could run her business on his property. Assuming Mr. Khinda did make a representation to this effect, it appears that this was false. The City of Surrey would only permit a business on the property if the operator of the business lived on the property.

[99] However, it is unclear on the evidence whether he made a representation of fact to her, or whether he was simply replying to her queries. Based on my view of the relative credibility and reliability of the parties, I find that Mr. Khinda was responding, not making any particular representation to Ms. Allen.

[100] I am satisfied that Mr. Khinda simply wanted to generate a bit of income from renting out the barn on his newly-acquired property, but had no idea whether any representation he might have made to Ms. Allen was false. There is no proof on a balance of probabilities, assuming (a) and (b) were proven to that standard, that Mr. Khinda made a representation knowing it to be false.

[101] I find that Ms. Allen was in a rush to secure the property. She was facing imminent eviction from the Port Coquitlam property she had leased for her horses. I can find no inducement by Mr. Khinda, simply an offer on Facebook Marketplace of a barn or workshop for rent. Nothing in the evidence concerning their conversation prior to the lease persuades me that Ms. Allen was induced to enter into the lease by any false representations by Mr. Khinda.

[102] Ms. Allen has not satisfied her onus on a balance of probabilities that there was fraudulent misrepresentation.

Quiet Enjoyment

[103] As for breach of the covenant of quiet enjoyment, some of Ms. Allen's allegations, such as the listening device in the air conditioner, are fanciful and outlandish. Other allegations include flooding near the barn and a lack of electricity which, in some circumstances, may amount to a breach of the covenant of quiet enjoyment.

[104] As to the flooding, Mr. Khinda explained that it was Ms. Allen who left the water running continuously. He felt constrained from turning the water off because she had tied up her large dog nearby.

[105] As for the problem with electricity, Mr. Khinda said it would require a new feed from the house. He offered a generator as a solution. Ms. Allen apparently had, and used, her own generator.

[106] Overall, Ms. Allen's complaints fall short of establishing, on a balance of probabilities, that they were of a grave and permanent nature.

[107] Finally, Ms. Allen blames Mr. Khinda for taking all of her belongings out of the barn and disposing of them. Mr. Khinda denies the allegation and Ms. Allen gave no evidence about how she secured the barn when she was not present. The allegation of theft is tied to the remedy for fraudulent misrepresentation, which I find has not been made out.

The Counterclaim

[108] Mr. Khinda counterclaims for unpaid rent from November 2021 to February 2023. Ms. Allen does not dispute that she did not pay rent for that time period while her horses were stabled in the barn. Mr. Khinda is entitled to the bulks of his counterclaim to compensate him for Ms. Allen's failure to pay rent from November 2021 to January 2023. Thereafter, he was able to use the barn for other purposes. I award him \$2,200 per month from November 2021 to June 2022 (\$17,600) and \$2,400 per month from July 2022 until January 2023 (\$16,800), less the \$500 deposit, for a total of \$33,900, plus pre-judgment interest.

Summary and Costs

[109] The plaintiff's claim is dismissed. The counterclaim is allowed. Mr. Khinda, as the successful party, is entitled to his costs at Scale B.

"Duncan J."