IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Langara Gardens Holdings Ltd. v. Chen,* 2023 BCSC 58

Date: 20230112
Docket: S1912639
Registry: Vancouver

Between:

Langara Gardens Holdings Ltd.
and Langara Gardens (Concert Nominee) Ltd.

Plaintiffs

And

Chao-Kung Chen also known as Danny Chen
and Tzu-Yu Chou also known as Angela Chou

Defendants

Before: The Honourable Justice Kirchner

Reasons for Judgment

Counsel for the Plaintiffs:	F.R. Cabanos N.K. Moallem
Counsel for the Defendants:	J. Wang
Place and Dates of Hearing:	Vancouver, B.C. December 1 and 2, 2022
Place and Date of Judgment:	Vancouver, B.C. January 12, 2023

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Introduction

[1] On November 14, 2017 a fire occurred in unit 603 in Building 1 at Langara Gardens, a rental apartment complex located at 57th Avenue and Cambie Street in Vancouver. The plaintiffs are the owners of that apartment complex. In this action they claim the defendant, Angela Chou, caused the fire and did so negligently. They sue for the cost of repairing the fire damage to the building and for lost rental revenue during the repairs.

[2] Unit 603 was rented to the defendants, Danny Chen and Angela Chou starting in 2005. It was occupied by Ms. Chou and her children at the time of the fire, although the children were not present when the fire occurred. Mr. Chen was apparently living in China at the time. He and Ms. Chou are separated but he was still named as a tenant when the fire occurred.

[3] The plaintiffs, Langara Gardens Holdings Ltd. and Langara Gardens (Concert Nominee) Ltd. (collectively, "Langara") own the Langara Gardens apartment building complex. The property is managed by Peterson Commercial Property Management Ltd. ("Peterson Management"). Vira Prykhodko is the general manager for Peterson Management and has been responsible for overseeing the management of Langara Gardens since before the time of the fire.

[4] There is no dispute that the fire started from a stand-up torchier halogen lamp in the corner of the unit's living room. According to the plaintiffs' expert fire investigator, Steve Baker, household goods in the unit – likely a box or a pillow case – made contact with the halogen bulb and caught fire while Ms. Chou was momentarily out of the room. The fire spread quickly because of a large amount of household possessions packed densely throughout the unit. After making a brief attempt to put out the fire with water, Ms. Chou had to pull the fire alarm and evacuate. The Vancouver Fire Department attended and put the fire out but not before significant damage was caused to unit 603, as well as neighbouring units and other parts of the building.

[5] Langara seeks judgment by summary trial. They argue Ms. Chou was negligent in causing the fire. They also argue Ms. Chou and Mr. Chen are jointly liable for breach of contract under the terms of their tenancy agreement which compels them to pay for damage they cause to the unit and to the residential property (i.e. the building) more broadly.

[6] The defendants argue Ms. Chou was not negligent in causing the fire and, in any event, the damage would have been substantially less if Langara Gardens had installed a sprinkler system throughout the building to mitigate against potential fire damage. In this respect the defendants argue Langara is, at least, contributorily negligent for the damage. They also argue the case is not suitable for summary trial. I will address that preliminary issue first.

Suitability for Summary Trial

[7] I find this case can and should be decided by summary trial as the material facts are not in dispute or can be resolved on the evidence.

[8] Significantly, neither Ms. Chou nor Mr. Chen have sworn affidavits. Their main piece of evidence is an expert report of a fire investigator, Chris Reed, who opines the damage to the building could have been substantially reduced if a sprinkler system had been installed. However, Mr. Reed does not substantively disagree with Mr. Baker's opinion as to how the fire started. Since Ms. Chou has not given her own evidence of how the fire started and spread, she has not contradicted Mr. Baker's opinion or the basis for it.

[9] The defendants argue a conventional trial is necessary so they can give their evidence in person and cross-examine the plaintiffs' affiants. However, they have not offered explanation for why they cannot give their evidence by affidavit. It is well settled that when an application for summary trial is made, it falls to the responding party to take every reasonable step to put themselves in the best position to respond substantively to the application: *Everest Canadian Properties Ltd. v. Mallmann*, 2008 BCCA 275, at para. 34; *Anglo Can. Shipping Co. v. Pulp, Paper & Woodwkrs. of Can., Loc. 8*, 1988 CanLII 2879 (B.C.C.A.) at para. 21. The mere fact the defendants

wish to give their evidence in person does not absolve them of the responsibility to respond substantively to the summary trial application by providing affidavit evidence to meet the plaintiffs' case. Had they done so, the Court would then positioned to determine if the matters in dispute require a conventional trial. However, with no contradictory evidence from the defendants I cannot find a reason why this case requires a conventional trial.

[10] To the extent the defendants have not put forward the case they wish to make, it is not for lack of opportunity. The summary trial application was filed on February 10, 2021. The originally-scheduled hearing was adjourned by Justice Fleming in October 2021 and re-set for August 2022. It was then adjourned by consent with case plan order that set timelines for cross-examination and other steps. In compliance with the case-plan order, the plaintiffs made Ms. Prykhodko and Mr. Baker available for cross-examination as the defendants' had requested, but the defendants did not arrange to cross-examine them within the time specified in the case plan. Nor did they conduct any examinations for discovery.

[11] Despite this, the plaintiffs arranged for Ms. Prykhodko and Mr. Baker to attend the hearing of the summary trial application and, since ample time had been set, counsel for the defendants was able to cross-examine them both during the hearing. This removed this ground for opposing the summary trial process.

[12] To the extent there are factual disputes in the evidence, I am satisfied these can be resolved, especially with the benefit of the cross-examination that has now occurred. However, the fact the defendants have led no evidence from themselves minimizes any conflict. The main area of potential dispute is between the two expert reports but, as I discuss later, the points of divergence are not material to this case and I am satisfied a conventional trial is not necessary.

[13] I am therefore satisfied the present case is suitable for summary trial.

Background

State of Unit 603

[14] At the time of the fire, Ms. Chou was planning to move out of Langara Gardens. Whether it was because of this planned move or her own lifestyle, she was living in what counsel for Langara fairly characterized as a “near hoarding state”. The unit was densely packed with Ms. Chou’s possessions. Boxes and other items were stacked on each other all throughout the unit. Photographs of the unit taken by the insurance adjuster two days after the fire show furniture and possessions occupying most of the floor space with boxes and other materials piled throughout.

[15] Mr. Baker inspected the unit on the same day the photos were taken. He reports that the unit was densely occupied with domestic possessions stacked with depths ranging from 2-4 feet. He said a walkway was cleared through the living room but apart from this, areas not occupied by furniture were covered in “several feet of stored domestic materials”.

[16] Although the photos and Mr. Baker’s description are from after the fire, I am satisfied they provide a fair indication of the state of the unit before the fire. Obviously, the fire caused damage and disarray in the living room, but photos of other parts of the unit clearly indicate it was in a near-hoarding state. Ms. Chou led no evidence to suggest otherwise.

The Fire

[17] The only direct evidence of how the fire started is from Ms. Chou’s examination for discovery and statements she gave to Mr. Baker and others after the fire. Those statements constitute admissions made by Ms. Chou which she has not refuted through her own evidence. Ms. Chou argues the court should not accept Mr. Baker’s report summarizing what she told him because Mr. Baker did not tell Ms. Chou her statements might be “used against her in court” or that she was not obligated to speak with him. I am not aware of any authority that imposes such an obligation on Mr. Baker and counsel has not cited any.

[18] Langara tendered Mr. Baker as an expert in fire investigation and fire origin and cause determination. His *curriculum vitae* outlines extensive training and experience in those areas starting around 2005. He is a member of the National Association of Fire Investigators and the International Association of Arson Investigators. He has been certified as an investigator by those bodies. He has personally investigated some 800 fires and overseen the investigation of many more as a principal in his company, Fire Pro Investigations Ltd. He has previously been accepted by this court as an expert in fire investigations and I find he is so qualified.

[19] Ms. Chou argues his opinion should not be admitted or it should be given little or no weight because Mr. Baker has an ownership stake in Fire Pro Investigations. Langara's insurer, who is pursuing this action as a subrogated claim, has retained Fire Pro Investigations on many occasions. Counsel for Ms. Chou argues this puts Mr. Baker in a conflict of interest. She suggests Mr. Baker stands to benefit financially by providing reports that are favourable to the insurer.

[20] I do not accept that Mr. Baker's ownership stake in Fire Pro Investigators undermines his qualifications, his objectivity, or the weight to be given to his report. Mr. Baker is aware of his duty to the Court and provided the required certification. Something much more than a vague insinuation that Mr. Baker could stand to benefit financially from providing a favourable report to the insurer is required to overcome this certification. The proposition of a direct pecuniary interest was not put to Mr. Baker in cross-examination. Moreover, he gave his evidence in a clear, careful, impartial, and forthright manner. He readily acknowledged where his report or its factual basis had limitations. I have no hesitation in accepting Mr. Baker's qualifications and the veracity of his certification to the Court that he is aware of his duty. I accept his report and give it its full weight.

[21] Ms. Chou reported to Mr. Baker that she was working on packing boxes for her move when she turned on the stand-up torchier lamp that stood in the corner of the living room next to a bunk bed. The lamp has a halogen bulb that is shielded by

an open dish-shaped shade that is exposed at the top of the lamp. Ms. Chou told Mr. Baker that she had not used this lamp in about five years.

[22] Ms. Chou told Mr. Baker that the lamp stood next to a stack of boxes and the bunk beds. She reported that a large pillow may have been extending over the top bunk near the lamp. She also advised him there was some plastic and carboard sticking over the end of the top bunk near the lamp.

[23] After turning on the lamp, Ms. Chou left the room for a few moments and when she returned she saw that a carboard box sitting atop a stack of containers next to the lamp was on fire. She did not immediately phone the fire department but instead ran to a neighbour for assistance. She and the neighbour tried to put the fire out using a baby tub to carry water but this proved ineffective. She and the neighbour then pulled the building's fire alarm and evacuated.

[24] In his report, Mr. Baker provides the following opinion as to how the fire started:

> **Discussion**
>
> The physical damage found is consistent with the witness statements that the fire originated in the northwest corner of the room. Fire patterns in this area confirm the storage of a large quantity of domestic materials. The arc damage on the Lamp cord and the protection marks on the receptacle confirms that the Lamp was energized leading up to the fire. The debris found within the upper lamp enclosure may have been associated with the material first ignited; however, it is possible that it was deposited there during fire suppression activities and overhaul. A quartz halogen lamp operates at temperatures exceeding the ignition temperatures of typical plastics, cardboard and other materials, such as those reported to be in close proximity to the Lamp when the fire occurred. There were no other competent ignition sources found within the area of origin.
>
> **Conclusion**
>
> Based on the physical evidence at the scene and information obtained from witnesses it is my opinion it is probable that:
>
> - The material first ignited was combustibles located adjacent the quartz lamp;
> - Heat from the quartz lamp ignited the combustibles; and
> - The combustible materials had accumulated in close proximity to the Lamp as a result of the storage methods.

[25] The defendants tendered the expert report of Mr. Reed without objection from the plaintiffs. Mr. Reed is also an expert in fire investigations and causes. He agrees with Mr. Baker's opinion as to the cause of the fire. He states in his report:

> 34. Figure 1 of Mr. Steve Baker's Report accurately depicts the area of origin of the Fire.
>
> 35. The probable cause of the Fire was the result of electrical energy from the lamp igniting ordinary combustible materials. Electrical energy was either in the form of an electrical fault or by contact with an energized quartz halogen bulb.
>
> 36. The initial fuel load consisted primarily of an empty cardboard box.

[26] Mr. Reed does not explain the potential "electrical fault" referred to in para. 35 of his report. There is no evidence that either the lamp or the electrical wiring in the building was faulty in any way. In the absence of such evidence, I accept Mr. Baker and Mr. Reed's opinions that the fire was caused by the energized quartz halogen bulb making contact with combustible material – probably a box but possibly a pillow – that was stored in close proximity to the lamp and to the bulb specifically.

Fire Suppression System at Langara Gardens

[27] Langara Gardens has a fire suppression system and fire safety plan in place. These include, among other things, smoke detectors in the units and hallways, a fire extinguisher on each floor, fire alarm activators on each floor, a map showing the location of these fire safety features posted at the elevator bank on each floor, and a central fire panel that receives alarms and relays them to the Vancouver Fire Department. The building is inspected annually by a certified fire prevention company and Peterson Management promptly addresses any deficiencies identified in that annual inspection. Each tenant is provided with an emergency preparedness and response guide that covers, among other things, what to do in event of a fire. A fire drill is also held once a year.

[28] Ms. Chou argues there was no fire extinguisher on the sixth floor at the time of the fire. I do not accept this. Since Ms. Chou has not provided an affidavit, there is no evidence she attempted to look for a fire extinguisher prior to trying to put the fire out with the tub of water from the neighbour's baby bath. She says Mr. Baker

testified in cross examination that he did not see a fire extinguisher when he inspected the fire damage on November 14, 2017 but nor did he say he looked for one. According to the fire plan map, the sixth floor fire extinguisher is located outside unit 605 on the sixth floor. A fire safety inspection was done by Ace Fire Prevention Ltd. on August 22, 2017 and its inspection report makes no observation of a missing fire extinguisher on the sixth floor or elsewhere. Ms. Chou has not shown that the fire extinguisher was missing and and there is no evidence to suggest it was.

[29] There are sprinklers in the parking garage and the boiler room of the Langara Gardens complex. There are no sprinklers in the residential hallways or units. The building was constructed around 1968 and I gather sprinklers were not a legal requirement at the time. As I discuss below, the evidence suggests that in some circumstances, such as with a major renovation, older buildings must be retrofitted with a sprinkler system. However, while Langara and Peterson Management keep Langara Gardens and its units updated and in good repair, there is no evidence of there having been a major renovation since its construction.

Damage from the Fire and Cost of Repairs

[30] The fire caused substantial damage to unit 603 from fire, smoke, and water. This is shown in the photos as well as the evidence of the insurance adjuster, Darren Berg, who handled the matter for Langara's insurer. Other units sustained damage as well, including some on the floors below which sustained water damage.

[31] Immediately after the fire, Ms. Prykhodko contacted Belfor Property Restoration to deal with the urgent restoration measures. Langara's insurer later had all of Belfor's invoices audited by a company called SPECS Ltd., a construction costs consultant who verified that the work done by Belfor was required and the amounts charged were reasonable.

[32] Ace Fire Prevention Ltd., which did the annual fire safety inspections of Langara Gardens, was retained to deal with the emergency inspection and re-certification of the building's sprinkler system after the fire.

[33] Total Energy Systems Ltd. investigated and tested the hot waterline pressure in the building following the fire.

[34] Fujitec Canada Inc. provided emergency elevator servicing at the building following the fire.

[35] Canstar Restorations handled the non-emergency repairs and restoration work on the building and the damaged units. Canstar was retained through a competitive bid process that was arranged by SPEC Ltd. It did the restoration and repair work that remained after Belfor's emergency restoration work.

[36] Scott Gordon provided architectural services needed for the repairs. Sense Engineering provided professional engineering services relating to damage to the building envelope. Finally, Variant Services Inc. replaced the windows in unit 603.

[37] The cost of the work associated with repairs to all the damaged units and common areas in the building are as follows:

Contractor	**Amount**
Belfor	$302,969.95
SPECS Limited	$15,547.98
Ace Fire Prevention Ltd.	$3,811.50
Total Energy Systems Ltd.	$486.15
Fujitec Canada Inc.	$1,325.89
Canstar Restorations	$153,241.06
Scott Gordon	$5,064.36
Sense Engineering	$11,385.65
Variant Services Inc.	$19,162.50
Total	**$512,995.04**

[38] Counsel for the defendants question whether the plaintiffs actually incurred these amounts and paid the invoices. However, Mr. Berg confirmed in his affidavit that these amounts were incurred to restore the building from fire damage and the amounts billed were paid by Langara's insurer. Counsel for the defendants suggests these amounts cannot be claimed by Langara because the insurer paid them and not Langara. However, this is a subrogated claim brought by the insurer in Langara's name. The insurer has standing to claim these losses in Langara's name as a

subrogated claim: *Insurance Act*, R.S.B.C. 2012, c. 1, s. 36(1); *Somersall v. Friedman*, 2002 SCC 59.

[39] Based Ms. Prykhodko's and Mr. Berg's evidence, I am satisfied these amounts were reasonably incurred by Langara's insurer as a result of the damage caused by the fire.

[40] Ms. Prykhodko testified that when the repairs were being done, Peterson and Langara elected to make certain upgrades to unit 603. Instead of replacing the carpeting they installed linoleum flooring. They also updated the window coverings. However, Langara did not charge these expenses to the insurer and those amounts are not claimed against the defendants.

[41] In addition to the cost of repairs, Langara lost rental income for unit 603 and ten other units for several weeks while restoration work was being done. Langara could not charge tenants rent for these periods. Unit 603 sustained the most damage and required the most amount of time to repair. For other units, a much shorter period of vacancy was needed to complete the repairs. For three units, vacancy was not required at all but a portion of the unit was not usable by the tenant until repairs were done. In those cases, Peterson gave the tenants a reduction in their rent proportionate to the unusable area pending repairs. I find that was a reasonable accommodation for tenants who were temporarily deprived of the full use of their units.

[42] No claim is made for loss or damage suffered by the tenants themselves.

[43] The plaintiffs provided the following summary of the loss of rents that were particularized in Ms. Prykhodko's and Mr. Berg's affidavits:

Unit	**Duration of Repairs**	**Percentage of Space Impacted**	**Amount of Lost Rent**
Unit 303	November 15, 2017 to February 2, 2018	12.12%	$573.60
Unit 403	November 15, 2017 – November 17, 2017	100%	$173.50

Unit 403	November 18, 2017 – February 2, 2018	12.12%	$403.01
Unit 503	November 14, 2017 – February 8, 2018	100%	$5,442.34
Unit 504	November 15, 2017 – February 2, 2018	12.12%	$632.99
Unit 601	November 14, 2017 – December 7, 2017	100%	$1,126.90
Unit 602	November 14, 2017 – November 30, 2017	100%	$821.67
Unit 603	November 14, 2017 – April 2019	100%	$38,997.24
Unit 604	November 14, 2017 – February 7, 2018	100%	$5,900.92
Unit 605	November 14, 2017 – December 22, 2017	100%	$1,673.29
Unit 701	November 15, 2017 – November 21, 2017	100%	$255.00
		Total	**$56,000.46**

[44] The evidence of damage and need for repairs to the other units was not contested. Nor did the defendants challenge the need for vacancy for most of these units during the restoration. Based on Ms. Prykhodko's evidence, I am satisfied Langara lost this rental income as a result of the fire.

[45] In total the plaintiffs claim damages in the amount of $568,995.49 for restoration costs and lost rental income. They also claim pre-judgment interest and costs.

Are the Defendants' Liable for Langara's Losses?

[46] The plaintiffs advance two alternative foundations for their claim:

a) Ms. Chou is liable for negligently allowing the fire to start; and

b) Both Ms. Chou and Mr. Chen are liable in contract under their tenancy agreement for the cost of repairing damage they caused to their unit and the residential premises more broadly.

Was Ms. Chou Negligent in Allowing the Fire to Start?

[47] The plaintiffs argue that Ms. Chou was negligent for storing large amounts of combustible materials densely packed in a confined and unsafe manner near the floor lamp and then turning on that lamp with those materials close by. Ms. Chou argues she was not negligent because the fire was just an unfortunate accident and she took immediate measures to try to put it out.

[48] Conduct is negligent if it creates a objectively unreasonable risk of harm. In *Ryan v. Victoria (City)*, [1999] 1 S.C.R. 201 at para. 28 the Supreme Court of Canada stated:

> To avoid liability, a person must exercise the standard of care that would be expected of an ordinary, reasonable and prudent person in the same circumstances. The measure of what is reasonable depends on the facts of each case, including the likelihood of a known or foreseeable harm, the gravity of that harm, and the burden or cost which would be incurred to prevent the injury. In addition, one may look to external indicators of reasonable conduct, such as custom, industry practice, and statutory or regulatory standards.

[49] I am satisfied Ms. Chou created an objectively foreseeable and unreasonable risk of harm – and risk of fire in particular – to Langara and the other tenants by keeping her apartment in a near-hoarding state. The densely-packed and stacked combustible material presents a clear fire hazard that could be set off by something as simple as the halogen lamp which burns very hot. In his cross-examination, Mr. Baker stated the exposed halogen bulb has a surface temperature of around 500 degrees Celsius and it can burn hotter than this when it makes contact with an object. He said the temperature of the lamp is well above the combustible temperature of the items that surrounded the lamp. This presented a clear risk of fire. Moreover, given how densely packed the material was in the unit, it is foreseeable that any fire would spread exceptionally quickly and be out-of-control in moments. This also makes the damage to other units and common areas of the building reasonably foreseeable, including water damage from the volume of water needed to extinguish the fire.

[50] Thus, I find Ms. Chou's conduct fell below the standard of care expected of an occupant and renter of Unit 603. She is therefore liable for the losses Langara has suffered. I note the defendants have not made a third party claim against the manufacturer of the lamp or claimed the manufacturer bears any responsibility for the fire.

Is Langara Contributorily Negligent?

[51] I find Langara had no legal or common law duty to install a sprinkler system throughout the building and in the apartment units in particular. It therefore was not contributorily negligent for the fire damage.

[52] The defendants have not shown it is a legal requirement of any building or fire code applicable in the City of Vancouver to retrofit buildings of this age with a comprehensive sprinkler system unless there is some major renovation.

[53] The defendants' expert, Mr. Reed, states in his report that building code requirements for sprinklers "apply to new construction, extensions, and material alterations to buildings." He says compliance with these requirements is not retroactively required for older buildings "unless major renovations are undertaken, or local bylaws enact new versions." He states the City of Vancouver imposes sprinkler requirements through building by-laws but determining whether these would require retrofitting a building like Langara Gardens would require "a more complete code evaluation" which Mr. Reed did not do. As it is the defendants who argue Langara ought to have installed sprinklers, it is for them to prove the legal requirement exists, not for Langara to disprove it.

[54] Regardless, I infer from the evidence that the City of Vancouver does not require Langara to retrofit the unit or the building with a sprinkler system under the City's bylaws. The City issued an occupancy permit for unit 603 following the completion of the restoration work after the fire. Sprinklers were not installed as part of the restoration work and I infer the City would not have issued the occupancy permit if Langara was required to install sprinklers.

[55] Ms. Prykhodko also testified that no municipal or fire authority has directed Langara or Peterson to install a sprinkler system in the units or throughout Langara Gardens. I am satisfied Langara Gardens is not presently required to retrofit the building with sprinklers in the units or residential hallways.

[56] The fact there is no regulatory requirement to retrofit Langara Gardens with a sprinkler system is a relevant but not a determinative factor in assessing the standard of care for Langara: *Ryan* para. 29. In my view, though, there are good policy reasons not to impose that standard on the owners of older apartment buildings. While the estimated cost of retrofitting a building like Langara Gardens with a comprehensive sprinkler system is not in evidence, I accept it is likely substantial. Imposing that cost on owners of older residential buildings could either drive up rents or close much-needed rental accommodation that is already in short supply in Vancouver and elsewhere. If government authorities responsible for residential fire prevention and safety have not seen fit to require older residential buildings to be retrofitted with sprinklers, I would not impose that requirement through the standard of care for negligence.

[57] I therefore find that the plaintiffs have not failed to meet the standard of care imposed on them as owners and operators of an older residential tower as that standard of care does not require them to retrofit the building with a sprinkler system. I am otherwise satisfied they fully met their standard of care with regular fire inspections, the maintenance of a fire prevention and suppression system, and ongoing diligent maintenance to ensure that system is kept to the required standard. I find Langara is not contributorily negligent for the damage caused by Ms. Chou.

[58] In light of this conclusion, it is not necessary for me to consider Mr. Reed's opinion as to the extent that the damage might have been reduced if a sprinkler system had been installed and any difference of opinion on that point between Mr. Reed and Mr. Baker.

Are the Defendants Liable under the Tenancy Agreement?

[59] The second ground of liability Langara claims is contractual. It argues that under the terms of the tenancy agreement, Ms. Chou and Mr. Chen are contractually responsible for any damage one or both of them cause to the rental unit and the building more generally. This ground has different consequences than the negligence ground because it potentially makes Mr. Chen liable as a party to the tenancy agreement. (Langara concedes that Mr. Chen is not liable for Ms. Chou's negligence.)

[60] The tenancy agreement incorporates standard terms that, by operation of law, must be included in every residential tenancy: *Residential Tenancy Act,* S.B.C. 2002, c. 78, s. 12; *Residential Tenancy Regulation,* B.C. Reg. 477/2003, s. 13(1). Those standard terms are set out in a schedule to the *Regulation*. Clause 26 of the tenancy agreement repeats a standard term in s. 8(2)(a) of the schedule to the *Regulation* regarding the tenant's obligations. That part of the tenancy agreement reads:

> **Tenant's Obligations.** The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant…
>
> [Emphasis added]

[61] The term "residential property" is defined in the *Residential Tenancy Act* as follows:

> "residential property" means
>
> (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
>
> (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
>
> (c) the rental unit and common areas, and
>
> (d) any other structure located on the parcel or parcels;

[62] Since the provision of the tenancy agreement adopts the standard terms required by the *Act,* the *Act*'s definition must also apply to the tenancy agreement. That definition is sufficiently broad to include not just the tenant's unit but the whole building as well.

[63] Using this definition in the context of the "Tenant's Obligations" under the tenancy agreement, an obligation is imposed on a tenant to repair damage to the building caused by the tenant's actions or neglect.

[64] The standard term prescribed in the *Regulation* goes on to say that the landlord may seek recovery of the repair costs if the tenant does not repair the damage in a reasonable time:

> (b) If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the cost of repairs, serve a notice to end a tenancy, or both.
>
> [Emphasis added]

[65] The actual tenancy agreement is worded somewhat differently:

> If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may seek a monetary order through arbitration under the Act for the cost of repairs, serve a notice to end a tenancy, or both.

[66] The difference in wording is not material and the language in the tenancy agreement has the same effect as the standard term. Regardless, the standard term forms part of the tenancy agreement by law: *Residential Tenancy Act,* s. 12.

[67] Thus, if the tenant does not repair damage caused by their actions or negligence in a reasonable time, the landlord may pursue the tenant for the cost of those repairs. Given the extent and consequences of the fire damage, I find a reasonable time here required immediate restoration work. Thus, Langara may claim its costs of repairs from the defendants under this term of the tenancy agreement.

[68] However, since the standard term refers only to damage caused to the residential property and not to loss of rental income caused by that damage, I am not persuaded this provision entitles Langara to claim its lost rental income under the terms of the tenancy agreement. I am satisfied it may claim that amount from Ms. Chau under the head of negligence but I am not satisfied it can claim that amount against both Mr. Chen and Ms. Chau under the tenancy agreement. Thus, liability under this clause of the tenancy agreement is necessarily limited to the cost of repairs ($512,995.04) plus court ordered interest.

[69] The standard term provides that Langara's claim is to be pursued under the dispute resolution process referred to in the *Act.* For most disputes, the *Act* gives the Director (appointed under s. 8 of the *Act*) exclusive jurisdiction to resolve such disputes, such that most residential tenancy claims cannot be pursued in this court. However, s. 58(2)(a) of the *Act*, which deals with the dispute resolution process, removes any jurisdiction from the Director to consider a dispute involving an amount that is more than the monetary limit set out in the *Small Claims Act*, R.S.B.C. 1996, c. 430 which is presently $35,000. Claims that are over that amount must be brought in this court rather than before the Director. Thus, this court has jurisdiction to consider Langara's claim under the tenancy agreement.

[70] I am satisfied Langara is entitled to recover the $512,995.04 in repair costs it claims that arose from the fire under the terms of the tenancy agreement. Here, it is Ms. Chou's actions or neglect that caused the fire in unit 603 that damaged her rental unit as well as other parts of the residential premises. As I am satisfied the losses claimed by the plaintiffs are the reasonable costs of repairing the damage caused by Ms. Chou's actions or neglect as incurred by Langara (or its insurer on Langara's behalf), I find the plaintiffs are entitled to recover that amount claimed from Ms. Chou and Mr. Chen as tenants under the terms of the Tenancy Agreement.

[71] I note parenthetically that under the tenancy agreement (though not the required standard terms under the *Regulation*), the tenant is required to "carry sufficient insurance to cover his property against loss or damage from any cause". I

understand Ms. Chou had insurance at some point but allowed it to lapse before the fire. Consequently (and unfortunately) Ms. Chou's and Mr. Chen's losses as a result of the fire are not covered by their own insurance.

Conclusion

[72] I find this action is suitable for summary trial. I find Ms. Chou was negligent in causing the fire that damaged her unit and other parts of the building. I find Langara was not contributorily negligent because its own standard of care did not require it to retrofit Langara Gardens with a sprinkler system in the rental units. Ms. Chou is therefore liable in negligence for Langara's costs of repair and restoration as well as its lost rental revenue while Ms. Chou's unit and other units were being restored. The total amount of damages is $568,995.49. I also find Ms. Chou and Mr. Chen are liable under the tenancy agreement for the cost of restoring and repairing the damage caused by Ms. Chou's actions or neglect but not for the lost rent. Lost rent can only be recovered under the negligence head.

[73] Langara is also entitled to pre-judgment interest. Subject to the effect of any settlement offer that might have been made, I award costs to Langara at scale B.

"Kirchner J."