Lease remedies clauses can limit prospective rent claims after termination

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More than 50 years after *Highway Properties Ltd. v. Kelly, Douglas and Co. Ltd.* established the modern framework for commercial landlord remedies, Canadian courts are revisiting how far those remedies extend in current leasing disputes.

This past March the Ontario Court of Appeal in *Highbury Narrows Ltd. v. LAF Canada Company* considered whether specific provisions of a lease limit a landlord's ability to recover prospective rent after termination. In *Highbury,* the Ontario Court of Appeal determined that this commercial landlord's right to claim future rent after terminating a lease was limited due to the specific provisions in its lease. The lease gave the landlord two distinct options following tenant default: terminate the lease or keep it in force and recover rent as it became due. The Court held that, on the specific wording, the claim for future rent ceased to be available once the landlord terminated.

What you need to know

- **This is a remedies case first and foremost.** The decision does not suggest that claims for future rent are no longer possible. Rather, it confirms that remedy determination begins with analysis of the actual lease provisions agreed upon by the parties.
- **Election is determinative.** The lease gave the landlord two paths following tenant default: terminate the lease, or keep the lease alive and recover rent as it came due. As a result of the landlord proceeding with termination, the Court held the second path, pursuit of future rent, was no longer available.
- **General "law and equity" language may not be enough.** The Court rejected the argument that a general reservation of "other remedies available at law or in equity" preserved a claim for future rent where the more specific lease wording pointed the other way.
- **Landlords should consider their business strategies when acting on a default.** Is the landlord's primary goal to obtain vacant possession of the premises, or to receive the future rent for the balance of the term.

Background

Highbury Narrows Ltd., the landlord, sued LAF Canada Company, the tenant, and LA Fitness International, LLC, as indemnitor, for default to pay rent under its lease. After terminating the lease, the landlord sought further remedies, including the arrears, future rent for the balance of the term, pool-removal costs and post-termination maintenance-related amounts.

Key facts

- The Tenant defaulted in rent payments under a commercial lease. After default, the Landlord terminated the lease and sought arrears, prospective rent for the remainder of the term, pool-removal costs, maintenance-related expenses, signage-related expenses and costs.
- Section 19.2 of the lease provided that, upon default, the Landlord had the option either to: (A) terminate the lease and the Tenant's rights, or (B) keep the lease in effect and recover rent and other charges "as they become due". Section 19.3 reinforced that if the Landlord did not elect termination, it could recover rental as it became due or relet the premises without terminating the lease.

The motion judge interpreted these provisions as limiting the Landlord, on termination, to rent and expenses due at the date of termination plus a fixed penalty amount, and not prospective rent. The Court of Appeal upheld that interpretation.

The decision in brief

The Court read the lease as creating a deliberate distinction between termination remedies and continuation remedies. If the landlord terminated, it was limited to the amounts the lease specifically made available on termination. If the landlord kept the lease in force, it could continue to recover rent as it became due. On that reading, the lease did not preserve a claim for prospective rent after termination, despite its general reference to other remedies available at law or in equity. The Court stated this general language was not without meaning: it could still capture other remedies, such as injunctive relief or distress, even though it did not preserve a future-rent claim here.

The Court also confirmed that *Highway Properties* did not create an automatic right to future rent in every commercial lease dispute. It established that such a claim may be available, depending on the specific working of the lease.

Why this matters now

Commercial landlords, tenants and their advisors should keep *Highbury* in mind when assessing post-default remedy options. The decision reinforces that the Courts will closely examine the remedial structure set out in the lease and will hold parties to what was negotiated and agreed upon by the parties.

This update also comes at a time when the commercial lease remedies are under active judicial consideration. On February 18, 2026, the Supreme Court of Canada heard *Aphria Inc. v. Canada Life Assurance Company, et al.* and reserved judgment on whether a commercial landlord that refuses to accept a tenant's repudiation and keeps the lease alive must mitigate its losses. We previously wrote on the Court of Appeal decision in July 2025. The Supreme Court's decision in *Aphria* is expected in fall 2026.

Together, *Highbury* and *Aphria* underscore that remedy selection, lease drafting and post-default strategy remain central issues in commercial leasing disputes.

Practical takeaway

Highbury is a reminder to carefully review the lease as part of your business strategies when considering your remedies after a tenant defaults.

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