

SUPREME COURT OF NOVA SCOTIA

Citation: 3298944 *Nova Scotia Limited v. 3299425 Nova Scotia Limited*, 2026
NSSC 236

Date: 20260716

Docket: Hfx No. 555243

Registry: Halifax

Between:

3298944 Nova Scotia Limited

Applicant

v.

3299425 Nova Scotia Limited

Respondent

DECISION

Judge: The Honourable Chief Justice Deborah K. Smith

Heard: July 10th & 15th, 2026

Oral Decision: July 16th, 2026

Written Release: July 20th, 2026

Counsel: Matthew G. MacLellan on behalf of Applicant
Rebecca Hiltz LeBlanc and Elias Metlej on behalf of the
Respondent

By the Court (Orally):

[1] The Applicant in this matter has filed an emergency motion for an interim injunction.

[2] The motion was heard before me on July 10th, 2026. At the conclusion of the hearing, I indicated that I would give an oral decision July 15th, 2026. In the meantime, the Respondent had agreed not to take any further action until my decision was rendered.

[3] On July 13th, 2026, counsel for the Respondent wrote to the court indicating that the Respondent had new information that may bear upon the court's adjudication of the issues. The next day, counsel for the Applicant wrote to the court indicating that his client would not oppose the introduction of new evidence by the Respondent on the condition that his client would have an opportunity to respond. In addition, the Applicant indicated that it had new information that it wanted to tender.

[4] The reopening of a hearing after a case is concluded but before a decision is rendered to allow the tendering of additional evidence is an unusual request. A hearing should not be a moving target. Once the evidence is in and submissions have been made, additional evidence should generally not be permitted. However, I am satisfied that the court has a discretion to permit the introduction of new evidence if the judge is satisfied that it is appropriate to do so.

[5] In the unique circumstances of this case, I decided to allow the introduction of the additional evidence sought to be filed by both parties. In coming to that decision, I took into account that (1) this additional evidence related to issues that were raised at the emergency hearing on July 10th, 2026; (2) all parties consented to the introduction of this new evidence and (3) the hearing of the matter was conducted on an emergency basis so the parties had a limited opportunity to gather their evidence prior to the hearing. Ordinarily, this third consideration would not be sufficient to allow the tendering of new evidence. Emergency motions, by their very nature, limit the time available to the parties to gather their evidence. I do not want to see a practice develop where counsel regularly apply to reopen a case after an emergency hearing has been held. However, in this case, where both parties consented to the introduction of this new evidence, I was prepared to allow it.

[6] No objections were made to any of the affidavits that were filed with the court in relation to this motion. In addition, counsel were given an opportunity to make further submissions in relation to the issues addressed in the supplementary affidavits.

[7] The Applicant corporation operates a student residence and short-term accommodation business known as Granville Hall at 1669 Granville Street in Halifax, Nova Scotia. There are approximately 30 student residence or dormitory rooms located at Granville Hall. They are small rooms that vary in size. Residents share kitchens, washrooms, common areas and laundry facilities.

[8] In September 2016, the Applicant entered into a building lease with BSL Holdings Ltd. (hereinafter referred to as “BSL”). The lease provided for an initial term of 10 years commencing on the “Commencement Date”. The lease defined the Commencement Date as the earlier of (a) the day after the expiry of the Fixturing Period and (b) the day the Tenant opens for business in any portion of the Premises.

[9] Halifax Regional Municipality issued an Occupancy Permit for the premises on May 11th, 2017.

[10] The Applicant says that the premises were delivered to it for fixturing in June 2017 and that August 2017 was the first month that it occupied the building and paid rent. It says that the residence opened for students in September 2017, although evidence filed by the Respondent raises some doubt as to the accuracy of this date.

[11] Granville Hall operates as a student residence from approximately September to April each year and as a short-term accommodation operation through the summer. The Applicant has operated the seasonal accommodation business for approximately eight years with the full knowledge and agreement of BSL.

[12] The lease between the Applicant and BSL provided the Applicant with two five-year renewals at market rent, subject to the terms of the lease.

[13] In July 2025, the Respondent acquired 1669 Granville Street through a court-approved insolvency sale involving BSL. The property was marketed as having a lease term that expires in or about September 2027. After the Respondent acquired the property, it asked the Applicant to sign an Estoppel Certificate concerning the terms of the lease. The Applicant eventually executed this Certificate after asking for a portion of it to be amended. The Estoppel Certificate contains the following clauses:

<u>Clause 2</u>	The Lease constitutes the entire agreement between the Tenant and the Landlord respecting the Premises, it has not been amended and there are no other agreements with respect to the tenancy.
<u>Clause 3</u>	The Lease is unmodified, is in good standing, is in full force and effect and represents a binding and enforceable agreement with respect to the Premises between the Landlord and the Tenant.
<u>Clause 13</u>	The Premises are being used for the purpose set out in the Lease.

[14] The lease provides:

<u>Article 1.1(q)</u>	“Permitted Use” means the use of the Premises for the purpose of operating a student residence/dormitory.
<u>Article 8.1</u>	Use of the Premises. The Tenant acknowledges that the Premises will be used solely for the Permitted Use as set out in Section 1.1(q), and for no other purpose.

[15] The Estoppel Certificate indicates at paragraph 4 that the lease has a term that will expire on September 30th, 2026. Mr. Al-Akhali, the President and operating mind of the Applicant, has sworn an affidavit saying that he did not notice that the Estoppel Certificate indicated that the term of the lease expires in September 2026.

[16] On May 12th, 2026, the Respondent advised the Applicant that it considered the lease to be expiring on September 30th, 2026. It also took the position that the Applicant had failed to exercise its extension rights within the required time. The Applicant disagreed with that position.

[17] The Applicant currently pays a base rent of approximately \$16,000.00 per month. In May of 2026 the Respondent proposed a new lease commencing October 1st, 2026 with a base rent of \$30,000.00 per month with annual increases and renewal options which the Applicant says are materially less favourable than the two five-year extension rights in the existing lease.

[18] The lease between the parties allows the Landlord to terminate the lease by notice to the tenant or to re-enter the premises and repossess them in the event of a default under the terms of the lease.

[19] On June 30th, 2026, counsel for the Respondent sent a notice to the Applicant alleging that the Applicant is in default of its lease as a result of using the premises as a hostel, hotel or other short-term transient accommodation business. The notice

indicated that the alleged default must be remedied within ten days of receipt of the notice. The Applicant received the notice on June 30th, 2026.

[20] On July 7th, 2026, the Applicant filed an Application in the Supreme Court of Nova Scotia applying for an order declaring that the date on the initial ten-year lease commenced August 2017 and does not expire until August 2027. In the Notice filed in support of the Application, the Applicant alleges that the Estoppel Certificate mistakenly states that the term of lease expires September 30th, 2026.

[21] Between July 10th and August 30th, 2026, the Applicant has approximately 290 existing reservations for Granville Hall covering approximately 708 room nights. The Applicant's short-term rentals are booked through platforms such as Expedia, Booking.com (and their subsidiaries) as well as Airbnb. The Applicant has filed affidavit evidence indicating that if these bookings are cancelled, these service providers will relocate travellers to other similar accommodations in the area. Granville Hall, it is suggested, is one of the cheapest options in Halifax for short-term accommodations. According to the Applicant, if a traveller has to be moved to another accommodation, platforms such as Expedia will look to the Applicant to make up the difference in cost. Importantly, the Applicant also says that these companies will ban the Applicant from using their platforms.

[22] The Applicant's original landlord was fully aware that the Applicant was renting Granville Hall in the summer months for short-term accommodations. It had no difficulty with this arrangement. In fact, it helped the Applicant obtain the necessary permits to operate such accommodations.

[23] Before considering the issue of the interim injunction, I must decide whether this matter should be heard on an emergency basis.

[24] Civil Procedure Rule 28.02(1) provides:

Emergency motion on notice

- 28.02** (1) The court may provide a time, date, and place for an emergency motion to be heard on notice, if a judge is satisfied on each of the following:
- (a) an emergency exists of sufficient gravity to require a speedy hearing;
 - (b) it is possible for all parties who wish to be heard to be in attendance for the motion;

- (c) the gravity of the emergency outweighs any inconvenience to a party.

[25] The Respondent argues, *inter alia*, that there is no emergency on the facts of this case and that the “alleged” emergency is entirely self-created.

[26] As noted previously, the Applicant has approximately 290 reservations for Granville Hall covering approximately 708 room nights from July 10th, 2026 until August 30th, 2026. In addition, it has 29 students who have signed leases to live at Granville Hall starting this coming September. Against this background, the Respondent has issued a Notice of Default requiring the Applicant to immediately cease using the leased premises as a hostel, hotel or short-term accommodation facility. The Respondent has indicated that if the default is not fully remedied within 10 days of June 30th, 2026, the Landlord will exercise its rights to terminate the lease and re-enter and take possession of the premises.

[27] Mr. Al-Akhali has given evidence that the Applicant will not be able to pay its rent obligations under the lease without the summer short-term rental revenue and that if the Respondent terminates the lease or re-enters the building before this proceeding is determined, the Applicant may lose the ability to continue its business.

[28] I have no difficulty, in these circumstances, in concluding that an emergency exists of sufficient gravity to require a speedy hearing. I have had the benefit of hearing from counsel for both parties. I am satisfied that the gravity of this emergency outweighs any inconvenience to the Respondent in having to deal with the matter on an expedited basis.

[29] I turn now to the issue of the interim injunction.

[30] The Nova Scotia *Judicature Act*, R.S.N.S. 1989, c.240, authorizes the granting of injunctions. Section 43(9) provides:

43 (9) A *mandamus* or an injunction may be granted or a receiver appointed by an interlocutory order of the Supreme Court, in all cases in which it appears to the Supreme Court to be just or convenient that such order should be made, and any such order may be made either unconditionally or upon such terms and conditions as the Supreme Court thinks just, and if an injunction is asked, either before or at or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the Supreme Court thinks fit, whether the person against whom such injunction is sought is, or is not, in possession under any claim of title or otherwise or, if out of possession, does or does not claim a right to do the act sought to be restrained, under any colour of title,

and whether the estates claimed by both or by either of the parties are legal or equitable.

[31] Civil Procedure Rule 41.04 deals with the granting of an interim injunction and provides:

41.04 Interim injunction or receivership

- (1) A party who files an undertaking as required by Rule 41.06 may make a motion for an interim injunction or interim receivership.
- (2) A judge who is satisfied on all of the following may grant the motion:
 - (a) the party claims an injunction or receivership as a final remedy in the proceeding, or it is in the interests of justice that an injunction or receivership be in place before determination of the claims in the proceeding;
 - (b) the party has moved, or will move, for an interlocutory injunction or interlocutory receivership and is proceeding without delay;
 - (c) an urgency exists and it cannot await the determination of the motion for an interlocutory injunction or interlocutory receivership;
 - (d) considering all of the circumstances, it is just to issue an order for an interim injunction or interim receivership.

[32] In *Injunctions and Specific Performance* (Toronto: Thomson Reuters, Loose-leaf) Robert J. Sharpe sets out the step-by-step formula to determine whether an interlocutory injunction should be granted. At § 2.6 he summarizes the questions to be asked as follows:

1. Has the plaintiff presented a case which is not frivolous or vexatious but which presents a serious case to be tried?
2. Will damages provide the plaintiff with an adequate remedy? If so, no injunction should be granted. If not,
3. Would the plaintiff's undertaking in damages provide adequate compensation to the defendant, should he or she succeed at trial, for loss sustained because of the interlocutory injunction? If yes, there is a strong case for an interlocutory injunction.
4. Where there is doubt as to the adequacy of the respective remedies in damages, the case turns on the balance of convenience.
5. At this final stage, weight may be placed on the court's prediction of ultimate success, but only where:

... the extent of the uncompensatable disadvantage to each party would not differ widely [that] it may not be improper to take into account in tipping the balance the relative strength of each party's case and revealed by the affidavit evidence adduced on the hearing of the application. This, however, should be done only where it is apparent upon the facts disclosed by the evidence as to which there is no credible dispute that the strength of the one party's case is disproportionate to that of the other party. The court is not justified in embarking upon anything resembling a trial of the action upon conflicting affidavits in order to evaluate the strength of either party's case.

[Citation omitted]

[33] Sharpe also warns against taking too formalistic an approach when dealing with an injunction motion, stating at § 2:17:

Although reference has been made throughout the discussion to the *American Cyanamid* formula, it now seems clear that neither it nor its adoption by the Supreme Court of Canada should be applied mechanically. As already noted, there has been a significant retreat from the assertion that consideration of the merits should never play an important role. The seeming rigidity of the remaining items in the formula is also regrettable, and the direction given by *Cyanamid* and *RJR-MacDonald* should be seen as guidelines rather than firm rules. The terms 'irreparable harm', '*status quo*' and 'balance of convenience' do not have a precise meaning. They are more properly seen as guides which take colour and definition in the circumstances of each case. More importantly, they ought not to be seen as separate, water-tight categories. These factors relate to each other, and strength on one part of the test ought to be permitted to compensate for weakness on another. The Manitoba Court of Appeal has quite properly held that 'it is not necessary to follow the consecutive steps set out in the *American Cyanamid* judgment in an inflexible way; nor is it necessary to treat the relative strength of each party's case only as a last step in the process'. A similar view was expressed by the Saskatchewan Court of Appeal:

... the strength of case, irreparable harm and balance of convenience considerations, although prescribed and necessary parts of the analysis mandated by the Supreme Court, are nonetheless not usefully seen as an inflexible straightjacket. Instead, they should be regarded as the framework in which a court will assess whether an injunction is warranted in any particular case. The ultimate focus of the court must always be on the justice and equity of the situation in issue. As will be seen, there are important and considerable interconnections between the three tests. They are not watertight compartments.

Treating the checklist of factors as a 'multi-requisite test' will often produce results which do not reflect the balance of risks and not minimize the risk of non-compensable harm. As Lord Hoffman stated, a 'box-ticking approach does not do

justice to the complexity of a decision as to whether or not to grant an interlocutory injunction’.

The list of factors which the courts have developed – relative strength of the case, irreparable harm and balance of convenience – should not be employed as a series of independent hurdles. They should be seen in the nature of evidence relevant to the central issue of assessing the relative risks of harm to the parties from granting or withholding interlocutory relief.

[Citations omitted]

[34] Campbell J. dealt with this topic in *Soup Pot Ideas Inc. v. 778938 Ontario Limited*, 2026 NSSC 136, where he stated at ¶ 7:

[7] The three parts of the *RJR-MacDonald* test are not each conditions precedent.

In the context of preliminary relief, the test is a relative and flexible one which, it is submitted, necessarily involves an evaluation of the other factors. Indeed, it has been held that an interlocutory injunction may be granted even where ‘irreparable’ harm has not been demonstrated. Similarly, attempts to make irreparable harm a condition precedent, and hence a threshold test, have been rejected. These cases suggest that the ‘irreparable harm’ requirement can only be defined in the context of a risk-balancing exercise. If the plaintiff’s case looks very strong, harm may appear to be more ‘irreparable’ than where the plaintiff has only an even chance of success. While judges seldom explicitly acknowledge that there is an ‘overflow’ effect produced by the strength or weakness of other factors, it cannot be doubted that as a practical matter it exists. The important point is that irreparable harm has not been given a definition of universal application: its meaning takes shape in the context of each particular case. However it is defined, failure to establish irreparable harm is commonly cited as the primary reason for refusing injunctive relief. (Sharpe, Robert, *Injunctions and Specific Performance*, 2025 Thompson Reuters, 69-71)

[35] I will now conduct the analysis set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 to determine whether the relief requested should be granted.

[36] I will deal first with the question of whether there is a serious issue to be tried. In *RJR-MacDonald*, *supra*, the court described the “serious question to be tried” test as having a low threshold requiring only a preliminary assessment of the merits of the case. At pp. 337-338 the court stated:

Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion

that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable.

[37] The Respondent takes the position that, on the facts of this case, there is no serious issue to be tried. It submits that the Applicant signed an Estoppel Certificate confirming that the lease constitutes the entire agreement between the Tenant and the Landlord; that there are no other agreements with respect to the tenancy and that the premises is being used for the purpose set out in the lease – the operation of a student residence/dormitory. Case closed.

[38] What that position seems to ignore, however, is that for years it appears that the premises has been used in the summer for short-term accommodations with the full knowledge and support of the Landlord that entered into the lease with the Applicant. At the hearing of the matter, Mr. Al-Akhali testified that he thought that everything that had been agreed to in relation to the lease (including the short-term rentals) would be inherited by and would continue on with the new owner (the Respondent). In addition, he testified that the Respondent's principal, Justin Ghosn, toured the premises in July 2025 and was fully aware that the Applicant was offering short-term accommodations at that time. The Respondent denies any such knowledge. Exhibit "A" of Mr. Al-Akhali's Supplementary Affidavit calls the Respondent's evidence in this regard into question, but that is a matter to be resolved on another day.

[39] I have no hesitation in concluding that on the facts of this case, there is a serious issue to be tried.

[40] That takes me to the issue of whether the Applicant has demonstrated that it will suffer irreparable harm if the injunction is refused.

[41] In *Injunctions and Specific Performance*, *supra*, Sharpe provides the following introduction to this issue at § 2:7:

An essential factor in determining the appropriateness of an interlocutory injunction is 'irreparable harm', a phrase familiar in equity jurisprudence. The remedies of Chancery were traditionally withheld, unless the plaintiff could show that the ordinary legal remedy in damages would be inappropriate or inadequate. In the context of preliminary injunctive relief, the phrase is given a more specific meaning, namely, that the plaintiff, before the trial, must show an immediate risk of harm that will occur before the case reaches trial and that cannot be compensated or remedied other than through the granting of an interlocutory injunction. The rationale for requiring the plaintiff to show irreparable harm is readily understood. If damages after trial will provide adequate compensation, and the defendant is in

a position to pay them, then ordinarily there will be no justification in running the risk of an injunction pending the trial.

In *American Cyanamid*, Lord Diplock restated the need for the plaintiff to show irreparable harm as the second step in his formula. The question to be asked, said Lord Diplock, was the following. Assuming that the plaintiff succeeds in the end in establishing a right to a permanent injunction, will damages be adequate compensation for the loss sustained between the time of the application and the trial? ‘If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff’s claim appeared to be at that stage.’ If damages are an adequate remedy, running the risk of restraining the defendant unjustifiably pending the trial is simply not warranted.

[Citations omitted]

[42] In *RJR-MacDonald Inc.*, *supra*, the Supreme Court of Canada provided guidance as to what constitutes “irreparable harm” at p. 341:

‘Irreparable’ refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. **Examples of the former include instances where one party will be put out of business by the court’s decision ...; where one party will suffer permanent market loss or irrevocable damage to its business reputation ...;** or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined ...

[Citations omitted]

[Emphasis added]

[43] In *H & N Enterprise Inc. v. Novacation Inc.*, 2020 NSSC 303, Norton J referenced the Saskatchewan Court of Appeal decision in *Potash Corp. of Saskatchewan Inc. v. Mosaic Potash Esterhazy Ltd. Partnership*, 2011 SKCA 120, where the court held at ¶ 113:

.... The general rule here is that the plaintiff must establish at least a meaningful doubt as to whether the loss he or she might suffer before trial if an injunction is not granted can be compensated for, or adequately compensated for, in damages. Put another way, the plaintiff must demonstrate a meaningful risk of irreparable harm. If this is done, the analysis turns to the balance of convenience proper.

[44] Our Court of Appeal has confirmed that damage to a business reputation can be a form of irreparable harm (see *Tardif v. McGrath*, 2002 NSCA 56 at ¶ 51 and *Morrison v. Morrison*, 2003 NSCA 58 at ¶ 6).

[45] In the case before me, the Applicant has satisfied me that it will suffer irreparable harm if an interim injunction is not granted. In particular, I think it is highly unlikely that the Applicant will be able to find another location to house this type of business within a reasonable period of time if the Respondent repossesses the property. I am also satisfied that if this summer's short-term rental reservations and the September student leases are not honoured, the Applicant will suffer a loss of customers and irreversible damage to its business reputation. Finally, I am satisfied that the Applicant will lose its ability to use booking platforms such as Expedia, Booking.com and Airbnb. This will be a significant loss. Approximately 90% of the Applicant's short-term bookings are made through these platforms. Viewed collectively, I am satisfied that the Applicant will suffer irreparable harm if an interim injunction is not granted.

[46] During the second day of the hearing, counsel for the Respondent pointed out that the Applicant had previously been suspended by Booking.com and its business survived. The implication was that it would not be irreparable harm if the business was banned from using these social media platforms.

[47] The evidence indicates that in 2024, the Province introduced a new short-term rental registry with a new requirement for operators to obtain a zoning confirmation letter from their municipality confirming that short-term rentals are permitted in their building. Without that letter, the Province would not register the property for short-term rentals. Without the provincial registration, booking platforms such as Booking.com and Airbnb would delist or suspend an operator's ability to allow clients to book through them. The evidence suggests (Tab I of Mr. Al-Akhali's July 7th, 2026 affidavit) that in the fall of 2024, the Applicant's Short-Term Rental Registration had expired and it had received notices that Granville Hall would be delisted from platforms such as Airbnb if a new Nova Scotia registration number was not supplied.

[48] More analysis of this situation will take place later in my decision. It appears, however, from Exhibit "A" to Mr. Al-Akhali's supplemental affidavit that as of May of 2025, his listing on Booking.com and its affiliate websites had been suspended since March 17th, 2025.

[49] I do not have any evidence before me as to whether the Applicant had any reservations for the summer of 2025 when its listing on websites such as Booking.com was suspended. The evidence before me is that this summer the Applicant has numerous bookings (close to 300) and that if these bookings are

canceled these booking platforms will ban the Applicant from using their platforms. In my view, there is a significant difference between a suspension and a ban.

[50] As I have said, I am satisfied that the Applicant will suffer irreparable harm if an interim injunction is not granted. I must go on, however, to consider the effect of granting the injunction on the Respondent.

[51] The Respondent submits that it will suffer actual harm if the injunction is granted. First, it suggests that the Applicant does not presently have the property insured for short-term rentals and that allowing such rentals exposes the Respondent to uninsured losses. If correct, this is a serious concern.

[52] The evidence on this issue is unclear.

[53] At ¶ 95 of Mr. Al-Akhali's affidavit sworn July 7th, 2026 and filed on behalf of the Applicant, he states:

The Applicant has operated the seasonal accommodation business for approximately eight years. Both the Applicant and former Landlord have been able to obtain and maintain appropriate insurance for the mixed-use operation throughout the lease period.

[54] At ¶ 49 of Justin Ghosn's affidavit sworn July 9th, 2026 and filed on behalf of the Respondent, he states:

Attached hereto and marked as Exhibit "F" is a true copy of email correspondence received by me, dated July 8, 2026, from my insurance broker, George Samara, that confirms 3299425 Nova Scotia Limited's existing insurance policy was issued based on the occupancy and permitted use outlined in the Lease, namely Student Residence/Dormitory and does not provide coverage for hostel, hotel or short-term rental operations. Mr. Samara's correspondence goes on to note that use of the property for purposes other than a student residence would result in [a] 'significant coverage gap and exposure to uninsured losses'.

[55] When one looks carefully, however, at Exhibit "F" attached to Mr. Ghosn's affidavit, one sees that different language is used. The email from Mr. Samara reads:

...

If the property is currently being used, or may at any point be used, as a **Hostel, Short-Term Rental, Airbnb, Hotel, or any occupancy other than a Student Residence**, there may be a significant coverage gap and exposure to uninsured losses.

Given that the policy is presently up for renewal, please confirm how you wish to proceed so we can ensure the coverage accurately reflects the property's operations and avoid any potential coverage issues.

[Underlining mine]

[56] Clause 10.1 of the lease provides, *inter alia*, that the Tenant must take out and maintain in full force and effect, at all times, All Risks insurance on property of every description and kind owned by the Tenant as well as a Commercial General Liability Policy with coverage for any one occurrence of not less than five million dollars or such higher limits as the Landlord may reasonably require from time to time.

[57] Clause 10.2 of the lease indicates that the Landlord shall provide and maintain insurance on the whole of the property against loss, damage or destruction caused by fire and extended perils.

[58] Importantly, clause 10.1(3) of the lease provides:

..... The Tenant shall furnish to the Landlord on written request, certificates of all such policies. The Tenant agrees that if it fails to take out or to keep in force such insurance or if it fails to provide a certificate of every policy and evidence of continuance of coverage as herein provided, the Landlord shall have the right to take out such insurance and pay the premium therefor and, in such event, the Tenant shall pay to the Landlord the amount paid as premium plus fifteen percent (15%), which payment shall be deemed to be Additional Rent payable on the first day of the next month following payment by the Landlord.

[59] I am unable to conclude, based on the evidence before me, that there is actually a gap in insurance coverage relating to this property. However, I do not want there to be any question about whether the property is properly insured. The Respondent is in a position to contact its own insurers and confirm whether there is, in fact, a gap in its insurance coverage. If there is such a gap, it can immediately remedy the problem.

[60] In Mr. Al-Akhali's supplementary affidavit he has attached a letter from BrokerLink Insurance confirming that the premises is insured by the Applicant as a student residence and for short-term tourist rentals. Counsel for the Respondent has indicated that this is not sufficient. She notes that the Applicant has not provided a copy of the actual policy. She also points out that the letter does not indicate that the Respondent is a loss payee or is an additional insured under the Applicant's policy.

[61] I am going to direct counsel for the Respondent to write to the Applicant's solicitor forthwith setting out exactly what her client requires to satisfy itself that the

Respondent has the insurance required under the lease. The Applicant's solicitor shall forthwith provide that documentation to Ms. Hiltz LeBlanc. If the Respondent is still not satisfied with the information provided, it can take out such insurance itself pursuant to Clause 10.1(3) of the lease. Any dispute as to the legitimacy and necessity for such action can be dealt with later.

[62] The Respondent also submits that the building is being operated by the Applicant for short-term rentals without a proper Occupancy Permit. A great deal of time was spent during the hearing dealing with this issue.

[63] As indicated previously, during Mr. Al-Akhali's testimony he explained that in 2024 there were changes made to the provincial short-term rental registry process and a letter of confirmation was now required from HRM to confirm that Granville Hall could be used for short-term rentals. Mr. Al-Akhali was apparently advised that a letter authorizing short-term rentals could not be issued without further documentation. The principal of BSL, Steve Caryi, had died by this point so on November 8th, 2024, Mr. Al-Akhali contacted the representative of Mr. Caryi's estate, Joanne Caryi, via email stating the following:

The new requirement to register hotels and other STR [short-term rental] properties in the new NS Short Term Rental Registry is to obtain a confirmation letter from the city's Planning department that indicates that the zoning and building permit at these addresses allow this type of business use. When I applied for this letter, the planning department declined to issue it.

They said that neither location has a permit to operate as hotels or short-term rentals and that an application must be made by the building owner to change the use of the building from residential to hotel For Granville Hall, I asked them to provide more clarification because it is permitted for student dorm use already but we need those summer months as short term, so maybe we shouldn't change the full building use to short term stays.

I was assured by Steve when we signed the leases that the occupancy and building permits for these locations allowed the use that we intended for these buildings

[64] Ms. Caryi subsequently arranged for an architect to apply for the necessary documentation.

[65] Mr. Al-Akhali testified that the City had not yet developed a proper form to approve short-term rentals, so they issued a document entitled "Mixed Use & Commercial Building Permit" (sometimes referred to herein as "the Permit"). On this document, the "Type of Work" is described as "Renovation", and the "Description of Work" is listed as "Change of Occupancy from Residential

apartments to Hotel for short term rental only”. Mr. Al-Akhali testified that no renovations to the building were undertaken, as Granville Hall had been operating as a provider of short-term accommodations for years at this point. His evidence on this point is consistent with an email he sent to Mayor Andy Fillmore on May 25, 2025, where he stated, *inter alia*, “As we already meet all the requirements to provide commercial accommodations, and have been doing so for seven years, we did not need to change any thing in the building to meet the building code for this new occupancy permit.”

[66] Despite the urgency of the situation, matters dragged on. On May 25th, 2025, Mr. Al-Akhali wrote an email to Mayor Andy Fillmore asking for urgent assistance with the matter. He explained the nature of his business (hosting students during the school year and tourists during the summer) and that a different occupancy permit class was required for the building housing Granville Hall. On May 28th, 2025, Jacqueline Hamilton, the Executive Director of Planning & Development for the City of Halifax emailed Mr. Al-Akhali stating “.... the permit was issued on Monday to your architect”. The same day, Erin MacIntyre, Director of Development Services for the City of Halifax wrote to Mr. Al-Akhali stating:

Hi Issmat,

The issued permit is attached. There are no outstanding requests for a zoning confirmation letter. **The issued permit will be all you need for your provincial registration application.**

Please let me know if there is anything further.

Best,

Erin.

[Emphasis added]

[67] In her email, Ms. MacIntyre did not advise Mr. Al-Akhali that an inspection and a new Occupancy Permit would be required before Granville Hall would be allowed to resume offering short-term rentals to the public.

[68] In Mr. Ghosn’s supplementary affidavit sworn yesterday, he advised that after the hearing of the emergency motion last Friday, he contacted the building authorities at the Halifax Regional Municipal Planning Office inquiring as to whether an Occupancy Permit had been issued that would allow Granville Hall to be operated as a hotel or short-term rental. He received the following response from a planner with the City:

Hi Justin,

BPCOM-2025-03606 has been issued but has not been completed. This permit is for 'Change of Occupancy from Residential apartments to Hotel for short term rental only'. Occupancy has not been issued for a hotel. **As such, the building is not currently allowed to be occupied as a hotel.**

We have no record of any inspections taking place since this permit was issued.

Best,

Lian Vroege

[Emphasis added]

[69] Mr. Al-Akhali was provided with a copy of this email. He then contacted Michael Morgan who is an HRM Building Official. Mr. Morgan was the inspector who issued the original Occupancy Permit for Granville Hall in 2017. Mr. Morgan apparently suggested that an inspection is needed to confirm that nothing has changed since the original inspection in 2017 and that the inspection can be completed at any time before the Permit expires in May of 2027. Mr. Morgan agreed to do the necessary inspection the day before yesterday at 1:30 p.m. It is alleged that Justin Ghosn subsequently contacted Mr. Morgan, advised him that he owns the property in question, and instructed him not to attend at the property.

[70] In my view, the evidence is unclear as to whether a further Occupancy Permit is required in order to run Granville Hall as a short-term rental. While the email from Lian Vroege certainly indicates that the building is not currently allowed to be occupied as a hotel, the email from Erin MacIntyre of the City of Halifax to Mr. Al-Akhali dated May 28th, 2025 indicates that the Permit was all that would be required to obtain provincial approval for short-term rentals. It is clear from the evidence that the City was aware in May 2025 that the Applicant was using Granville Hall for short-term rentals. Nevertheless, there is no evidence that they told Mr. Al-Akhali that further documentation was required. In fact, the email from Erin MacIntyre indicates that the permit that she sent to him was all that would be needed for him to proceed with his provincial registration application.

[71] As pointed out by the Respondent's solicitor, Mr. Al-Akhali is not the owner of Granville Hall. *If* a further Occupancy Permit is required to operate this facility for short-term rentals, it is the owner of the building who would need to apply for such, not the Applicant. Mr. Al-Akhali understandably understood that he had received from the City the only permit that was necessary for him to operate a short-term rental.

[72] More importantly, it appears that this problem has a simple solution. Mr. Morgan (of the City) has agreed to attend at the property forthwith to do an inspection and has indicated to Mr. Al-Akhali that the process can be completed within 24 hours. I expect Mr. Ghosn to co-operate to get this inspection done. I fully agree with Ms. Hiltz LeBlanc's suggestion that Mr. Ghosn is entitled to be present during the inspection as owner of the building. I also suggest that Mr. Al-Akhali attend as he has knowledge of the building and any changes that have or have not been done since the 2017 occupancy permit was issued. Mr. Ghosn would not have this knowledge since he did not purchase the property until last summer.

[73] Any occupancy permit issue that may exist was not of Mr. Al-Akhali's making. In my view, the Respondent cannot claim harm arising from a situation that seems to have been the responsibility of the previous Landlord, and, more importantly, which is within the control of the Respondent to help remedy.

[74] The occupancy permit issue does not alter my view on the appropriate disposition of this case.

[75] Finally, the Respondent submits that it made financing arrangements in reliance on the Estoppel Certificate, specifically the term dates. Mr. Ghosn gave evidence that the Respondent negotiated an interest-only demand mortgage with the expectation that beginning in October of 2026, a rent increase would take effect and the Respondent would be able to move into a more secure form of mortgage. Mr. Ghosn further states in his affidavit that if the Estoppel Certificate was executed in error and rectification of the lease term is permitted, it will compromise the Respondent's position with its financial lender both in terms of financial consequences and reputation.

[76] No further evidence was given to support this suggestion. In particular, it is not clear why the Respondent will suffer reputational damage if a different type of mortgage is not entered into this fall.

[77] I am satisfied that if the Respondent is ultimately successful in relation to this matter, and if it suffers financial consequences as a result of the interim injunction being granted, it can claim for such under the undertaking that has been filed by the Applicant pursuant to Civil Procedure Rule 41.06.

[78] That takes me to the balance of convenience. In *RJR-MacDonald, supra*, the Supreme Court stated at p. 342:

The third test to be applied in an application for interlocutory relief was described by Beetz J. in *Metropolitan Stores* at p. 129 as: ‘a determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits’

[79] In *Maxwell Properties Ltd. v. Mosaik Property Management Ltd.*, 2017 NSCA 76, our Court of Appeal stated at ¶ 61:

The balance of convenience involves determining which of the parties will suffer the greater harm from the granting or refusing of an interlocutory injunction, pending trial. Lord Diplock puts it this way:

It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.

When other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the *status quo*

[Emphasis in the original]

[80] In the case at Bar, I have found that the Applicant will suffer irreparable harm to its reputation and business if an interim injunction is not granted. I find that little harm will accrue to the Respondent if the interim injunction is granted. The Respondent will continue to receive its rent from the Applicant, and the building will continue to be used as it has been for many years. In other words, the *status quo*, will be maintained.

[81] The Respondent has submitted that the true *status quo* is that:

- the lease restricts use to a student residence/dormitory;
- the Applicant certified that the lease was unmodified;
- the Applicant certified that no other agreements existed;
- the Applicant certified Granville Hall was being used for the permitted purpose; and
- the Respondent relied upon those representations in completing the purchase.

[82] The Respondent suggests that preserving the *status quo* therefore favours enforcement of the parties' written agreements, not suspension of them.

[83] Respectfully, the problem with this argument is that it ignores the reality that for approximately 8 years, it appears that the Applicant has operated Granville Hall as a short-term rental property with the full agreement of the Landlord that executed the commercial lease relating to this property. I fully appreciate that Mr. Ghosn, as the operating mind of the Respondent, may not have been aware of that fact when he purchased the property. Nevertheless, it is a fact and operating the building over the summer as a short-term rental provider will be maintaining the *status quo*.

[84] While in no way determinative of the matter, when considering the balance of convenience, I have taken into consideration the third parties who will be affected if an injunction is not granted. I am referring, in particular, to the 290 people who have existing reservations at Granville Hall over the next few months and the 29 students who have leases signed with the Applicant for this coming September.

[85] I am satisfied that the court can consider harms that may be suffered by third parties (see *Injunctions and Specific Performance*, *supra*, at § 2:7.30 and *Hapi Feet Promotions Inc. v. Martin*, 2005 NSCA 83, at ¶ 18 where the Chambers judge took into account, *inter alia*, losses to third parties and his decision was upheld by the Nova Scotia Court of Appeal). I am of the view that the consideration of the interests of parties who are not before the Court should take place in the balance of convenience analysis.

[86] Weighing all of these considerations, I am satisfied that it is appropriate to grant the interim injunction requested by the Applicant. The Applicant has satisfied me on all four of the conditions that are required pursuant to Civil Procedure Rule 41.04(2) before an interim injunction can be issued.

[87] An Order will issue accordingly.

Smith, C.J.