CITATION: NP Health Clinic Inc. v. 2456192 Ontario Inc., 2025 ONSC 2230
COURT FILE NO.: CV-25-00000123
DATE: 20250904

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
NP HEALTH CLINIC INC.	
Applicant	Michael F. Motala, Counsel for the Applicant
– and –	
2456192 ONTARIO INC.	Daria Krysik, Counsel for the Respondent
Respondent	
	HEARD: April 1, 2025

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REASONS FOR DECISION

CHARNEY J.:

[1] The Applicant, as the Tenant, and the Respondent, as the Landlord, are parties to a commercial Lease Agreement. The Landlord served the Tenant with a Notice of Default expressing its intention to terminate the lease and evict the Tenant for failure to obtain liability insurance as required by the lease. The Tenant has brought this motion for an interlocutory injunction to prevent the Landlord from evicting the Tenant.

Facts

[2] The Applicant operates a medical clinic in the leased premises located in Whitby, Ontario.

[3] The Lease Agreement was executed on April 25, 2023 for a three year term from July 1, 2023 to June 30, 2026, with an option for renewal for a further 3 year term.

Tenant's Insurance Certificates – February 2024.

[4] In February 2024, the Tenant provided the Landlord with a copy of a liability insurance certificate issued on February 4, 2024 for the period February 4, 2024 to January 31, 2025.

[5] The Landlord sent a copy of the insurance certificate to the Landlord's insurance broker. On February 28, 2024 the insurance broker advised the Landlord that the clinic's insurance certificate was not satisfactory because it only showed "Commercial General Liability" coverage, but the lease required "all risk" coverage that included:

1) Fire including contents, fixtures and lease hold improvements
2) Sewer back up
3) Flood
4) Earthquake
5) Equipment breakdown
6) Business interruption
7) CGL

[6] The Landlord's affidavit states that he advised the Tenant's representative "verbally on several occasions that the coverages…were insufficient and that the Landlord required the insurance to be brought into compliance with the Lease". No dates or other particulars of any of these verbal statements is provided, and they are denied by the Tenant.

[7] On cross-examination, the Landlord stated that not only did he verbally inform the Tenant that the insurance coverage was inadequate, but he also provided the Tenant with a copy of the February 28, 2024 email that he received from his insurance broker. The Landlord did not produce a copy of this email to the Tenant.

[8] It is possible that the Landlord did advise the Tenant, either verbally or by email, that the first insurance certificate was deficient. I say this because that would explain why the Tenant sent the Landlord a second insurance certificate, also dated February 4, 2024 and also for the policy period from February 4, 2024 to January 31, 2025. This second insurance certificate includes "all risk" coverage including "contents of every description", earthquake, flood, equipment breakdown, and business interruption.

[9] The second insurance certificate appears to have remedied the deficiencies identified by the insurance broker in the first certificate. There is no evidence that the Landlord ever forwarded the second insurance certificate to his insurance broker or that the insurance broker ever commented on the sufficiency of this second certificate. There is no evidence that the Landlord ever discussed the second certificate with the Tenant.

[10] There is no evidence that the parties had any further communications regarding insurance until September 25, 2024.

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First Notice of Default

[11] On September 25, 2024, the Respondent served the Applicant with a Notice of Default, alleging that the Applicant was in breach of its covenant to pay utilities. The Respondent alleged that the Applicant was required to pay monthly utilities of $450, but was paying only $200.

[12] The Landlord, in its Notice of Default, threatened, within ten (10) days, to re-enter, repossess the Leased Premises and expel all persons from the Leased Premises, and remove all of the Applicant's property, sell or dispose of it as the Respondent considers appropriate, or store it in a public warehouse or elsewhere at the cost of the Applicant.

[13] The September 25, 2024 Notice of Default also set out in full clause 8.01 of the Lease, which set out the terms of insurance that the Tenant was required to maintain. In summary, these terms included:

a. All risk property insurance

b. Broad form boiler and machinery insurance if applicable

c. Business Interruption Insurance

d. Public liability and property damage insurance

e. Legal liability insurance

f. Standard owners form automobile insurance

[14] The September 25, 2024 Notice of Default stated:

> The Tenant's current insurance policy does not contain many of the above mentioned provisions required pursuant to the Lease and despite many notices from the Landlord to the Tenant to revise the Tenant's insurance policy so as to include the required terms, the Tenant failed to remedy this default and revise its insurance policy so that it is in line with the requirements of the Lease.

[15] The Notice of Default presents two immediate problems. First, it does not specify how the Tenant's current insurance policy is alleged to be deficient. Which of the several terms set out in clause 8.01 of the Lease are alleged to be missing or deficient? The Notice of Default reads more like a riddle than a notice.

[16] In the absence of such particulars, this Notice does not comply with s. 19(2) of the *Commercial Tenancies Act,* R.S.O. 1990, c. L.7, which "imposes specific notice requirements before a landlord can take possession of a property where the tenant is in

default": *Tauro v. Yu*, 2018 ONSC 7319, at para. 40. Section 19(2) requires that the landlord serve on the tenant "a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach". The "particular breach complained of" is not specified in the September 25, 2024 Notice.

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[17] Second, there was no evidence that the Landlord had ever given the Tenant even a single previous written notice to revise the Tenant's insurance policy to include the specified required terms. There is no evidence that the Landlord ever discussed the second certificate with the Tenant or provided any notice that the second certificate was deficient. The statement that there had been "many notices from the Landlord to the Tenant" with regard to the insurance policy is simply not true.

[18] Moreover, clause 14.02 of the Lease requires the Landlord to provide "written notice of the Act of Default" before the Lease can be terminated for default.

[19] I find it difficult to believe that, if the second certificate was deficient, as the Landlord now claims, he would not have provided some written notice setting out the particulars of the alleged deficiencies so that they could be remedied by the Tenant. I also find it difficult to believe that, if the second insurance certificate was deficient, the Landlord would wait over six months before sending a Notice of Default to the Tenant. No explanation was provided for this delay.

[20] Based on this evidence, I find that as of September 25, 2024 (the date of the Notice of Default), no particulars of the alleged deficiencies in the second insurance certificate were ever provided by the Landlord to the Tenant. The evidence does not support the Landlord's allegation that the Tenant's insurance coverage was deficient when the September 25, 2024 Notice of Default was served.

First Interlocutory Injunction

[21] Following the Tenant's receipt of the Notice of Default, the Tenant brought an urgent, without notice, motion for an interlocutory injunction on October 2, 2024.

[22] The focus of the motion at that time related to the dispute about the payment of utilities.

[23] I was satisfied that the Applicant met the three part test for an interlocutory injunction and granted the injunction for only 10 days since it was made without notice (see Rule 40.02).

[24] At that time, the Applicant had not yet commenced proceedings, but undertook to commence proceedings as soon as possible, as required by Rule 37.17.

[25] The parties consented to a without prejudice extension of the interlocutory injunction for a period of 90 days from October 11, 2024. This extension expired on January 11, 2025.There is no evidence that during this 90 day period the Landlord raised any concerns about the Tenant's insurance coverage.

[26] The Applicant served the Notice of Application on January 14, 2024. The Notice of Application focuses on the dispute between the parties regarding the size of the leased premises and the amount of rent to be paid. The Applicant takes the position that the lease miscalculated the square footage of the leased premises, and the rent should be reduced and the Applicant reimbursed for excess rent paid to date

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Second Notice

[27] On January 29, 2025, counsel for the Landlord emailed counsel for the Tenant advising that the Tenant had 48 hours to obtain the insurance required by the Lease or the Lease would be terminated. The email stated:

> The tenant has failed to provide confirmation of adequate insurance for the Leased Premises in accordance with section 8.01 of the Lease. The tenant has therefore failed to cure the default as required pursuant to the Notice of Default dated September 25, 2024, which remains in full force and effect.
>
> …
>
> I advise that the landlord intends to exercise all remedies available pursuant to the terms of the Lease or otherwise at law if the tenant’s default is not rectified by 9:00 am on January 31, 2025. This will include termination of the Lease, the full amount of the current month’s rent and the next three month’s installments of Minimum Rent and Additional being due and payable, the landlord may immediately re-enter and repossess the Lease Premises, expel all persons from the Lease Premises, and may remove all-property from the Leased Premises, as more particularly set out in the Lease and the Notice of Default.

[28] Counsel for the Respondent explained that this letter was not a “Notice of Default” but was “a courtesy notice to you that my client intends to exercise the Notice of Default that remained in force and effect”.

[29] Just like the September 25, 2024 Notice of Default, this “courtesy notice” provides absolutely no particulars of the nature of the alleged deficiencies in the Tenant’s insurance policy. It simply refers back to the September 25, 2024 Notice, which, as indicated, provided no particulars. Like the September 25, 2024 Notice of Default, this “courtesy notice” did not comply with s. 19(2) of the *Commercial Tenancies Act.*

[30] On January 30, 2025, counsel for the Tenant wrote to counsel for the Landlord requesting “a specific list of alleged deficiencies in the current insurance coverage pursuant to the Lease Agreement”. Tenant’s counsel also requested until February 21, 2025 to provide proof of insurance.

[31] Counsel for the Landlord never responded with a direct answer to the request for a list of the alleged deficiencies.

Tenant's Insurance Certificate: 2025

[32] Given the Landlord's failure to specify the deficiencies in the Tenant's insurance polices, the Tenant exchanged several emails with their insurance brokers in February 2025, in an effort to determine what insurance coverage they might be missing that was required by their lease.

[33] On March 19, 2025, the Tenant provided the Landlord with an updated liability insurance certificate dated March 17, 2025, for the period January 31, 2025 to January 31, 2026. Like the first certificate of insurance from February 4, 2024, this was a Commercial General Liability policy.

[34] On March 21, 2025, the Landlord/Respondent served a Supplementary Motion Record. This Supplementary Motion Record included a supplementary affidavit and an email from the Landlord's insurance broker dated March 19, 2025. Like the insurance broker's email from February 28, 2024, this email stated that the insurance certificate was not satisfactory and did not satisfy clause 8.01 of the lease agreement. The email stated:

> Missing coverage a, b, c, g, h, i, j, all those sections are not covered under their policy that they provided.
>
> ALL RISK policy should include Clinic against:
>
> 1) Fire including contents, fixtures and lease hold improvements
> 2) Sewer back up
> 3) Flood
> 4) Earthquake
> 5) Equipment breakdown
> 6) Business interruption

[35] There is no evidence that this email from the insurance broker or the information contained in it was ever forwarded to the Tenant, except when it was served as part of the Respondent's Supplementary Motion Record on March 21, 2025, 10 days before the motion was heard.

[36] In its factum filed on this motion, the Landlord alleges that the March 19, 2025 certificate contains the same deficiencies as the first certificate of insurance from February 4, 2024.

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In addition, the Landlord argues that the March 19, 2024 certificate names Andrena McDonald as the named insured and not the Tenant, NP Health Clinic.

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Analysis

[37] Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, gives the court authority to grant an interlocutory injunction "where it appears to a judge of the court to be just or convenient to do so".

[38] The standard test for an injunction is articulated in *RJR-MacDonald Inc. v. Canada (Attorney General),* 1994 CanLII 117 (SCC), [1994] 1 SCR 311 at p. 344, and requires the moving party to demonstrate the following:

(a) there is a serious issue to be tried;

(b) the moving party will suffer irreparable harm if the relief is not granted; and

(c) the balance of convenience favours the moving party.

Undertaking for Damages

[39] Rule 40.03 of the Rules of Civil Procedure requires the moving party on a motion for an interlocutory injunction to provide an undertaking with respect to damages. It provides:

> On a motion for an interlocutory injunction or mandatory order, the moving party shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make if it ultimately appears that the granting of the order has caused damage to the responding party for which the moving party ought to compensate the responding party.

[40] The Applicant did provide an undertaking with respect to damages when the motion was heard on an *ex parte* basis on October 2, 2024.

[41] The Applicant did not file a new undertaking with respect to the current motion. This issue was raised by counsel for the Respondent during the Applicant's cross-examination of her client. Counsel had the following exchange:

> Ms. Krysik: No, I want to put this on the record. My position is that you cannot now serve and file an undertaking regarding damages. It's too late.

> Mr. Motala: Counsel, in response to that, as you were aware, when we filed our *ex parte* Notice of Motion in writing, therein we had, with respect to that motion, which is separate and apart from this motion, provided an undertaking regarding damages. Given how this motion has evolved from being one without notice to one with notice, I'm not sure that would be appropriate. And we'll comment further in due course, but I understand that the previous undertaking as to damages would not apply in this context, given that this is with notice…

[42] The Applicant's counsel now recognizes that his previous understanding was not correct: the undertaking with respect to damages is required whether the motion for an interlocutory injunction is made with or without notice. At the hearing of this motion, he took the position that his client remains bound by the undertaking that he gave on October 1, 2024.

[43] I am prepared to accept counsel's statement that his client remains bound by his previous undertaking.

Serious Issue To Be Tried

[44] As a general rule, the first step presents a low threshold. As the Supreme Court observed in *RJR-MacDonald*, at p. 337:

> What then are the indicators of "a serious question to be tried"? There are no specific requirements which must be met in order to satisfy this test. The threshold is a low one. The judge on the application must make a preliminary assessment of the merits of the case…
>
> 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.

[45] This case is more complicated because the Notice of Application and the Applicant's factum in support of this motion are focused exclusively on the dispute between the parties regarding the size of the leased premises and the amount of rent to be paid. The Applicant's Notice of Application seeks declarations that the leased premises is 900 square feet, not 1,200 square feet, that rent should be reduced from $29,000 per year to $20,000 per year, and that the cleaning service fee be reduced from $450 to $200 per month. The Tenant seeks reimbursement of excess rent in the amount of $13,000 as of the date of the Notice of Application.

[46] The Applicant's factum argues that these are all serious issues and meet the first step of the *RJR-MacDonald* test.

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[47] These arguments miss the point. The Landlord is not seeking to terminate the lease because of the dispute about the square footage of the leased premises. There is no dispute that the Tenant is currently up to date in its rental payments and that there are no arrears. Whether the Tenant's dispute about the square footage of the leased premises and rent reduction has any merit, it has no bearing on the Tenant's obligation to maintain insurance in accordance with the terms of the lease. Even if the Applicant is entirely successful in the Notice of Application as presently drafted, the Applicant's obligation to obtain the requisite liability insurance required by the Lease will remain in place, and the Landlord may terminate the Lease if the Tenant fails to obtain adequate insurance.

[48] The Notice of Application does make one express reference to the insurance issue, at subparagraphs 2(uu), (vv), and (ww), where the Applicant argues that the September 25, 2024 Notice of Default was made in bad faith, lacks particulars on how the Applicant's current insurance coverage can be altered to bring it into compliance with clause 8.01(1) of the Lease, and falsely claims that the Respondent had been served with "many notices".

[49] Given my review of the facts above, I agree that these paragraphs do raise a serious issue about the sufficiency of the Notice of Default. The Applicant acknowledges that it will have to amend the Notice of Application to request specific relief with respect to the impugned Notice of Default. It would have been preferable if the amendment had been made before this motion was argued, but, given the low threshold for "serious issue to be tried", I am satisfied that, even as currently drafted, the Applicant has raised a serious issue with respect to the adequacy of the Notice of Default relied on by the Landlord.

Irreparable Harm

[50] The nature of this requirement was discussed in *RJR-MacDonald*, 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 ...;

[51] The Applicant operates a medical clinic business that, it argues, is essential to the surrounding community and provides various clinic-related services. Termination of the lease will result in loss of goodwill, permanent market loss and irrevocable damage to its business reputation, since it would have to find another suitable location in the area, and would be unable to operate until another location is found.

[52] I am satisfied that, in these circumstances, the prospect of having a commercial lease terminated and all of the Applicant's property removed and sold or disposed of as the Respondent considers appropriate, qualifies as irreparable harm.

Balance of Convenience

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[53] The balance of convenience requires an assessment of which of the parties would suffer the greater harm from the granting or refusal of the injunction pending a decision on the merits. One consideration under this branch is the preservation of the status quo (*RJR-MacDonald*, at para. 80).

[54] The Applicant argues that the balance of convenience falls in its favour. Continuation of the status quo would permit it to maintain its lease and its business, which has operated at that location for almost two years. The Applicant has also made significant investments in medical equipment, indicating a long-term commitment and reliance on the Lease's terms. The Applicant has continued to pay rent and is not in arrears.

[55] The Landlord argues that the balance of convenience falls in its favour because the Landlord "has made it clear that the Tenant's insurance is not in compliance with the Lease when it issued the Notice of Default on September 25, 2024", but the Tenant has failed to comply with this requirement since that date. The updated liability insurance certificate dated March 17, 2025, is also not compliant with the clause 8.01 of the Lease.

[56] I would have much greater sympathy for the Landlord's position if its September 25, 2024 Notice of Default complied with s. 19(2) of the *Commercial Tenancies Act*, and specified how the Tenant's insurance coverage was deficient. Given my finding that the Notice of Default did not comply with s. 19(2), I accept that the balance of convenience favours the Applicant at this time.

[57] That said, the Tenant's compliance with the insurance requirements of clause 8.01 of the Lease is fundamental, and failure to comply will lead to the termination of the Lease. As Favreau J. (as she then was) stated in *Tauro*, at para. 80: "the failure to maintain insurance on the property is especially serious."

[58] The importance of the insurance is highlighted by s. 20(8) of the *Commercial Tenancies Act*.

[59] Section 20(1) of the *Commercial Tenancies Act* gives the Court broad powers to relieve a defaulting tenant from re-entry or forfeiture:

> Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture, whether for non-payment of rent or for other cause, the lessee may, in the lessor's action, if any, or if there is no such action pending, then in an action or application in the Superior Court of Justice brought by the lessee, apply to the court for relief, and the court may grant such relief as, having regard to the proceeding and conduct of the parties under section 19 and to all the other circumstances, the court thinks fit, and on such terms as to payment of rent, costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future as the court considers just.

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[60] Notwithstanding this broad power, s. 20(8) of the *Commercial Tenancies Act* explicitly provides that the Court does not have the power to relieve a commercial tenant from an obligation to maintain insurance:

> Where the right of re-entry or forfeiture is in respect of a breach of a covenant or condition to insure, relief shall not be granted if at the time of the application for relief there is not an insurance on foot in conformity with the covenant or condition to insure except, in addition to any other terms that the court may impose, upon the term that the insurance is effected.

[61] While the balance of convenience favours the Applicant at this time, the balance of convenience may change if the Landlord serves a proper Notice of Default and the Tenant is found to be in breach of its contractual obligation to maintain insurance. As such, any interlocutory injunction must be made subject to such an eventuality.

Conclusion

[62] Based on the foregoing, I will issue an interlocutory injunction enjoining the Respondent from terminating the lease or from re-entering or repossessing the leased premises or from removing, selling or disposing of any of the Applicant's property or assets located in the leased premises or dispossessing the Applicant from the leased premises.

[63] This interlocutory injunction is subject to the Respondent serving the Applicant with a Notice of Default, specifying how the Tenant's current insurance policy is alleged to be deficient and which specific terms of clause 8.01 of the Lease are not met.

[64] If such Notice of Default is served, the Applicant shall have 20 days from the date of service of the Notice of Default to provide proof of insurance that meets the terms of clause 8.01 of the Lease.

[65] If the parties are not able to agree on whether the Applicant's insurance meets the terms of the Lease, they may schedule a motion before me to have this issue (and only this issue) determined. The interlocutory injunction shall remain in effect until the motion is decided.

[66] If the parties are not able to agree on costs, the Applicant may serve and file costs submission of no more than 3 pages plus costs outline and any offers to settle within 20 days of the release of this decision, and the Respondent may serve and file responding submissions on the same terms within a further 15 days.

Justice R.E. Charney

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Released: April 10, 2025

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Justice R.E. Charney

Released: April 10, 2025

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