

CITATION: *Sun Life Assurance Company of Canada v. 8753008 Canada Inc.*, 2026 ONSC 3452

COURT FILE NO.: CV-25-00747752-0000

DATE: 20260617

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
SUN LIFE ASSURANCE COMPANY OF CANADA	)	<i>Gasper Galati and Latisha Cohen, for the</i>
	)	Plaintiff
	)	
Plaintiff	)	
	)	
– and –	)	
	)	
8753008 CANADA INC.	)	Unrepresented Defendant
	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	HEARD: In writing

REASONS FOR JUDGMENT

JOHN CALLAGHAN J.

- [1] This is a motion for default judgment by Sun Life Assurance Company of Canada as a landlord (Landlord) as against 8753008 Canada Inc., a defaulting tenant (Tenant). The Tenant did not file a statement of defence and has not responded to this motion.
- [2] For the reasons that follow, the Landlord is entitled to judgement.
- Background**
- [3] This dispute arose out of a commercial lease agreement dated February 24, 2014, between the Landlord and the Tenant. The initial term of the Original Lease was for a period of ten (10) years commencing on August 1, 2014, and ending on July 31, 2024.

[4] The Tenant defaulted on its agreement with the Landlord when the Tenant failed to pay the rent for several months. The Tenant's defaults led to the termination of the Lease on August 27, 2024.

[5] The Landlord seeks damages arising from the Tenant's breach and the termination of the Lease, in the amount of \$380,007.01, comprised of (a) \$238,447.67 for arrears of rent outstanding at the date of termination plus (b) \$330,205.75 for the loss of the benefit of the Lease over the unexpired term, less (a) the \$2,146.93 in end of year reconciliation credits, (b) \$7,573.25 for a security deposit and (c) \$178,926.16 for mitigation.

[6] As noted in the calculation above, the Landlord partially mitigated its damages by securing a new tenant for the Premises. The term of the new lease began on January 1, 2026.

Discussion

[7] The test on a motion for default judgement was set out in *Elekta Ltd. v. Rodkin*, 2012 CarswellOnt 2928 (ONSC) as follows: A. What deemed admissions of fact flow from the facts pleaded in the Statement of Claim? B. Do those deemed admissions of fact entitle the plaintiff, as a matter of law, to judgement on the claim? C. If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitle it to judgement on the pleaded claim?

[8] Even where facts are admitted, the motion judge is still required to scrutinize the admitted facts and any evidence to determine if the requested judgment is warranted. As stated by the Court of Appeal in *Paul's Transport Inc. v. Immediate Logistics Limited*, 2022 (ONCA) 573:

The motion judge is entitled to scrutinize both the deemed admissions in the pleading and any evidence tendered by the plaintiff to see whether the plaintiff is entitled to judgment....

[9] Conclusions of law or of mixed fact and law are not deemed admissions as a result of a failure to defend. As stated in *Paul's Transport*, "judgment is not to be given unless the facts deemed to be admitted 'entitle the plaintiff to judgment'" (at para. 80).

[10] In this case, both the admissions in the statement of claim and the filed evidence establishes a breach of the lease by the Tenant. The Tenant failed to make payments and was therefore in breach of the lease.

[11] In such circumstances, a landlord may terminate the lease and seek the present value of the remainder of the lease, subject to accounting for any mitigation: *Highway Properties Ltd. v. Kelly, Douglas and Co. Ltd.*, 1971 CanLII 123, [1971] SCR 562 at p. 576.

[12] In this case, the Landlord has properly calculated the future rent lost due to the termination. The Landlord has then deducted the amounts received from the new tenant as mitigation. There is no issue as to the reasonableness of these mitigation efforts as it is for the Tenant, as the defendant, to raise any issue with the reasonableness of the mitigation and it has not defended: *Southcott Estates Inc. v. Toronto Catholic District School Board*, 2012 SCC 51.

[13] Having reviewed the affidavit, I am satisfied that the proper amount owing less mitigation is \$380,007.01. The Landlord is entitled to judgment in that amount.

[14] The Landlord is also entitled to pre and post-judgment interest at the contractual rate of interest, being the Prime Rate published by the Royal Bank of Canada plus 5% per annum, compounded monthly: *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43, at paras. 40, 45-52. This is calculated as \$25,796.21 as of March 19, 2026.

[15] Finally, the Landlord is entitled to its costs. It claims \$2,500 in cost. This a reasonable amount which the Tenant should expect to pay in circumstances such as this: *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, [2022] O.J. No. 3632, at para. 61.

[16] The Landlord may forward to my assistant a draft judgment for my approval.

Callaghan J.

Released: June 17, 2026