Broken beyond repair: Court declines to grant relief from forfeiture due to tenant's poor conduct

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When a landlord in British Columbia terminates a lease for non-payment of rent, the tenant can seek relief from forfeiture. Tenants often believe that if they cure this default, relief will be granted. However, as shown in the recent Supreme Court of British Columbia decision of *Delta Automotive Ltd. v 4846 Elliott St Ltd.*, 2024 BCSC 2246 [*Delta Automotive*], a tenant's ability to cure the default is only one factor that the court considers when deciding whether to grant relief.

What you need to know

- Relief from forfeiture is an equitable remedy, codified in s. 24 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253. It gives the court broad discretionary power to restore a lease after termination.
- Relief from forfeiture is available to a tenant when the loss suffered is out of all proportion to the landlord's contractual entitlement to end the lease, or where the effect of the termination would be "unconscionable".
- A tenant's conduct during the term of the lease may weigh against relief from forfeiture.

Background

In *Delta Automotive*, the former tenant had been operating an automotive repair shop in a leased premises for more than 30 years. The former tenant's most recent lease for the premises had a five-year term, from Nov. 1, 2018, to Oct. 31, 2023. In June 2022, the former tenant exercised its contractual right to renew the lease for another five-year term with new fair market rent. After exercising the right to renew, the former tenant largely ignored the landlord's attempts to negotiate fair market rent for a renewed lease term. At one point, the former tenant agreed to the landlord's rental terms, including an increase to market rent, but refused to execute when presented with a renewed lease.

Throughout the remainder of the term, the former tenant breached the lease in several ways and generally conducted itself poorly. The former tenant failed to pay rent on time,

failed to remediate fire hazards at the premises for ten months, put the landlord's insurance at risk, and failed to respond to multiple notices of default. Matters came to a head when the former tenant failed to pay rent for three successive months, despite receiving several notices of default from the landlord. In these circumstances, the landlord terminated the lease.

After termination, the former tenant proposed, and the landlord was willing to agree to, a short-term lease that would allow the former tenant to wind-up its business. However, when provided with a draft short-term lease, the former tenant refused to execute it and indicated that it would seek relief from forfeiture.

Analysis

At the hearing, the former tenant was required to establish that it is entitled to relief from forfeiture. The former tenant argued that it should be granted relief because it had been a long-term tenant and because it was prepared to pay rent, albeit not market rent. The former tenant also argued that its business would come to an end if relief was not granted.

The former tenant provided no evidence of the loss it, or others (including employees), would suffer if the Court did not grant relief from forfeiture. It provided no evidence that it attempted, but failed, to find alternative premises, and it could not explain how its stated intention to wind-up its business squared with its petition for relief. The former tenant offered no explanation for its failure to pay rent during the lease, and provided no evidence as to whether it could pay market rent going forward. The former tenant also failed to explain its failure to remediate the fire risks at the premises, and the fact that it had ignored several notices of default.

In these circumstances, the Court found that the landlord could not trust that the former tenant would perform its obligations under the lease if relief were granted. The business relationship had been destroyed. That being the case, the Court dismissed the former tenant's petition for relief. The Court concluded its decision by granting the landlord solicitor-and-client costs.

Key takeaways

Relief from forfeiture remains a useful remedy for tenants whose lease has been terminated. However, tenants seeking this remedy must be prepared to prove that their loss would be disproportionate to the benefit to the landlord of being able to end the tenancy, or unconscionable.

In *Delta Automotive*, the Court suggested that the following may have assisted the former tenant in its petition for relief:

- evidence of the former tenant's financial circumstances and ability to pay rent going forward;
- evidence that the former tenant could not operate its business elsewhere, or at all, if relief were not granted; and
- evidence of how many people the former tenant employed, and the employees who would be out of work if the lease were not reinstated.

However, even if a former tenant can prove that it would suffer significant loss because of the termination of the lease, it may be unable to escape its own bad behaviour. Like the finding in *Delta Automotive*, the Court may conclude that the former tenant's breaches and poor behaviour are so extensive that relief should not be granted.

In the instant case, BLG acted for 4846 Elliott St Ltd. For more information, please reach out to any of the key contacts listed below.

By

Matthew G. Swanson, Sean Gallagher, Les Honywill

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BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3
T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9
T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2
T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4
T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3
T 416.367.6000
F 416.367.6749

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