Court of King's Bench of Alberta

Citation: CLMS Financial Ltd v 2264356 Alberta Ltd, 2026 ABKB 801

Date: 20261113
Docket: 2603 17850
Registry: Edmonton

2026 ABKB 801 (CanLII)

Between:

CMLS FINANCIAL LTD IN ITS CAPACITY AS TRUSTEE OF COMPUTERSHARE TRUST COMPANY OF CANADA

Plaintiff/Applicant

- and -

2264356 ALBERTA LTD

Defendant/Respondent

Endorsement
of the
Honourable Justice Michael J. Lema

I. Introduction

[1] Should the receiver's proposed disclaimer of all remaining residential-tenancy leases in a state-of-chaos apartment building (Stadium Plaza) be approved, or alternatively should the leases be declared frustrated due a non-functioning and seriously compromised heating system?

[2] I find that the leases have been frustrated, grant the relief sought by the receiver (in large part), and provide directions for resolving any disputes over the repayment of prepaid rent and damage deposits and whether rent abatements should be made, all as explained below

II. Background

[3] The apartment building, in central-east Edmonton – six stories with 78 total residential units -- was completed in 2024. Its construction was plagued by problems, as reflected in the registration of various construction liens.

[4] The building has fared no better since, with less-than-full occupancy, unleased suites being occupied by persons without permission, illegal-drug-related activities occurring in certain suites and in public areas of the building, a flood rendering the elevators inoperable, ongoing destruction of or damage to the main entrance and the entrances of various suites, graffiti reflecting gang activity in the building, excessive noise (day and night), effectively daily attendance by police, and eventually the loss of heat via ongoing thefts of copper piping throughout the building.

[5] Rental payments have largely dried up, with over half the suites empty, many of the remaining tenants unable or unwilling to pay rent, others able and willing to pay but holding off payment pending repairs, and only a handful paying rent in full and on time.

[6] Following payment defaults in early January 2026, the first mortgagee began enforcement proceedings.

[7] The receiver was appointed on August 25, 2026. It has collected only approximately $13,000 of an estimated $90,000 of rent collectively due since then.

[8] The current state of chaos at the building is fully detailed in the receiver's First Report, dated November 3, 2026.

[9] The receiver has been cooperating with a Residential Inspection Safety Compliance (RISC) Team, composed of representatives of the Edmonton Police Service, Edmonton Fire Service, City of Edmonton, Alberta Health Services, Bissell Centre, and Hope Mission, which has inspected the building three times over the last few weeks, including on November 10.

[10] Per the receiver's counsel, the RISC Team's consensus following the recent inspection was "support [for] the [b]uilding being vacated", albeit no formal report or recommendation has yet been issued, and the receiver is not aware of the timing for any being issued.

[11] As far as the receiver is aware, no "uninhabitability" declaration has been made under s. 62 of the *Public Health Act* (discussed further below).

[12] The receiver's evidence is that the building's heating system is completely inoperable, repair work will require three or four months, such work is not practically possible if the building remains occupied by any residents i.e. if entry and exit of non-construction personnel is required i.e. if the risk remains of continuing trespassing and thefts of copper piping, and, in any case, continued occupancy by any tenants is not feasible i.e. with no heat and winter approaching (i.e. with the repair work, even if started immediately, requiring until at least mid-February 2027).

[13] On notice to all affected persons, including all remaining tenants and occupiers of the building, the receiver has applied for an order approving disclaimer of all remaining leases or, alternatively, declaring that the remaining leases have been frustrated by (at minimum) the loss of

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heat and no possibility of repairs for at least three months, so that the building can be secured, repairs can be performed, and the building can be offered by sale by the receiver, with habitability restored and all suites rented or at least rentable.

III. Analysis

A. Frustration of Tenancy Agreements

1. "No reasonable tenant would be willing to remain as a tenant"

[14] The receiver invokes s. 40 of the *Residential Tenancies Act*. It states:

> **(1) A residential tenancy agreement is frustrated if**
>
> (a) the residential premises that are the subject of the residential tenancy agreement are destroyed,
>
> (b) **the residential premises, the common areas or the property of which they form a part are damaged to such an extent that**
>
> (i) a reasonable landlord would not repair the damage, or
>
> (ii) **a reasonable tenant would not be willing to remain as a tenant,**
>
> (c) an order is made under section 62 of the *Public Health Act* that closes the residential premises, declares the residential premises unfit for habitation or otherwise operates so as to make the continuation of the tenancy practically impossible, or
>
> (d) **the residential premises, the common areas or the property of which they form a part are in a condition that contravenes an enactment that regulates health and safety in housing accommodation, and the condition is not remedied in accordance with that enactment.**
>
> **(2) The law pertaining to frustration of a contract applies with respect to a residential tenancy agreement that is frustrated.** [emphasis added]

[15] The receiver relies first on para 40(1)(b), emphasizing the lack of heating. Per its report:

> The Receiver recently [per November 3 report] became aware that the heating system at Stadium Plaza is inoperative as a result of the copper piping being stolen from the system. The removal of copper piping from the boiler heating system stops the circulation of heated water throughout the building, thereby affecting the system's ability to provide heat to affected areas.
>
> The Receiver understands that copper piping has been removed primarily from the fifth and sixth floors and at various locations throughout the first four floors. This has resulted in the entire boiler heating system no longer functioning.
>
> An operating heating system is necessary to protect Stadium Plaza pipes from freezing during the winter months. Accordingly, the inoperable heating system presents concerns regarding the health and safety of the occupants, risk of further

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> deterioration of Stadium Plaza, in addition to potential insurance coverage concerns.
>
> The Receiver received a preliminary estimate of approximately $461,000 to repair and restore the heating system. Due to the magnitude of damage caused by the theft of copper piping, the Receiver understands that the necessary repairs are expected to take approximately three to four months to complete and are not expected to be completed prior to the onset of winter.
>
> Given the recurring unauthorized access and ongoing vandalism at Stadium Plaza, the Receiver is of the opinion that it is not reasonable to conduct the repairs to the heating system while the Property remains occupied at the risk of further damage to the repaired system.
>
> The Receiver has explored alternative means of providing heat to Stadium Plaza; however, none of the alternatives considered provided a viable heating solution.
>
> In consideration of the approaching winter conditions, the estimated cost and timing of repairing and restoring the heating system, and the existing safety and security concerns, the Receiver is of the view that Stadium Plaza is uninhabitable in its current state.
>
> On October 28, 2026, the Receiver issued notice to the Tenants advising of the lack of heat, the declining winter temperatures and resulting health and safety concerns. The Receiver further encouraged all Tenants to arrange alternative accommodations. A copy of the notice is attached … as Appendix 11.

[16] Per the same report, the Receiver advised that, of the 78 rental apartments in the building, 42 are vacant, 22 are occupied by persons whose lease agreements have expired, 2 by persons who have and had no lease agreement, and 12 by persons with valid and ongoing lease agreements.

[17] Only one tenant (Ms. Olesen) appeared at the application, in person. (No tenants attended otherwise e.g., by Webex or by phone.) She confirmed many of the referenced problems at the building, including inoperable elevators and no heat. She said she has been coping, in part, with space heaters and by boiling water.

[18] She also advised that she no longer wishes to remain in the building, is actively looking for a new place, and ideally would have until November 23 to move out i.e. three more days than the move-out deadline proposed by the receiver (November 20), as discussed further below.

[19] I recognize that some occupants of the building, whether under valid leases or not, may not have received or at least seen the posted notices from October 28 or been told about the application materials. Or, having received, seen, or heard them (or some of them), may have been unable to attend the application to offer evidence or, in any case, their position on what should happen.

[20] On the other hand, the receiver's counsel made no mention of any occupiers contacting his office, the receiver, or the property manager, formally or informally, to advise of planned attendance at the application, to ask questions, or to provide a position.

[21] In any case, in the circumstances here, with no heat, no realistic possibility of heat-system repairs until at least mid-February, no evidence of any feasible temporary heating solutions (or at

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least any compatible with ongoing occupancy of the building), the coming of winter (even recognizing currently milder-than-usual temperatures), the Environment Canada forecast for the coming seven days (November 13-19) predicting daily highs declining (overall) from 8C to -1C and daily lows from 0C to -7C, and the almost inevitable continuing decline in both daily high and low temperatures to below freezing over the coming weeks, coupled with only 13 of 78 units currently occupied by valid-lease tenants and only one of those attending the application, and Ms. Olesen on her way out, and with no evidence that anyone living in the building began living there after the heating-system breakdown, the receiver has amply proved that "[no] reasonable tenant would … be willing to remain as a tenant" i.e. the frustration test in subparagraph 40(1)(b)(ii) is satisfied.

[22] In so finding, I interpret "reasonable tenant" as one in legitimate occupation, paying rent in full, and willing to continue paying rent in full, with the question being whether such a person would likely be willing to continue living in the building in the current conditions.

[23] I find that no reasonable tenant would be willing to remain as a tenant in an unheated apartment building from mid-November to mid-February (at minimum) in Edmonton.

2. Contravention of Health and Safety Enactment

[24] In any case, I find that another branch of the "lease frustrated" test is satisfied here, namely, para 40(1)(d), reproduced again here:

> … the residential premises, the common areas or the property of which they form a part are in a **condition that contravenes an enactment that regulates health and safety in housing accommodation**, and the condition is not remedied in accordance with that enactment. [emphasis added]

[25] Here is the *Housing Regulation* (Alta Reg 173/1999) under the *Public Health Act* on a property owner's heating obligations to occupants (including tenants):

> 3(1) Subject to subsection (3) and section 4, **an owner shall ensure that**
>
> …
>
> **(b) the occupants of the housing premises are supplied with adequate**
>
> …
>
> **(ii) heating facilities that are capable of maintaining a habitable indoor temperature, if the housing premises are used or intended for use during all or part of the period from September 1 in one year until May 1 in the following year ….**
>
> **(2) An owner shall ensure that the housing premises' plumbing system and facilities provided under subsection (1)(b) are free from defects and maintained in proper operating condition.**
>
> …

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> **4** An **owner shall maintain the housing premises in compliance with the *Minimum Housing and Health Standards***, as approved and published by the Minister and as amended by the Minister from time to time. [emphasis added]

[26] Here are the referenced ***Minimum Housing and Health Standards*** (M.O. 57/2012 (1999-2012 Government of Alberta) (minimum-heating requirements):

> **Occupants of a housing premises [must be] supplied with adequate … heat …:**
>
> …
>
> **8. Heating Facilities**
>
> (a) **All heating facilities** within a housing premises are to be properly installed and maintained in good working condition, and be ***capable*** **of safely and adequately heating all habitable rooms, bathrooms, and toilet rooms within the building to a temperature of ;**
>
> **(i) at least 22 [degrees] C (71 [degrees] F), or**
>
> **(ii) maintained at a temperature of at least 22 [degrees] C (71 [degrees] F) when the control of the supplied heat in a dwelling is the responsibility of a person other than the occupant.**
>
> …
>
> (c) Cooking appliances and **portable space heaters shall not be used as the primary source for the required heat to a habitable room.**
>
> (d) **Every owner must ensure a continuous supply of** electricity, water and **heat** unless the rental agreement stipulates that such utility services are the sole responsibility of the occupant.

[27] An unheated building will obviously not meet these minimum requirements.

[28] Concerning the para 40(1)(d) *RTA* requirement that the identified subpar condition "is not remedied in accordance with [the governing] enactment", I do not see anything in either the *Housing Regulation* or the *Minimum Housing and Health Standards* bearing on remediation expectations or associated timing e.g. deadlines for the performance and completion of remediation work.

[29] It may be that that gap is filled by s. 62 of the *Public Health Act* (key portions here):

> **(1) An executive officer may issue a written order in accordance with this section if the executive officer has reasonable and probable grounds to believe, based on**

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> (a) an inspection of a public place under section 59 or a private place under section 60, or
>
> (b) a report or test, regardless of whether the report or test is required to be produced or performed under this Act, if a public place or private place was not inspected under section 59 or 60,
>
> that a nuisance exists in or on the public place or private place, or **that the place or owner of the place or any other person is in contravention of this Act or the regulations.**
>
> (2) An **order** shall be served on the person to whom it is directed and **shall set out** the reasons it was made, **what the person is required to do and the time within which it must be done.**
>
> …
>
> (4) An order may include, but is not limited to, provisions for the following:
>
> (a) requiring the vacating of the place or any part of it;
>
> (b) declaring the place or any part of it to be unfit for human habitation;
>
> (c) requiring the closure of the place or any part of it;
>
> (d) requiring the doing of work specified in the order in, on or about the place …. [emphasis added]

[30] As noted, per the receiver's counsel, no s. 62 order has been made to date, whether to declare Stadium Plaza uninhabitable on account of no heating or to direct or set a deadline for remediation work.

[31] I infer that, whatever remediation requirement applies or may apply, it will or would direct immediate remediation steps here, i.e., the immediate restoration of heating equipment on an emergency basis, given the time of year.

[32] And, given the reality of the extensive work required here, I infer that any such immediate-restoration requirement would not be met here.

[33] In other words, I find that the requirements of para 40(1)(d) are also met i.e., a material breach of a critical (heating) requirement that cannot be remedied on an immediate basis.

[34] Whether under subpara. 40(1)(b)(ii) or para 40(1)(d), the present conditions at the building are incompatible with continued occupancy by any tenants.

[35] In such circumstances, the residential tenancy agreements are -- i.e., have been – frustrated (i.e., performance has effectively been rendered impossible) within the meaning of s. 40.

B. Effect of Frustration of Tenancy Agreement

[36] As a result, per ss. 40(2), "[t]he law pertaining to frustration of a contract applies."

[37] At minimum, that engages the ***Frustrated Contracts Act*** (key parts reproduced here):

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1 In this Act,

...

(c) “discharged” means relieved from further performance of the contract.

2(1) This Act applies to a contract, whenever made, governed by the law of Alberta that ... has become impossible of performance or been otherwise frustrated and the parties to which for that reason have been discharged.

...

Sums payable before discharge

3 The sums paid or payable to a party, in pursuance of a contract before the parties were discharged,

(a) in the case of sums paid, are recoverable from that party as money received by that party for the use of the party by whom the sums were paid, and

(b) in the case of sums payable, cease to be payable.

Expenses

4(1) If, before the parties were discharged, the party to whom the sums were paid or payable incurred expenses in connection with the performance of the contract, the court, if it considers it just to do so having regard to all the circumstances, may allow the party to retain or to recover, as the case may be, the whole or a part of the sums paid or payable not exceeding the amount of the expenses.

(2) Without restricting the generality of subsection (1), the court, in estimating the amount of the expenses, may include a sum that appears to be reasonable in respect of overhead expenses and in respect of work or services performed personally by the party incurring the expenses.

Benefit

5(1) If, before the parties were discharged, any of them has, by reason of anything done by another party in connection with the performance of the contract, obtained a valuable benefit other than a payment of money, the court, if it considers it just to do so having regard to all the circumstances, may allow the other party to recover from the party benefited the whole or a part of the value of the benefit.

(2) When a party has assumed an obligation under the contract in consideration of the conferring of a benefit by another party to the contract on another person, whether a party to the contract or not, the court, if it considers it just to do so having regard to all the circumstances, may for the purposes of subsection (1) treat a benefit so conferred as a benefit obtained by the party who has assumed the obligation.

Insurance

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> 6 In considering whether a sum ought to be recovered or retained under this Act by a party to the contract, the court shall not take into account a sum that, by reason of the circumstances giving rise to the frustration of the contract, has become payable to that party under a contract of insurance, unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under an enactment.
>
> **Frustration contemplated**
>
> 7 If the contract contains a provision that, on the true construction of the contract, the contract is intended to have effect
>
> (a) in the event of circumstances that operate, or but for that provision would operate, to frustrate the contract, or
>
> (b) whether those circumstances arise or not,
>
> the court shall give effect to the provision and shall give effect to this Act only to the extent, if any, that appears to the court to be consistent with that provision.

...

[38] The receiver's application materials did not address whether pre-paid rent (e.g. rent paid in full for the current month (November)) must be reimbursed, whether under the *Frustrated Contracts Act* or otherwise, if the paying tenant moves out before the end of the month.

[39] Or what the landlord's or, in its place, the receiver's obligations are concerning damage deposits paid by the tenants.

[40] At the application, the receiver's counsel advised that the receiver will or at least may be agreeable to refunding any prepaid and "unearned" rent.

[41] He also advised that, as far as the receiver was aware, it had not received any damage deposits from the owner or information about their status.

[42] He advised that the receiver had apparently not received any requests for rent abatement i.e., cancellation or reduction of rent for any month(s) during which the tenants have been without heat, a working elevator, or other lease-required supplies or amenities.

[43] The receiver's counsel did not mention seeking unpaid rent from any non-paying tenants.

[44] I believe it is clear under ss. 3 or 5 (or both) of the *Frustrated Contracts Act* that the landlord and receiver, as applicable, must refund any pre-paid rent to tenants i.e. amounts previously paid to the landlord or the receiver for any period after the date of this judgment i.e. from the finding that the residential leases have been frustrated at law.

[45] And that the landlord or receiver, as applicable, must return the damage deposits paid by tenants (plus any required interest), subject any reasonable holdback to cover damages to the rental unit(s) in question i.e., appropriately withheld per the lease agreements in question.

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[46] If any dispute arises over what damage deposits were paid in the first place, how, where, and when they were held, their current status, the responsibility as between the landlord and receiver for the repayment of damage deposits, or the amounts (if any) properly withheld to cover property damage, over what rental amounts were prepaid or for what period(s), or whether any tenant's rental obligation should be abated for any particular period and, if so, for what reason(s) and (if warranted) by how much, I will provide directions for having such disputes heard.

C. Deadline for Tenant Move-Out

[47] The receiver asked for an order requiring tenants to move out of the building, with all belonging, by 12 noon on Friday, November 20, 2026.

[48] As noted, Ms. Olesen asked for more time, but only until Monday, November 23, 2026.

[49] The receiver did not point to any construction or remediation contracts, in place or proposed, let alone with a fixed or proposed starting date.

[50] The receiver is free to take whatever recovery-of-possession steps are available under the *Residential Tenancies Act* in respect of the premises occupied by persons with no existing tenancy agreement i.e. whether they continue to occupy the premises following the expiry of pre-existing tenancy agreements or do so without a lease having ever been in place i.e. to take whatever steps have been available to it before this frustration-of-leases application, with frustration not applying to expired or non-existent leases.

[51] As for persons with existing leases, I will direct (primarily in recognition that the current lack of heating will likely become more difficult to cope with as the temperatures continue to decline), that they move out (with all belongings) by the requested date and time (12 noon, November 20, 2026). However, if a given tenant is unable to meet that deadline, he or she or they can request an extension, with a proposed later date and brief reasons for the extension, via letter or note (typed or hand-written) or email, sent to the receiver (whose physical, mailing, and email addresses) must be included in the order, by Monday, November 16 at 5 pm. (In the case of Ms. Olesen, I approve her request to extend the move-out deadline to November 23, 2026.)

[52] I will then decide, after also considering any letter-form submissions the receiver may have, whether an extension should be granted and, if so, on what terms.

[53] Any tenant who has not moved out (with all possessions) by November 20, 2026, at 12 noon or by any extended deadline is subject to removal as contemplated in paragraph 5 of the first draft order attached to the receiver's application i.e. that paragraph is approved.

D. Receiver's Other Relief

[54] Service of the application and related materials is approved and deemed good and sufficient.

[55] The direction to vacate contemplated in the first draft order is varied as outlined above i.e., to add the extension aspect.

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[56] Service of the current order via the means suggested in paragraph 6 of the first draft order is approved.

[57] In light of the recognized frustration of the tenancy agreements, it is not necessary to address the receiver's request for approval of disclaimer of those agreements.

[58] The relief proposed in the second draft order (approval of receiver's activities, etc., amendment to the receiver's borrowing charge, and service of that order) is approved.

IV. Closing Note

[59] I thank all counsel for their helpful submissions.

[60] I thank Ms. Olesen for her helpful submissions and acknowledge her fortitude in coping with difficult conditions at the building.

[61] I note in closing the continuing absence of a section 62 order under the *Public Health Act* and query how an apartment building lacking heating, apparently not remediable for last three months i.e. until mid-February, can be regarded, even implicitly, as fit for habitation, in Edmonton, Alberta.

[62] If such an order had been granted, frustration of the tenancy agreements under para 40(1)(c) would have been easily recognized.

[63] If the receiver believes any further directions are required, Mr. Norris can contact me via my assistant.

Heard on November 10, 2026.
Dated at Edmonton, Alberta this 13th day of November, 2026.

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

Appearances:

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