

Court of King's Bench of Alberta

Citation: Rayn Cultivation Inc v Rocor Holdings Ltd, 2026 ABKB 650

Date: 20260915
Docket: 2603 12905
Registry: Edmonton

Between:

Rayn Cultivation Inc.

Applicant/
Cross-Respondent

- and -

Rocor Holdings Ltd.

Respondent/
Cross-Applicant

**Endorsement
of the
Honourable Justice Michael J. Lema**

I. Introduction

[1] A commercial tenant, admitting lease breaches, seeks relief from forfeiture. The commercial landlord seeks a declaration of termination anchored on those breaches and consequential orders, including one for eviction.

[2] I find against forfeiture relief, declare the lease terminated, and grant the other relief requested by the landlord.

II. Analysis

A. Test

[3] The parties agree on the applicable test for relief from forfeiture, from *Saskatchewan River Bungalows Ltd v Maritime Life Assurance Co*, [1994] 2 SCR 490 [SRB]:

The power to grant relief against forfeiture is an equitable remedy and is purely discretionary. The **factors** to be considered by the Court in the exercise of its discretion are the **conduct of the applicant, the gravity of the breaches, and the disparity between the value of the property forfeited and the damage caused by the breach**: *Shiloh Spinners Ltd. v. Harding*, [1973] A.C. 691 (H.L.); *Snell's Equity* (29th ed. 1990), at pp. 541-42.

The Ontario High Court in *Liscumb v. Provenzano* (1985), 1985 CanLII 2051 (ON HCJ), 51 O.R. (2d) 129, aff'd 1986 CanLII 2595 (ON CA), 55 O.R. (2d) 404 (C.A.), relying on the *Shiloh* decision, summarized the governing principles as follows (at p. 137, *per* McKinlay J.):

I consider that the following are the appropriate questions to consider in determining whether there should be relief from forfeiture in this case: **first, was the conduct of the plaintiff reasonable in the circumstances; second, was the object of the right of forfeiture essentially to secure the payment of money, and third, was there a substantial disparity between the value of the property forfeited and the damage caused the vendor by the breach?**

[4] The landlord argues that each element must be satisfied (i.e. this is a conjunctive test), that the tenant's conduct was unreasonable, and that, with the first element not satisfied, relief from forfeiture is unavailable, without any need to explore the other elements. This approach was taken in *2189252 Alberta Inc (Tutti Fruitti Breakfast & Lunch) v Harvard Developments Corporation*, 2021 ABQB 977 (Dunlop, J.) (paras 6, 69, 70, and 85) and *1218807 Alberta Ltd v Muslim Association of Canada Ltd*, 2023 ABKB 300 (Angotti, J.) (para 143), among other cases.

[5] The tenant accepts the **SRB** test, asserting it meets all three factors and, in any case, that the third factor is so resoundingly met that any no-relief indicators on the first or second (or both) factors are outweighed in favour of relief from forfeiture being granted.

[6] I do not need to decide whether the test is conjunctive. A reasonable argument can be made that it is not, instead that each element is a factor to be weighed in a weighing-all-factors exercise: see *Monk v. Farmers' Mutual Insurance Company (Lindsay)*, 2019 ONCA 616 (SCC leave denied – 2020 CanLII 13145 (SCC)) (paras 88-94).

[7] As explained below, I find that, if the test is conjunctive, the tenant's conduct was unreasonable and accordingly relief from forfeiture is precluded, without having to examine the other elements.

[8] If the test is “three factors, each to be weighed”, the tenant's conduct was so unreasonable that it outweighs any pro-relief signals coming from the other factors, as seen (for

example) in *1198816 Alberta Ltd v Bourbon Lounge Inc*, 2008 ABQB 600 (S. Martin, J. as she then was) (paras 224-258).

B. Reasonableness of tenant's conduct

[9] Here are my reasons for finding the tenant's conduct unreasonable.

[10] **First**, the tenant's **base-rent payment delays were chronic**: 43 of 44 monthly rent payments were late, with delays from a day or two to 19 days. Payment was often not made until after repeated reminders and demands by the landlord.

[11] **Second**, on the **2024 operating-costs catch-up payment**, the tenant asked for, and the landlord agreed to, an instalment plan, on which **the tenant defaulted** (amount due eventually paid but **after agreed-to deadlines**). The landlord's agreement to instalment payments was a one-off departure from the terms of the lease, which required payment of such amounts "forthwith" on receipt of the landlord's calculation and request for payment (lease, s. 5.4).

[12] On the **2025 catch-up payment**, the landlord advised that the full amount (\$19,277.35) was due immediately in full, per the landlord's request for payment via email dated April 17, 2026. (As noted above, payment was due in full "forthwith.") The landlord requested payment of that amount again, via email on May 4, 2026. The tenant advised on May 15, 2026, as part of its response to the landlord's notice of lease termination of the same date, that it was paying \$1,500 towards the 2025 catch-up payment i.e. **leaving \$17,777.35 of the "payable forthwith" payment unpaid**. As of June 10, 2026, when the tenant filed its originating notice seeking forfeiture relief, the tenant had not paid any further amount on this debt. At the application heard July 16, 2026, no evidence showed and no representations were made that any further payment had been made by that date.

[13] **Third**, the tenant has provided **insufficient evidence of tendering the overdue amounts or being able to pay or secure them**. I note here that the landlord agreed on or shortly after June 10, 2026 that it would take no further steps to enforce its rights under the lease i.e. until the tenant's application filed that date had been heard and decided. But nothing precluded the tenant from paying the 2025 catch-up arrears or at least the undisputed portion of those arrears. (The tenant disputes that the entire \$17,777.35 is owing.) Or paying the entire amount on the condition that, if it prevailed on the disputed portion, the overpayment would be repaid to it or credited to future amounts owing under the lease. Or, accepting its evidence that the landlord refused to accept any payments after lease termination (in May 2026), paying the ongoing monthly base rent into court or to its counsel in trust or otherwise showing an ability to pay or secure those amounts.

[14] Clearing or tendering rental arrears (or, conceivably, demonstrating an ability to clear them), even after termination, weighs in the tenant's favour. See *1218807 Alberta Ltd v Muslim Association of Canada Ltd*, 2023 ABKB 300 (Angotti, J.):

... The more important consideration is that MAC had not paid any amounts towards the rent that started to accumulate as due and owing as of May 1, 2020. The Security Deposit was insufficient to cover two months rent under the Lease. MAC cannot reasonably use its payment to support its request for relief from forfeiture to pay rent, when the Security Deposit was an amount payable under the Lease in addition to any rent. The failure to pay any rent distinguishes this case from *Mimi's Parlour [Ltd v 1816112 Alberta Ltd*, 2021

ABQB 254] **where the tenant made partial rent payments during the material time and, within days of receiving notice of termination of the lease, provided full payment for the outstanding arrears on condition that the lease continue** [see *Mimi's Parlour* at para 44 (first bullet – sixteenth sub-bullet (“conclusion on reasonableness of tenant’s actions”)) [para 141 of 1218807] [emphasis added]

[15] Conversely, the absence of payment or tendering attempts weighs against the tenant on the “reasonableness” factor. Here see also *Rahawanji v Gwendolyn Shop (1973) Ltd*, 2011 ONSC 4828 (Murray, J.):

On or about March 1, 2011, the applicants did try to pay rent for both units for February and March 2011 but the landlord refused to accept such payment. Even if, based on this refusal, the applicant tenants had reason to believe the landlord would not accept payment of rent pending resolution of the application for relief from forfeiture, the landlord’s position on the payment of rent pending the resolution of this application was clarified on May 6, 2011 when the landlord’s solicitor told the applicants that rental payments would be accepted on a “without prejudice” basis. Clearly the “without prejudice” stipulation was reasonable and intended to protect the respondent against any argument by the applicants that the landlord had waived its rights by accepting such payments. **In any event, no rent payments were made and rent remains unpaid for both units for the last seven months.** [paras 20-22] [emphasis added]

[16] Recognizing that the landlord advised it would not accept rent payments post-termination, I note that the tenant did not provide evidence of having set aside or earmarked any monies to clear the base rent for any of June through September 2026.

[17] Instead, via its brief, the tenant offered undetailed assurances that (for example) “[the landlord] can be protected by payment [and] security ...” and “[the landlord’s] concerns ... can be addressed by strict terms rather than termination.” The tenant also asserted that “it has the present financial ability to address [the landlord’s concerns] and is willing and able to satisfy or secure the operating-cost claim, satisfy or secure the utility amount”, [and] take immediate steps to address the [lien matter] including posting security or paying funds into Court if necessary.”

[18] All without any evidence showing any ability to pay the overdue or now-due amounts or what asset(s) would anchor or person(s) (e.g. guarantors) would provide the proposed security.

[19] In his primary affidavit, the tenant’s representative swore that “[the tenant] has the present financial ability to address [the 2025 catch-up balance, utility arrears, and lien matter, which it tallies at \$44,257.35]”, albeit with no supporting evidence.

[20] I find that, where a tenant has been chronically late in paying rent, allowed arrears (operating costs and utilities) to accumulate, and apparently been unable to pay the lien contractor or at least pay the sought amount into court to clear title, the tenant had a practical onus, when asserting “able to pay”, to provide supporting evidence i.e. its bare “can pay or will secure” assertion is insufficient to dispel the landlord’s legitimate payment concerns.

[21] **Fourth**, despite the landlord’s demands, dating back to March 24, 2025, that the tenant pay out or otherwise arrange for the **removal of a builder’s lien registered against the rented premises** on March 11, 2025 and the associated certificate of pending litigation registered on July 11, 2025 (pursuant to s. 13.1(e) of the lease (“discharge all liens”); related obligation in s.

16.3 too), **the lien and CLP remain on title** (at least through to the landlord's title search dated May 28, 2026). At the application (July 16, 2026), the tenant did not provide updated evidence or make submissions showing or maintaining that the lien and CLP had been removed by that point. And this despite the tenant's multiple assurances they would be removed.

[22] The landlord's evidence shows that it was **named as a defendant in a statement of claim filed by the apparently unpaid contractor** on May 22, 2025. No evidence shows that the landlord has been removed from that action. And this despite the tenant's response (via March 27, 2025 email) that:

[We] already sent all the [lien-related] documents to our lawyer, and he is looking into it. I will get an update soon and I will communicate it to you.

Regarding the [l]ien, rest assured it has been taken care of since we got notified of this and the following steps [have] been taken:

- All the required documents have been submitted to our lawyer;
- As there was some work that is still pending from the contractor side and for that another trade contractor has submitted a deficiency list along with the quote to finish off that work. This has also been submitted to the lawyer; [and]
- We also tried to contact the electrical contractor with regard to some discrepancy in his invoice but unfortunately he is not picking up our calls either or calling back. This has also been notified to the lawyer.

Now, our lawyer is completing all the formalities and is trying to get in contact with the contractor.

As soon as we get an update from our lawyer, it will be notified to you.

We are doing our best to settle this matter at [the] earliest [time] and also look forward to your patience and cooperation in this regard.

[23] The record does not reflect any update by the tenant on the lien front at any point before the landlord's counsel raised the lien-on-title issue in his March 19, 2026 letter, demanding that:

... Rayn Cultivation take immediate steps to obtain an **irrevocable discharge of the Unauthorized Registrations** from title and make all necessary arrangements with [the lien-filing contractor] in respect of same.

Should [Rayn] fail to obtain these discharges such conduct is in direct contravention of *inter alia* sections 13.1(e), 16.1 and 16.3 of the Lease Agreement[,] which require [Rayn] to promptly pay all contractors, discharge any claim or lien filed against the property, and indemnify Rocor Holdings from any damages incurred by reason of any builders lien for work or materials rendered.

My client looks forward to prompt confirmation of [Rayn's] efforts in this regard as well as an updated copy of the Certificate of Title reflecting the discharge of the Unauthorized Registrations.

[24] Via his May 5, 2026 letter, Rayn's counsel revisited the lien issue (among others):

... further to my email correspondence of March 30, 2026, neither [one of two tenant representatives] have advised as to the counsel representing [Rayn] in its ongoing [lien] litigation matter with [the lien-filing contractor] in [KB action described]. For clarity we require confirmation of either (a) the discharge of the construction lien ..., or (b) the identity of [Rayn's] counsel in that matter such that this correspondence can be forwarded on together with the discharge request.

Rocor Holdings requires payment [of certain described amounts] and confirmation of the foregoing [lien aspect] immediately, and in any event by no later than **Wednesday, May 13, 2026**, failing which my client will proceed accordingly under the terms of the lease agreement absent further notice.

[25] And again in his May 15, 2026 letter providing “Formal Notice of Default and Termination”:

[after describing the lien and CLP and their continued registration] [The lien-filing contractor] was contracted by [Rayn] for past interior construction work at the Property and has no former or ongoing business relationship with Rocor Holdings. The demands made by Rocor Holdings that [Rayn] take steps to obtain the discharge of the Unauthorized Registrations from title have since been ignored. [reference to lease terms thus contravened]

[26] The tenant advised at the recent application that it will “take immediate steps to address the [lien] matter, including posting security, paying funds into Court if necessary, and seeking appropriate relief to facilitate discharge”

[27] However, it provided **no evidence of having taken taking any concrete step toward paying the lien claim (in whole or in part) or otherwise arranging for the removal of the lien and CLP from title** e.g. paying the lien (or any) amount into court as security for the lien claim. Or its financial ability to take meaningful steps now.

[28] **Fifth**, the tenant did not dispute the landlord’s evidence of **outstanding utility invoices** that are the tenant’s responsibility (per ss. 8.2 and 8.4 of the lease), including a due-June-15-2026 water bill from the County of Leduc for \$2,938.79 (Exhibit M to Donnelly affidavit sworn June 5, 2026).

[29] **Sixth**, per the record the tenant did **not offer any explanation or at least a sufficient explanation for the chronically late rent payments**: see *Rahawanji* (cited above) at para 21. Or acknowledge the landlord’s forgiving (but “no waiver”) approach to those payments, including not charging leviabale-per-lease interest on the overdue payments.

[30] **Seventh**, the **tenant itself did not assert that its conduct has been reasonable**, instead focusing on how it can and will remedy the problems it caused.

[31] Having found the tenant’s conduct unreasonable, I turn to the second (“gravity of the breaches”) factor.

C. Gravity of the breaches

[32] In *Ontario (Attorney General) v 8477 Darlington Crescent*, 2011 ONCA 363, the Ontario Court of Appeal described the second factor of the **SRB** test:

The second factor identified in *Saskatchewan River Bungalows*, the gravity of the breach, looks both at the nature of the breach itself and the impact of that breach on the contractual rights of the other party: see *Leon's Furniture* at paras. 75-78.

If, for example, the forfeiture provision operated as a means of securing payment of the rent required under a lease, the fact that the breaching party had paid all amounts owing could obviate the need to resort to forfeiture and support a claim for relief from forfeiture. [para 91] [bold and italicized emphases added]

[33] In *Mimi's Parlour*, on “gravity of the breaches”, I found that the rental arrears “accumulated to a material amount” but also that “the tendering of the full arrears, within three days of termination ... effectively counters the gravity of the rent-payment breaches” (para 44 under “gravity of the breaches” – fourth paragraph there).

[34] In *Ontario International College Inc v Consumers Road Investments Inc*, 2020 ONSC 6772, when assessing breach gravity and after noting that the “amount not paid is substantial” and that the “length of time these breaches have been continuing is also a consideration”, Schabas J. also emphasized that “[the tenant] has failed to provide financial information, leading to the inference that it is not able to pay the amounts outstanding.”

[35] Same here: as discussed earlier, the tenant did not provide financial (or other) information confirming or even suggesting an ability to pay the overdue amounts and whatever is or will be required to discharge the lien and CLP from title, all aside from an ability to pay the rent due since termination (May-September 2026, inclusive), ongoing rent, and other lease obligations.

[36] The landlord did not cite impaired ability to service its own debt obligations (if any), entanglement in lien litigation, or similar difficulties or hardship caused by the tenant's breaches.

[37] I conclude that the gravity of the breaches is relatively modest, albeit (as noted) not countered by sufficient “will pay or secure” evidence.

D. Proportionality

[38] *Ontario (Attorney General) v 8477 Darlington Crescent* also illuminates the third **SRB** factor:

[It] engages a kind of proportionality analysis. If there is a large difference between the value of the property to be forfeited and the amount owing as a result of the breach, equity will favour relief from forfeiture. For example, in *Liscumb v. Provenzano* (1985), 1985 CanLII 2051 (ON HCJ), 51 O.R. (2d) 129 (H.C.), aff'd (1986), 1986 CanLII 2595 (ON CA), 55 O.R. (2d) 404 (C.A.), the trial judge, in granting relief from forfeiture, observed that the property to be forfeited was worth between three and four times the amount owing on the debt giving rise to the breach. The trial judge relied on this disproportionality between the debt owing and the consequences of the forfeiture as one factor in favour of granting relief from forfeiture. [para 92]

[39] The tenant offered the following evidence here:

Since entering into the Lease, Ray has invested approximately \$3.3 million in **developing, constructing, equipping, licensing, and operating** the Premises as a specialized cultivation facility.

...

Based on my involvement with the development and operation of the facility, the investment made by Rayn **in connection with the Premises** is approximately \$3.3 million.

[40] It also cited the “destruction or loss of approximately 2,000 live cannabis plants” and other business-disruption considerations i.e. if forced to vacate -- “loss of harvested inventory, interruption of cultivation cycles, disruption of business operations, disruption of customer and supplier relationships, employee disruption, loss of goodwill, and potential destruction of the business.”

[41] The tenant did not provide evidence on the availability or unavailability of replacement premises, when any available premises might be available, how long a relocation would take, how much it would cost, or the specific impacts would or might result i.e. show the extent and cost of any relocation-caused disruptions.

[42] It also did not explain, with evidence, why a relocation would involve the loss of its harvested inventory.

[43] Or necessarily cause or risk the destruction of the in-progress inventory i.e. provide evidence supporting that assertion.

[44] Or provide a breakdown of the cited \$3.3 million figure i.e. as among “developing, constructing, equipping, licensing, and operating” the premises i.e. showing what portion represents leasehold improvements and, of those, what portion represents improvements that would or might have to be left behind in a relocation.

[45] On that point, neither party referred to para 13.2(c) of the lease:

Should ... this Lease be terminated before the proper expiration of the Term due to a default on the part of the Tenant then, in such event, as of the moment of default by the Tenant, all trade fixtures and furnishing of the Tenant (whether or not attached in any manner to the Premises) shall, except to the extent the Landlord requires the removal thereof, become and be deemed to be the property of the Landlord, without indemnity of the Tenant and as additional liquidated damages in respect of such default but without prejudice to any other right or remedy of the Landlord.

[46] Per its counsel’s May 15, 2026 letter terminating the lease, the landlord asked the tenant to “remove all inventory, equipment and waste material” i.e. did not request the remove of trade fixtures or otherwise appear to waive the operation of para 13.2(c). And nothing in its counsel’s post-termination emails with Rayn’s former counsel or Rayn itself reflected any such request or waiver. (I note that, in its application brief, the landlord says it “remains willing to permit [Rayn] a reasonable opportunity to remove its inventory, equipment, and other corporate assets” from the premises. Accordingly, it appears that trade fixtures will remain in place per the noted provision or be removable i.e. if the landlord so agrees.)

[47] In these circumstances, I find that Rayn did not sufficiently detail or, at minimum, quantify its expected loss-of-lease disruptions and losses i.e. to enable an adequate analysis of comparative losses or overall positions as between landlord and tenant.

[48] That is, the tenant did not, on the evidence here, show a disproportionate outcome i.e. if forfeiture relief is denied.

E. Conclusion

[49] If the test is conjunctive, Rayn's unreasonable conduct alone makes it ineligible for relief from forfeiture.

[50] If the test is "weigh all factors", the answer is still no relief. Rayn's exceptionally unreasonable conduct outweighs the relatively modest gravity of the breaches. No additional counterweight comes from the disproportionality factor, as explained above.

[51] I accordingly dismiss the tenant's application for relief from forfeiture and grant the landlord's application for a declaration that the lease has been terminated and the other relief sought in its cross-application (including indemnification-level costs, per s. 17.4 of the lease), subject to setting the deliver-up-vacant-possession date (which I will fix if the parties are unable to agree, in which case the tenant can provide its position and brief reasons via letter due by 4.30 pm on September 17, 2026, to which the landlord can respond (same fashion) via 4.30 pm on September 18, 2026).

[52] I thank counsel for their helpful written and oral submissions.

Heard on July 16, 2026.

Dated at Edmonton, Alberta on September 15, 2026.

Michael J. Lema
J.C.K.B.A.

Appearances:

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