Date: 20250428
Docket: CI 21-01-31002
(Winnipeg Centre)
Indexed as: Miss Browns Hot Pressed Sandwich and Coffee Corp.
v. 5500967 Manitoba Ltd. et al.
Cited as: 2025 MBKB 56

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

MISS BROWNS HOT PRESSED SANDWICH and COFFEE CORP., plaintiff,	)	Peter Halamandaris for the plaintiff
-and-	)	
5500967 MANITOBA LTD., 5780862 MANITOBA LTD. or any of them carrying on business as BEDFORD INVESTMENTS, and the said BEDFORD INVESTMENTS, defendants.	)	Kevin T. Williams, K.C. J. Matthew Nordlund Austin Sutherland (articling student) for the defendants
	)	Judgment Delivered: April 28, 2025

CHAMPAGNE J.

INTRODUCTION

[1] The plaintiff, Miss Browns Hot Pressed Sandwich and Coffee Corp. ("Miss Browns", also referred to as the "plaintiff"), has brought an action for breach of a commercial lease.

[2] The response of the defendants, 5500967 Manitoba Ltd., 5780862 Manitoba Ltd., and Bedford Investments (collectively "Bedford"), to the claim is threefold. First, they

say Miss Browns does not have standing to bring this claim as it was not party to the lease. Second, Bedford explains the terms of the lease demonstrate they cannot be held responsible or liable for any damages incurred by the plaintiff except in the case of negligence or willful misconduct in their role as landlord. Bedford submits they were never negligent and responded with dispatch to address the concerns of the tenant. Finally, Bedford says even if they are found liable for breach of the lease, Miss Browns has suffered no damages as it was a money losing restaurant.

[3] For reasons that follow, I find Miss Browns was party to the lease, Bedford's negligence and willful misconduct breached the terms of the lease agreement and Miss Browns suffered damages.

BACKGROUND

[4] In 2014, Jenny Tyrrell ("Jenny") and Steve Tyrrell ("Steve") pursued their dreams of opening a restaurant in Winnipeg. After creating a business plan and searching for the ideal location, Miss Browns entered into a lease with the defendants with respect to the premises at 288 William Avenue ("288 William") in the "Exchange District" of Winnipeg (the "lease agreement"). Miss Browns operated the restaurant at 288 William until it was forced to vacate the premises on January 22, 2021 by order of the City of Winnipeg (the "City") (Exhibit 1, tab 56). The reason for the order to vacate was due to hazardous and unsafe conditions. Miss Browns claims the unsafe conditions were created by the negligence and willful misconduct of Bedford by failing to repair 288 William and the adjoining property at 284 William Avenue ("284 William").

[5] Bedford is in the commercial property business and holds numerous properties in the exchange district. The properties include:

1. 85 Princess Street, which is home to the Deer and Almond restaurant;
2. 275-281 McDermott Avenue which is known as the "Bedford Building" with tenants on the upper floors and the offices of Bedford Investments on the main floor;
3. 294-296 William Avenue is the "Massey Building" and has Providence University as a tenant;
4. 100 King Street is a multi-faceted building with three restaurants on the main floor and 157 parking stalls;
5. 288 and 290 William Avenue is one building split into two separate premises. It is a one-story building built on a cement slab. Bedford has owned this building since 1981. Miss Browns occupied 288 William until they were forced to vacate; and
6. Various parking lots.

[6] Key to this dispute is Bedford's prior ownership of 284 William. Bedford acquired 284 William in 1988 and owned the property until it was sold for $25,000 in March 2021. The building at 284 William and the building at 288 William share a common wall. It is fair to say they are "joined at the hip". 284 William is a 100-year-old building that had significant structural issues. Bedford knew structural issues at 284 William could and did impact the structure and safety of 288 William.

[7] Bedford has been in the commercial property business for many decades. Harry Reiss ("Harry") was the owner. Harry stopped working at Bedford in 2019 and passed away in 2023. Harry's son Alan Reiss ("Alan") was the power of attorney for his father and executor of the estate. Alan is now the director of Bedford. He took over the decision-making of Bedford from Harry in late 2018 or the beginning of 2019. Alan is responsible for leases and approves large projects on behalf of Bedford.

[8] Judy Hansen ("Judy") is a longtime and loyal employee of Bedford. She started as the bookkeeper for Bedford and by 2012 she was the property manager. She is the face of Bedford. She responds to the needs of tenants and is on-call 24 hours a day. Judy was the main witness to testify on behalf of Bedford. Judy explained that Jorge Salazar ("Jorge") was the maintenance and cleaning person for Bedford. He was employed by the business until he passed away in December 2024.

[9] At its core, the Bedford's business model is simple and profitable. Bedford acquires commercial properties, secure long-term tenants and collects rent. There is a responsibility of the landlord to maintain and repair the property. The business model fails and profits evaporate if there are no tenants. Bedford acquired 284 William in 1988. It was last occupied by a tenant in 2007 as it needed repairs. It was sold in March 2021. That is 14 years of ownership without a tenant. The inescapable inference from the totality of the evidence is that Bedford concluded in 2007 that 284 William was a "money pit" and it made more financial sense to allow the premises to remain vacant than to remediate it. Common sense and experience tells us that the condition of vacant buildings is not static. Without proper attention, they will continue to deteriorate

over time. 284 William is an example of a vacant building that continued to deteriorate over time.

[10] Miss Browns, like many small businesses, was built in part from life savings and sweat equity of the owners. 288 William had to be prepared for the new restaurant. This involved mechanical, plumbing, ventilation and electrical upgrades. The invoices for this work totaled approximately $100,000 (Exhibit 1, tab 128).

[11] Steve, Jenny and Jenny's father provided most of the labour for the initial build of the restaurant. They removed old materials, prepared the walls, tiled the walls, constructed the entire counter area and all the tables. They took possession of the space in September 2014, worked diligently to prepare the space and opened for business in April 2015. In addition to serving customers, Miss Browns offered catering for various events. The restaurant specialized in smoked meats and coffee, offering soup and salads with brunch on the weekends. From 2014 to 2019, Jenny was the general manager and Steve was the chef.

[12] In December 2019, Miss Browns opened a satellite location operating a counter service at 242 Hargrave Street which is part of the True North Square food court. The food was prepared at 288 William and transported to the Hargrave location. Jenny and Steve provided the labour to prepare this site to suit the needs of the business.

[13] Miss Browns started off with approximately six employees and grew to 30 full-time and part-time staff. Steve and Jenny are the only shareholders of the company.

THE LEASE

[14] The terms of the lease agreement are not in dispute (Exhibit 1, tab 1).

[15] On August 28, 2014, Jenny signed the lease agreement on behalf of what appears to be her numbered company 6970118 Manitoba Ltd. The term of the lease agreement was for a period of five years and five months. There was an option for the tenant to renew the lease agreement for two additional five-year terms. The total possible length of the lease was 15 years and five months, which was set to expire in 2030. Throughout the lease agreement Bedford is called the "Landlord" and 6970118 Manitoba Ltd. is referred to as the "Tenant". The lease agreement with schedules contains many conditions covering approximately 35 pages. I will summarize some of the relevant conditions:

a) Section 8.02 makes it clear that the landlord is not responsible for any loss, damage or injury suffered by the tenant unless the loss, damage or injury results from the negligence or misconduct of the landlord.

b) Section 10.04 makes it the responsibility of the landlord for repairs to the structure, heating, ventilating, air-conditioning, electrical, mechanical, plumbing systems and equipment of the premises.

c) Section 11.01 provided the landlord with relief from responsibility to repair damage or destruction of the premises. If the premises suffers damage or destruction by any cause and the landlord is of the opinion that the premises cannot be rebuilt or made fit for the purposes of the tenant within 90 days of the damage or destruction occurring, then the landlord had an option to terminate the lease if the landlord gave the tenant notice of termination

within 30 days after the damage or destruction. Bedford never gave Miss Browns notice of termination of the lease.

d) Section 16.17 confirms that the landlord covenants and agrees that the tenant shall peaceably and quietly hold and enjoy the premises without interruption or disturbance from the landlord.

[16] On February 29, 2020, the plaintiff exercised the option for the first five-year renewal of the lease agreement for 288 William. Later, on June 4, 2020, Alan agreed to Schedule A being added to the lease renewal for 288 William. Schedule A was included to address concerns about repairs to the premises. It was noted that the main structure was damaged and caused roof leaks and a slant in the kitchen floor which in turn resulted in damage to a back light and the back kitchen floor. There was also damage to the exterior cladding of the building. It was agreed that the repairs and maintenance of the structure was the responsibility of the landlord. The landlord agreed to engage qualified trades to carry out the repairs and to provide a timeline for the repairs to be completed. The landlord agreed to provide a completion timeline within 30 business days of the execution of the lease extension (Exhibit 1, tab 96). Although I was not provided with the finalized documents, Judy testified that the lease amendment and extension agreement and Schedule A were in effect in June 2020. Judy also confirmed that the landlord never provided the completion timeline to the tenant as required by Schedule A.

STANDING

[17] The defendants submit that Miss Browns was not a party to the lease and therefore Miss Browns is not the entity that can assert a claim. I acknowledge the lease agreement identifies the parties to the agreement as follows:

> 5500967 MANITOBA LTD.
> and
> 5780862 MANITOBA LTD.
> o/a BEDFORD INVESTMENTS
> (hereinafter called the "Landlord")
>
> OF THE FIRST PART.
>
> and
>
> 6970118 Manitoba Ltd. (hereinafter called the "Tenant")
>
> OF THE SECOND PART.

[18] The defendants say the numbered company 6970118 Manitoba Ltd. is the tenant as the numbered company signed the lease. Therefore, Miss Browns is not a party to the lease agreement. I disagree. In my view, the evidence demonstrates 6970118 Manitoba Ltd. is not a numbered company and was inserted into the lease agreement in error.

[19] The certificate of Articles of Incorporation for Miss Browns were issued and effective as of July 31, 2014, (Exhibit 2, tab 12). The lease agreement was signed approximately one month later on August 28, 2014. The registration number provided by Manitoba Companies Office for the corporate name Miss Browns is 6970118. I conclude Bedford prepared and provided the lease agreement that is approximately 35 typed pages and Jenny, in error, handwrote 6970118 Manitoba Ltd. into the document

as a means of identifying Miss Browns. It was a simple and harmless error that caused no prejudice to the defendants. There is ample evidence to demonstrate the lease agreement was acted upon by both parties knowing Miss Browns was the tenant in the premises at 288 William.

[20] Section 1.09 of the lease agreement concludes with the sentence "The Tenant shall operate under the name Miss Browns Hot Pressed Sandwich & Coffee Co.".

[21] The essence of section 1.09 of the lease agreement requires the tenant to carry on business as "Miss Browns Hot Pressed Sandwich & Coffee Co." and cannot change the business name without the written consent of the landlord.

[22] Schedule A of the lease amendment and extension agreement signed by Alan on June 4, 2020 (Exhibit 1, tab 13) provides, in part:

> SCHEDULE A
> This Schedule is attached for the lease renewal for the property located at 288 William Avenue, Winnipeg between:
> 5500967 Manitoba Ltd.
> 5780862 Manitoba Ltd.
> O/A Bedford Investments
> -And-
> 6970118 Manitoba Ltd.
> O/A Miss Browns Hot Pressed Sandwich & Coffee Co.
>
> . . .

[23] The parties are identified as the two numbered companies of the defendant that "operate as" Bedford Investments and the second party is identified as 6970118 Manitoba Ltd. that "operates as" "Miss Browns Hot Pressed Sandwich & Coffee Co." (Exhibit 1, tabs 96 and 101).

[24] Throughout the length of the lease agreement, Bedford and Miss Browns conducted themselves as landlord and tenant pursuant to the terms of the lease agreement. Bedford accepted rent from Miss Browns and communicated with Miss Browns knowing it was the tenant and party to the lease. Clearly, Miss Browns has standing to bring this action.

LIABILITY

[25] The lease provided Miss Browns would peaceably and quietly hold and enjoy the premises without interruption or disturbance from the landlord. The covenant of quiet enjoyment respects the tenant's right and ability to use the premises for the intended purpose, in this case, a public restaurant.

[26] Ongoing issues that have a significant impact on the tenant's ability to carry on its business can constitute a breach of the covenant of quiet enjoyment (***846-6718 Canada Inc. v. 1779042 Interior Ltd.***, 2018 ONSC 1563, at paras. 282 and 283).

[27] To fulfill the covenant of quiet enjoyment, Bedford was obligated to make repairs to the structure, heating, ventilating, air-conditioning, electrical, mechanical, plumbing and equipment of the premises. A landlord's failure to repair damage can be a breach of the covenant for quiet enjoyment where the damage prevents the tenant from carrying on their business (***Slimmon-Weber v. Racco***, 2021 ONSC 3108, at para. 26).

[28] Section 8.02 of the lease agreement provided some protection for the landlord as Bedford is not responsible for any loss, damage or injury suffered by the tenant unless the loss, damage or injury results from the negligence or misconduct of the landlord.

[29] Bedford submits there was no negligence or misconduct on their part as the evidence demonstrates they made efforts to retain the professionals needed to assess and ultimately remediate serious and complex problems with the premises. I acknowledge that there were some efforts by Bedford to assess the problems with 284 William and 288 William but there was little action. The totality of the evidence demonstrates that Bedford was not inclined to address the costly repairs but rather was looking to dump 284 William to avoid the cost of remediating the two premises.

[30] As previously noted, Bedford's business model involved owning commercial properties which were leased to tenants. Structural issues with 284 William had a direct impact on 288 William which was the premises of Miss Browns.

[31] Judy explained 284 William is a two-story building with a rubble basement. It was originally five stories. The top three floors suffered a fire. It was rebuilt once in the early 1900s. The west wall of 284 William is shared with the east wall of 288 William. Judy explained the two premises have their own walls but the two walls are built on a three-foot high pony wall that serves as a single foundation for both 284 William and 288 William so it is correct to conclude the buildings have a shared wall.

[32] The premises at 284 William sat vacant since 2007 because it was in disrepair and unfit for tenants. On December 15, 2014, the City issued the Commercial Schedule A Order (the "Order") (Exhibit 1, tab 122) that noted 284 William was in contravention of the Vacant Buildings By-Law, NO. 79/2010, because of a leaky roof and no floor in the basement. Bedford was required to fix the roof and install a basement floor with a compliance date of May 2, 2015.

[33] Judy's evidence about compliance with the Order was unclear. There may have been some work to fix the leaky roof, but a basement floor was never installed. Judy seemed to defend the lack of compliance with the Order noting the City never imposed a fine.

[34] On January 23, 2018 the City was back to inspect 284 William. The inspector noted combustible materials piled up on the main floor and second floor of the building. In addition, the inspector noted that there were extensive cracks on the west wall that passed through to the exterior. As a result, the Compliance Order (Exhibit 1, tab 123) was issued to address these concerns.

[35] Paragraph 3 of the Compliance Order explains that "every wall or floor must be structurally sound and maintained in a condition so as to prevent undue settlement of the building and prevent the entrance of moisture, insects, rodents or pests" (Vacant Buildings By-law, s. 3(1)). The compliance date was April 30, 2018.

[36] Judy testified that the combustible material was removed but does not recall anything happening to address the west wall as Harry's health was starting to decline. To be clear, Bedford did nothing to address the serious issues with the west wall. Judy again noted that there were no sanctions or fines from the City for non-compliance. At the time of these orders to repair 284 William, Bedford had decades of experience with commercial properties. Bedford was well aware of the responsibilities of commercial landlords in Winnipeg. Failure to comply with the Compliance Order was not a misstep. It was beyond negligent. It was willful misconduct.

[37] The failure to correct the structural issues pertaining to the west wall of 284 William would have had a direct impact on 288 William. Pursuant to the Compliance Order, the west wall should have been repaired by April 30, 2018. It was not.

[38] During this time, 288 William was also having issues. On March 6, 2018 Jenny notified Judy about a roof leak at 288 William (Exhibit 12, p. 4). A company was sent out to fix the leak. On June 1, 2018, Jenny advised Judy that the roof was still leaking (Exhibit 12, p. 8). The company was sent out to do repairs again.

[39] The roof leak persisted. In February 2019, Steve advised Judy about the roof leaking and the repair man noted there were structural problems with the buildings.

[40] On May 16, 2019, Jenny sent a text message to Judy to advise the back area of the restaurant was flooded due to rain and it was apparent the roofer was unable to fix the problem in February 2019 (Exhibit 1, tab 90).

[41] On May 17, 2019, Jenny thanked Judy for sending out the roofer the previous day. Jenny shared with Judy that the roofer mentioned the structural problems with the building next door. Jenny went further to explain the problem between the two premises as her restaurant floor had shifted and the cracks in the floor were growing, which was a concern (Exhibit 1, tab 90 and Exhibit 12, p. 51).

[42] Judy testified that she was aware of structural concerns and she responded to the concern by bringing in an engineer. In direct testimony she told me the engineer's name was John. She could not recall his last name. She reached out to him in early May 2019.

[43] Judy advised that John was taken into the building and he was to provide her with drawings to correct the issues. She tried to contact him numerous times and she arranged to meet him again on site. She met him on site a few weeks later. He smelled very badly of alcohol and she did not continue with that engineer.

[44] Judy was challenged on cross-examination about her response to the structural concerns. It was suggested to her that John never existed. Judy maintained that John was the first engineer she retained to address the structural problems at 284 William and 288 William. I do not believe her as there are many inconsistencies with her story.

[45] Judy attended examination for discovery on behalf of Bedford. A key issue in this action is whether Bedford was negligent in their response to the structural concerns at 284 William and 288 William. It is expected that the person produced for examination would be knowledgeable concerning the matters in question in the action. The steps, if any, that Bedford took to address the structural concerns were front and center in this litigation. Judy never mentioned that John was the first engineer engaged to provide drawings to correct the structural issues. She told me that she never mentioned John during her examination because she could not remember his name. However, she provided an undertaking to investigate the response of Bedford and provide documents relating to structural repairs. Her answer to the undertaking never mentioned any engineer named John.

[46] Judy began her job with Bedford as the bookkeeper. She knows the importance of records. She testified that John was hired to provide drawings to correct the structural issues. If he was hired for that purpose, there would be records but none were produced.

[47] On July 10, 2019, Jenny wrote to Judy about flooding in the back due to heavy rain. Jenny also noted that the light fixture above the dry storage has shorted out due to water damage. She again raised concern about problems next door and was uncertain if a band-aid solution would work. Jenny noted her floors were getting worse and required the attention of a professional. She advised Judy that she had people she could contact to assess the floor (Exhibit 1, tab 5).

[48] Judy responded they were putting in roof drains and would advise when "AllPro" could attend to do the roof work. Jenny responded "great" but also asked if Judy would send someone to look at the structure of the building as there are cracks in the floor near the dish pit, the floor was bulging at the back entrance and there was a significant slant in the ceiling between the front and back kitchens.

[49] Judy never responded to Jenny about the structural concerns. She was asked at trial why she did not respond to Jenny. Her answer was "I don't know". If she had hired John for that purpose, I would have expected her to share that with Jenny. I conclude there was no engineer named John.

[50] On July 25, 2019, Jenny wrote to Judy about structural concerns because the City sent out notices that the Public Safety Building, which was located close to Miss Browns, was to be demolished. The notice indicated the process for demolition of the Public Safety Building would cause vibrations in the area. Jenny was very concerned about 284 William and 288 William and was offering to bring in an engineer to assess the building as it was now urgent and needed to be addressed.

[51] Judy responded that Bedford was starting the process of stabilizing 284 William and had engaged engineers (Exhibit 1, tab 9). This claim by Judy is incorrect. There is no evidence that engineers were engaged at that time.

[52] The first evidence of any discussion with any engineer occurred on September 23, 2019. Judy explained she found an engineer named Darren Towells ("Darren") on the internet. There are some text message exchanges with Darren (Exhibit 16). Judy advised Darren the basement floor of 288 William was mud and a concrete floor needed to be poured and support was required as the building has shifted. Darren was unsure if the building was sinking and suggested a surveyor set up benchmarks and monitor for six months. Judy responded that the building was shifting as there were cracks in the bricks and it was affecting the building next door. Darren estimated it would cost approximately $5,000 for him to prepare a report.

[53] Judy testified that she did not continue to work with Darren as his proposal was not a solution and she could not wait six months. Her testimony left the impression that Bedford believed the stabilization of 284 William was urgent, yet nothing was done.

[54] On November 7, 2019 Judy exchanged text messages with Steve Reeves ("Reeves") (Exhibit 15). He is a concrete specialist and does foundation work. The text messages reveal that Alan told Reeves to contact Judy about the foundation at 284 William. Reeves requested Judy to provide any engineer reports for the premises. There were no reports to provide. Judy testified she and Reeves went on site on numerous occasions as they wanted him to do remediation work at 284 William. He advised he needed engineered drawings for the property before he could commit to any

work. Reeves referred Judy to Ken Charleson ("Ken"). She testified she reached out to Ken around the end of November 2019.

[55] Ken emailed Judy on January 28, 2020 to confirm 284 William was designated a historical building. On February 25, 2020, Judy emailed Ken to advise they needed to move forward with the renovations at 284 William (Exhibit 1, tab 12).

[56] On March 3, 2020, Ken sent Judy a quote for $8,000 to produce an engineering report for 284 William (Exhibit 1, tab 14). Approximately two months later, on May 12, 2020, Judy responded by asking Ken how much it would cost for construction and permit drawings over and above the quote for the engineering report (Exhibit 1, tab 15). To be clear, Ken was not retained, he was only providing a quote for his services. Judy explained she did not retain Ken as he was an engineer, not a contractor, and he did not give her any names of contractors he used so she had to seek out a contractor.

[57] Murray Hiebert ("Murray") was a contractor at Keystone Projects with in-house engineers. Judy explained that Murray worked at Red River College for many years and that was how she knew Murray. It was clear Judy was connected with Murray and she had trust in him, therefore the decision was made to use his services.

[58] On March 4, 2020, the day after receiving Ken's quote, Judy contacted Murray to review the quote as she believed it to be rather high (Exhibit 13, p. 2). On March 9, 2020, Murray told Judy the quote seemed high and offered to have his engineers provide another price. According to Exhibit 13, p. 6, on March 18, 2020, Judy arranged for their handyman Jorge to meet Murray at 284 William that afternoon for an

inspection. Upon entering the building and seeing the massive cracks in the west wall, Murray texted Judy to suggest preparing a demolition plan.

[59] On May 12, 2020 there was a further text message exchange regarding the cost for a "conditions report" for 284 William. Judy approved the cost for this report. Murray arranged for a structural engineer to visit the building on May 19, 2020. Mohamed Matar visited the building and provided his report based on his visual inspection. He concluded the building was in poor shape and immediate action was needed to restore its structural integrity (Exhibit 1, tab 16).

[60] Murray emailed Judy on June 10, 2020 to provide the report and advised that 284 William was in very poor condition. Murray asked if he should prepare a quote to repair or to demolish. On June 11, 2020, Judy sent Alan an email to inform him that Murray estimated it would cost $100,000 to re-stabilize 284 William.

[61] I pause to note that Schedule A of the lease amendment and extension agreement was signed by Alan on June 4, 2020. Schedule A was included to address the tenant's concerns about repairs to the premises. It was noted that the main structure was damaged, causing roof leaks and a slant in the floor which in turn resulted in damage to a back light and the back kitchen floor. Bedford had 30 days to provide Miss Browns with a timeline for completion of the repairs. Bedford knew that the structural problems at 284 William were causing structural problems with Miss Browns' location at 288 William as Judy had discussed those problems with Darren in September 2019. Yet, nothing was done.

[62] On August 6, 2020 the lawyer for Miss Browns wrote to Bedford about the timeline for repairs and for the potentially serious structural issues at 288 William. Judy testified that there was little to report. She did send an email to Jenny on August 13, 2020 enclosing an engineer's report which was actually only the "conditions report" and contact information for Murray stating Keystone Projects was to complete the project (Exhibit 1, tab 24).

[63] I note Keystone Projects was not retained to complete the project when the email was sent to Jenny as Judy was only asking Murray to provide a timeline and costs as of August 13, 2020 (Exhibit 1, tab 26). I note Alan was also involved in the discussion about work required for 284 William and appeared to direct Judy to obtain a quote for the work (Exhibit 1, tab 27).

[64] On August 19, 2020 Murray texted Judy to advise her that there appeared little value in trying to save 284 William or 288 William. He asked about the possibility of a complete demolition and putting up a new building. Judy responded that she doubted they would go for a demolition of 284 William. Murray went on to explain about the need for temporary shoring in 284 William (Exhibit 13, p. 23). On August 20, 2020 Murray advised Judy that his men would be at 284 William the next day to place temporary shoring under the worst beam on the second floor. He went on to advise that he would return to the building with his engineer to determine if further emergency shoring was required. On August 21, 2020 Murray wrote to Judy to confirm that the shoring was put in place under the beam that was in the greatest danger of falling (Exhibit 1, tabs 29 and 30).

[65] I pause to respond to a submission by Bedford that COVID-19 made it difficult to find contractors to do the required work. I reject that submission. Murray advised Judy that temporary shoring was required on August 21, 2020. Obviously, he received the go ahead to do the work and it was done within two days. The only barrier to getting the work done throughout this ordeal was Bedford's refusal to give the go ahead and pay for the work.

[66] On August 28, 2020 Judy sent an email to Jenny to advise her that questions about the remediation project should go through her and not Keystone Projects. She assured Jenny that Bedford was working with the Keystone Projects engineers for the best solution but were unable to price the job as more information was required. Judy promised to keep Jenny informed (Exhibit 1, tab 105).

[67] On September 1, 2020 Murray emailed Judy to provide an update on 284 William. He met with the structural engineer and draftsman and a plan was coming together. Murray advised Judy that more temporary shoring should be installed at 284 William. He advised that once 284 William was stabilized, he could then address the issues at 290 William. It is agreed that 290 William was an error and it should read 288 William (Exhibit 1, tab 33).

[68] On September 1, 2020, Reeves reached out to Judy by text message to see how she was doing. Judy responded that Keystone Projects was working on 284 William and she would forward Reeve's contact information to Murray.

[69] On September 2, 2020, there was a text message exchange between Murray and Judy. Murray advised he saw Alan the previous evening and they had a good meeting.

He told Alan that the best plan for 284 William would be to demolish it along with 288 William and 290 William and build a new multi-story commercial/residential building. Murray believed it gave Alan something to think about (Exhibit 13, p 31-33).

[70] On September 29, 2020, Judy messaged Reeves to see if Murray contacted him. He replied there had been no contact. Judy asked Reeves what he needed to proceed with shoring up the building. He responded that he needed an engineer's report (Exhibit 15, pp. 8-12).

[71] On November 5, 2020, Murray provided a couple of quotes for temporary stabilization of 284 William. Both quotes were approximately $25,000. Reeves, the concrete specialist, declined to quote the job (Exhibit 1, tabs 41 and 44). Judy never provided Murray with the approval to go ahead with the stabilization of 284 William. She testified Murray was only interested in demolition and she told Murray 284 William was listed as a historic building so it could not be demolished. She said she kept pushing for drawings and that did not happen, so she knew she had to go in another direction.

[72] On December 7, 2020, Judy emailed Ken to produce an engineer's report for 284 William. She explained Keystone Projects was involved but their response has waned. She wanted to move quickly and have Reeves quote the work. She told Ken to keep the building the same size as opposed to adding floors to it (Exhibit 1, tab 45). I note this is the first mention of adding floors to 284 William. The picture of indecision becomes clear from a text message from Reeves to Judy on December 8, 2020. Reeves asked Judy if Alan was any closer on deciding what he really wanted to do with the

building (Exhibit 15, p. 14). In my view, Alan had no interest in putting money into 284 William.

[73] Judy told Ken that he had to move quickly to produce an engineer's report so Reeves could do the work. Ken responded the next day with an email on December 7, 2020. He provided a proposal with two phases and was looking for the approval to go ahead and quote the work for phase one (Exhibit 1, tab 46). Judy never gave him the approval to go ahead. She told me she got sick and was unable to respond. I do not believe her.

[74] During examination for discovery Judy was asked if Ken produced a report. She gave an undertaking to answer. Her answer indicated there was no report from Ken as the defendants were exploring an offer to purchase the property. An offer that was accepted prior to Ken preparing a formal report.

[75] As a matter of fact, Keystone Projects' response to the project had not waned. At this same time, Judy was still in contact with Murray regarding the possibility of demolition. The building was designated historical but there was a belief that they could claim the poor condition of the building was a life and safety issue and that would support demolition.

[76] On December 9, 2020, Murray text messaged Judy to advise that he was meeting Bob from Rakowski Cartage and Wrecking Ltd. on December 10, 2020 and would stop by to see her after the meeting. Judy's response was "Excellent. See you tomorrow" (Exhibit 13, p. 45).

[77] The communications continued with Murray. On December 11, 2020, Judy advised Murray the request to remove the Manitoba Hydro service to 284 William was submitted.

[78] On December 14, 2020, Murray was telling Judy he would contact Rakowski Cartage for an update. On December 16, 2020, Judy advised Murray that the gas has been disconnected for 284 William.

[79] Rakowski did obtain an engineer's report dated December 16, 2020 that was provided to Bedford (Exhibit 1, tab 84). Murray emailed the report to Judy and Alan on December 18, 2020 with options. There were quotes to demolish 284 William and rebuild the wall of 288 William or in the alternative, a quote to demolish 284, 288 and 290 William. Murray was seeking direction from Alan and Judy (Exhibit 1, tab 48).

[80] That report highlighted significant concerns regarding the structural integrity of 284 William and the associated risks to the occupants of 288 William. Clearly, this report heightened Murray's concerns for the safety of customers and staff of Miss Browns. Murray was never provided with instructions to proceed with the stabilization of 284 William, so he made it clear to Judy and Alan that the risk and liability associated with 284 William was theirs.

[81] On December 21, 2020 Murray sent a formal letter to Alan and Judy regarding the safety of 284 William. He thanked Alan for the phone call from that same afternoon. Alan decided to hold off making any decisions about 284 William until the new year. Murray referenced the latest engineer's report that explained the building was in very poor condition and in danger of catastrophic failure and explained that any significant snowfall and accumulation on the roof could hasten the building's demise. He reiterated

his concerns for the safety of staff and customers of Miss Browns. He concluded that Keystone Projects would not be held liable for Alan's decision not to proceed with the recommendations set out by the engineer.

[82] Judy was asked what she did upon receipt of the letter. She testified "I honestly don't remember. We should have probably informed the tenant at that point in time and served them with notice to vacate and to this day I regret that, that we did not, but it was not done".

[83] She did not provide a copy of the letter to the tenant and could not recall why she did not provide a copy. The letter indicated Bedford was putting all decisions on hold for 284 William until the new year. She denied that statement. She explained that they did not divulge to Murray they were no longer planning to work with him because he was not providing her with what she needed. Nonsense, they were working on sale of the property.

[84] Murray continued to check in with Judy through December and January and it was clear he was aware of the pending sale as he sent a text message to Judy on January 27, 2021, asking if the deal had closed and if it was time to celebrate.

[85] Judy testified that Bedford received an unsolicited offer to purchase on January 11, 2021 with a closing date of January 14, 2021 for 284 William. Her testimony left the impression that somebody made the unexpected offer on that very day. She then explained that an unsolicited offer meant there was no for sale sign on the building.

[86] In cross-examination, she told me the purchaser had already informed her of the offer before it was made. The purchaser contacted her and told her that he was bringing

an unsolicited offer to purchase. She could not recall when that discussion took place, but it was sometime near the end of December 2020. The offer was for $144,000. The deal never closed as the cost of remediation was far too high.

[87] On January 22, 2021, the City issued another compliance order to mitigate unsafe conditions and an order to vacate the property, effectively ending the business of Miss Browns.

[88] On March 12, 2021 an offer to purchase was presented by real estate agent Rene Zegalski. This was another unsolicited offer in the amount of $178,000. The purchaser was Gary Gervais who owned 280 William. Once the vendors provided the costs for remediation the purchaser countered with an offer of $25,000 that was accepted with a condition that the purchaser immediately start the remediation of 284 William. The transaction did close towards the end of April 2021. Judy told me the remediation work for 284 William is ongoing. Judy testified that Bedford knew all along it could not begin to remediate 288 William until 284 William was stabilized. Bedford did remediate 288 William and was ready to be occupied as of the spring of 2024.

[89] As noted at the outset, the inescapable inference from the totality of the evidence is that Bedford concluded in 2007 that 284 William was a "money pit" and it made more financial sense to allow the premises to remain vacant than to remediate it.

[90] Bedford's failure to repair 284 William and 288 William is a breach of the lease agreement. Bedford's refusal to repair the premises was calculated and deliberate. The evidence demonstrates that Bedford was hoping to sell 284 William without making the

required repairs. In addition to the evidence of the unsolicited offer from December 2020, there is other evidence that Bedford was trying to sell the building prior to that date.

[91] On September 2, 2020 there was a text message exchange between Murray and Judy. This took place shortly after Murray met with his engineer. Murray wrote, "If you still have an offer for 284 TAKE IT". Judy responded, "Believe me. I would" (Exhibit 13, p. 31).

[92] Murray was trusted by Bedford. It is clear he knew Alan and Judy well. He knew there had been discussions about selling 284 William and he wrote "if you still have an offer", which implied the existence of previous offers prior to September 2, 2020.

[93] The conduct of Bedford is beyond negligent and wilful misconduct. The failure to notify Miss Browns of the serious safety concerns raised by Murray on December 21, 2020 is unconscionable. It was December in Winnipeg. A heavy snowfall could result in catastrophic failure of 284 William. Bedford did nothing to address those serious concerns because they had an offer on the table. It is highly reprehensible conduct. The submission from counsel that 284 William was still standing is unhelpful, irrelevant and disingenuous. Bedford is liable for breach of the commercial lease agreement.

DAMAGES

[94] Damages are awarded when a party has suffered a loss. The award is meant to place the party in the financial position they would have been in had the wrong not occurred. I have the difficult but necessary task of determining the amount, if any, of the business loss suffered by Miss Browns had the company operated throughout the length of the lease. The length of the loss period extends from January 22, 2021, when

Miss Browns was ordered to vacate the premises, to the expiration of the lease agreement on February 28, 2030.

[95] To assist with my task, the plaintiff and defendants called expert evidence to offer opinions about business valuations and loss of income. The plaintiff called Rob Rabichuk ("Rabichuk") who is a chartered professional accountant with Meyers Norris Penny LLP. Rabichuk's report is marked as Exhibit 6. The defendants called Mike Stevens ("Stevens") who is a chartered professional accountant working for Exchange Group and his report is marked as Exhibit 18.

[96] The opinion and calculations of the two experts are far apart. Rabichuk opines that Miss Browns suffered damages in the amount of $397,202 from January 22, 2021 to February 28, 2030. To be sure, it is a modest amount for that length of time.

[97] Stevens opined that Miss Browns never achieved any profits since opening in 2015 and the business would have lost an additional $553,000 from January 22, 2021 to February 28, 2030 had they remained in operation.

[98] In their reports, Rabichuk and Stevens explain their understanding of their role as experts who are providing opinion evidence to the court. They acknowledge they are independent and their duty is to the court which requires them to provide fair, objective and non-partisan evidence. I have carefully considered the testimony of both experts and their respective reports and I accept the evidence from Rabichuk. I found Stevens' report and testimony to contain subtle but important aspects that caused significant concerns that undermined his stated role of providing independent and unbiased evidence. I will only touch on a few of my concerns.

[99] To begin, I give both witnesses credit for correcting errors in their reports at the outset of their testimony. For example, Rabichuk explained that he did not incorporate an expense for advertising and promotions in his forecast of his quantification of damages and he corrected that mistake. Likewise, in his report, Stevens claimed that Rabichuk assumed a growth rate of sales of 8.2 per cent for Miss Browns from 2019 onward, which was a mistake. Stevens corrected the error explaining that Rabichuk used the lower growth rate of 4.2 per cent for forecasted sales.

[100] I turn to my concerns about analysis from Stevens' report. In part, Stevens' report and testimony focused on errors in Rabichuk's analysis. I find it unnecessary to review all the differences between the two experts but will mention a few.

[101] On page 6 of the report from Stevens, he has a section called "Overstatement of Forecasted Sales". Section 3.d. asserts Rabichuk overstated forecasted sales starting post-COVID and continued to overstate sales every year thereafter based on their four per cent annual increase in sales. In cross-examination it was put to Stevens that Rabichuk never used a four per cent annual increase in sales measure anywhere in his report. It was a straightforward and easy question to answer. Stevens resisted answering the question, was unresponsive to the question and kept repeating his own evidence on this point but eventually agreed that the four per cent inflationary measure was not in Rabichuk's report.

[102] In this same section, Stevens criticized Rabichuk's assumption that inflationary expenses would be passed on to the consumer which would mean higher prices for the products and the possibility of pricing yourself out of the market. Rabichuk explained

passing on inflationary increases to the customer makes good business sense and is a common practice. Common sense and everyday experiences confirm this assumption. Consumers are asked to pay more for many goods and services, from groceries, lumber and automobiles to services such as lawyer fees.

[103] Stevens suggests that increasing prices to match inflation will negatively impact sales growth and profitability. He forms this opinion from reviewing media reports. I do not attach much weight to an expert opinion that is gleaned from media reports. I conclude the foundation for this opinion, like the foundation of 284 William and 288 William, is weak.

[104] On page 6 of Stevens' report, is section 4 "Overstatement of Gross Profit". In his report and in his testimony, Stevens told me that Rabichuk overstated the rate of gross profit for Miss Browns. Stevens stated that Rabichuk calculated the rate of gross profit for Miss Browns to be 66 per cent. That calculation was based on the 12-month period from December 2018-November 2019 which was the 12-month timeframe immediately before the opening of the Hargrave location. This assumption is spelled out in black and white in Rabichuk's report (Exhibit 6, p. 7, s. 8.17).

[105] In cross-examination, counsel challenged Stevens on this point. Counsel indicated that the rate of gross profit was a function of the timeframe used to calculate it. Again, it was straightforward and easy to answer. Stevens agreed he read the Rabichuk report, and he was simply asked to agree that Rabichuk based his 66 per cent rate of gross profit of Miss Browns on the 12-month period prior to the opening of the Hargrave location. He was not asked to agree that it was an appropriate assumption nor one that he would use,

he was simply asked to agree that this was the measurement Rabichuk used. Stevens resisted answering. He was evasive and referred back to his evidence which based the profit margin of 65.4 per cent from the financial statements. Not a lot turns on the actual rate of gross profit margin, however, Stevens' report and his testimony suggested that because Rabichuk overstated this measurement and used the overstated measurement, there was an error in Rabichuk's report. I disagree. I reviewed the financial data from the 12-month period prior to the Hargrave opening and the gross profits for that 12-month period was exactly 66 per cent. I conclude this 12-month timeframe is a reasonable measurement for assessing future financial results and does nothing to diminish the accuracy of Rabichuk's report.

[106] Another concern about Stevens' report and his testimony relates to his conclusions that Rabichuk overstated the rate of future sales. At page 18 of Stevens' report is a heading called "Overstatement of Forecasted Sale". Stevens notes at section 51.a. that the 2018-2019 sales growth of Miss Browns at the 288 William location showed "a significant decrease in growth rate from the prior year's opening of the restaurant". He then goes on to say the "[288] William location growth may have plateaued". I find this to be a subtle but misleading statement. Stevens had the actual financial data to show that the growth rate for the next year, 2019-2020, was eight per cent. I acknowledge the growth rate in sales had declined but the growth rate had not plateaued but rather increased by eight per cent.

[107] Rabichuk and Stevens had significant differences of opinions in two areas. Jenny and Steve never took wages from the company, therefore Rabichuk never included wages

as an expense item when calculating the future financial results of Miss Browns. Jenny and Steve did receive compensation from Miss Browns for their work. It came from repayments for their shareholders loan and dividends when available.

[108] Stevens opined that it was unreasonable not to include wages as an expense as others would have to be hired to do the work of Steve and Jenny. Miss Browns had hired numerous people to do some of that work and the wages for all employees was factored in as an expense by Rabichuk. Stevens researched the positions Steve and Jenny occupied and concluded a reasonable expense for their wages for the year 2021 was $42,000 for Steve as head chef and $47,000 for Jenny as general manager which increased annually to reach an amount of $55,200 and $61,900 respectively for the final year of the lease. The assigned expense for wages was a major factor for Stevens' assessment of future financial results.

[109] The other significant disagreement relates to amortization. Rabichuk deliberately excluded the accounting principle of amortization in calculating the future financial results of Miss Browns in his report. Stevens took a different approach and inserted annual amortization entries as an expense item in his report. According to Exhibit 18, p. 23, row 70, the amount for 2021 was $19,400 which increased annually to the final year of the lease when the amortization expense is listed as $26,500.

[110] At its basic level, amortization is an accounting principle that allows for expensing capital assets over an extended period. The undisputed evidence from Jenny was that the capital assets purchased by Miss Browns were going to last the life of the lease. Rabichuk explained that the amortization amount assigned for any year is not an actual

expense that gets paid. It is the debt that must be paid. Amortization is not a cash item. Miss Browns would never pay-out a single dollar for all the amortization entries in Stevens' report. The amortization entries have the effect of reducing the cash available for the year. Stevens agreed that if the amortization amounts were backed out of his report, Miss Browns would have had a positive cash flow for each year remaining on the lease.

[111] Stevens was asked to clarify this during re-examination. Stevens explained that if amortization entries were backed out of his report, there would be a positive cash flow. He went on to say that the debt payments are missing. The debt payments would turn it into a negative cash flow even before the owners got any cash. He concludes that the amount of debt to be repaid over the remaining ten years of the lease means that the owners would not have made any money. He then states in his testimony, "for me personally as a business owner, I am not going to work for no money".

[112] This last comment causes serious concern as Stevens has inserted his personal views into his evidence. He fails to acknowledge Jenny and Steve received compensation from repayment of their shareholders loan and some dividends, so he inserts an added wage expense, and he insists that amortization expense must be factored in because as a business owner he would not work for no money. His personal views on what is acceptable to him as a business owner seriously undermines his independence, impartiality and objectivity, and highlights aspects of his testimony that amounts to advocacy for the defendants. To be clear, I reject the report and testimony from Stevens.

[113] I accept the evidence of Rabichuk that concludes Miss Browns suffered $397,202 in damages for the remaining years of the lease. At the outset of his testimony, Rabichuk

told me he made an error by not including an expense for advertising and promotion. Therefore, the amount of damages must be reduced to reflect a reasonable amount of expense for advertising and promotion. In the years that Miss Browns was open for business the expense for this item fluctuated from $1,820 to $2,161 per year. Advertising and promotion were for the purpose of building Miss Browns' customer base. The best advertising is word of mouth. Jenny told me that the satellite location in True North Square was an exciting opportunity to expand their customer base in a high-end location because more people would experience their menu. If Miss Browns was not forced out of 288 William there is no reason to conclude the Hargrave location would have closed. Word of mouth promotion would have continued and the need for an actual expense would be less over the length of the lease. Therefore, I conclude it is reasonable to minimally reduce the full amount of damages from $397,202 to $390,000 to account for ongoing advertising expenses.

MITIGATION

[114] Miss Browns is entitled to compensation for the pecuniary loss flowing from the breach of the lease. The law also imposes a duty on the plaintiff to take all reasonable steps to mitigate their loss and a damages award will be reduced by the amount of losses that could have been avoided had the plaintiff taken reasonable steps.

[115] Where it is alleged the plaintiff has failed to mitigate, the onus is on the defendant to demonstrate the plaintiff failed to take reasonable steps to mitigate and that mitigation was possible (***Southcott Estates Inc. v. Toronto Catholic School Board***, 2012 SCC 51, at paras. 23-25).

[116] The defendants called no evidence on mitigation. The plaintiff called evidence about the steps Miss Browns took to mitigate their damage. After Miss Browns was locked out of 288 William, they retained a real estate agent to search for other available and suitable locations. Miss Browns was unable to secure a new premise due to the location of available spaces, the size of available locations and the cost to outfit a new location. Miss Browns called evidence from Jaret Horbatiuk ("Horbatiuk") who is an engineer technologist who built a company called Tractus Projects ("Tractus"). Horbatiuk explained that he and his company specialize in building and outfitting restaurants. Horbatiuk was qualified as an expert to give opinion evidence and the Tractus' report was marked as Exhibit 9.

[117] Horbatiuk explained the cost to prepare a new location for Miss Browns would vary depending on the nature of the premises. The evidence from Jenny and the evidence from Horbatiuk explained that it would be reasonable to expect a range from $100,000 to $280,000 to outfit a new location. The cost of preparing a new business location is a factor to consider when determining if the plaintiff took reasonable steps to mitigate its loss.

[118] The defendants called no evidence to dispute the efforts made by Miss Browns or the cost associated with starting fresh. Although the defendants called no direct evidence on the issue of mitigation, they assert there is evidence to consider.

[119] The defendants questioned Steve about his work after Miss Browns closed. Steve explained his mental health declined and he did little work other than some artistic and design creations. Steve's main job was to stay home and raise their three young children.

Steve was questioned about Jenny's work. He explained that Jenny worked as the day manager at the Nor Villa Hotel. Steve was uncertain what she was paid but believed she also received tips.

[120] The defendants suggest that Jenny is making more than minimum wage with tips and that she is likely earning more now than as co-owner of Miss Browns. The defendants seem to suggest that I should speculate on her earnings and reduce the damages by that amount for mitigation. The defendants have provided no authorities to support their position that a shareholder of a company is required to find work to earn money to mitigate the damages of the company, so I decline to do so.

[121] Jenny and Steve told me they retrieved some, but not all of the restaurant equipment and the equipment is now in storage. The defendants invited me to speculate about the value of used restaurant equipment and use that unknown value to reduce the amount of damages. I am not prepared to guess at the value. The onus is on the defendants and they could have called evidence to support their assertions but did not.

[122] I conclude Miss Browns took all reasonable steps to mitigate its losses therefore the amount of damages will not be reduced.

SPECIAL DAMAGES

[123] Miss Browns provided a security deposit as required by the lease. The evidence reveals that Miss Browns paid the rent as required, notified the landlord of any concerns or issues with the premises and expected the landlord to make repairs to the premises in a timely way as agreed to in the lease. There is no evidence that Miss Browns damaged the property.

[124] For unexplained reasons, Bedford has refused to return the security deposit. I conclude Miss Browns is entitled to the amount of $2,040 for special damages.

PUNITIVE DAMAGES

[125] In ***Elia v. Chater***, 1998 NSCA 39, 167 N.S.R. (2d) 166, the court explained punitive damages are rarely available for ordinary contracts. However, leases are not ordinary contracts. Possession and quiet enjoyment are not purely commercial commodities. Punitive damages have been awarded against landlords where their unlawful acts towards tenants have been found to be deserving of punishment.

[126] The Supreme Court of Canada has explained that punitive damages are largely restricted to intentional torts but are available in exceptional cases involving breach of contract. The general objectives of punitive damages are punishment, in the sense of retribution, deterrence of the wrongdoer and others, and denunciation. The court makes it clear that punitive damages should only be resorted to in exceptional cases and imposed with restraint (***Whiten v. Pilot Insurance Co.***, 2002 SCC 18).

[127] In my view this is an exceptional and clearest of cases for the imposition of punitive damages as the conduct of Bedford was highly reprehensible, driven by greed, and endangered the safety and lives of Miss Browns' staff and their customers. The plaintiff submits an award of $50,000 is reasonable but is open to a higher award.

[128] To determine the quantum of punitive damages, I am mindful of the principles of proportionality and restraint. To assess the amount of punitive damages I must consider the background of the defendants and the circumstances of the highly reprehensible conduct. The level of punitive damages has a direct relationship to the strength of the

message the court is trying to send. In this case, a strong message is required as the conduct of Bedford is egregious, highly reprehensible and driven by greed. Bedford simply refused to spend the money necessary to stabilize 284 William and then repair 288 William. I repeat, punitive damages are not awarded to compensate the defendants. Punitive damages are awarded to punish, deter and denounce the serious misconduct of the defendants.

[129] Bedford has been in the commercial property business for decades. They own numerous properties with many tenants. The type of tenants includes restaurants, offices and a university. It is reasonable to conclude that there are many people attending the premises owned by Bedford.

[130] In 2007, the last tenant vacated 284 William. Bedford has had many years to address the problems with that premises. It was a financial decision to do nothing.

[131] In 2014, the City ordered Bedford to put a concrete floor into the basement of 284 William. A floor is a key component for stabilizing the building as it prevents the walls from moving in. Bedford ignored the order.

[132] In 2018, the City ordered Bedford to correct the structural issues pertaining to the west wall of 284 William. Bedford ignored the order. Bedford knew about the serious problems with the structural integrity of 284 William and the impact to 288 William. Bedford was told time and again that 284 William needed to be stabilized.

[133] Bedford's trusted colleague, Murray, explained in no uncertain terms that the structure of 284 William was in very poor condition and in danger of catastrophic failure. Murray explained that any significant snowfall and accumulation on the roof could hasten

the building's demise. Murray explained his concerns for the safety of staff and customers of Miss Browns and that Keystone Projects would not be responsible for any damage or injury. Yet, Bedford did nothing. They allowed the safety of the staff and customers of Miss Browns to remain at risk. Judy explained that she regrets not informing Miss Browns of the danger at the time.

[134] The general objectives of punitive damages include punishment, deterrence and denunciation. I conclude the court must send a strong message to Bedford that their conduct is unacceptable and will not be tolerated. The message from an award for punitive damages is also meant to extend to others. Landlords who neglect maintenance and repairs for their buildings, creating a dangerous environment for the tenants and the public need to understand there will be consequences. Given all the aggravating factors that exist in this case, I conclude an award of $50,000 for punitive damages falls short of the mark. This is an exceptional case. Bedford is a significant player in the commercial property business with many tenants. It is difficult if not impossible to find other cases where a landlord knowingly allowed the safety and lives of the tenant and the public to remain in danger. If an award of punitive damages is to serve its purpose a significant award is required. Acknowledging the principles of proportionality and the need for restraint, I find a fair award for punitive damages is $100,000. Anything less than this significant award will amount to nothing more than an expense item on a financial statement. Bedford and other neglectful landlords would simply see it as the cost of doing business.

CONCLUSION

[135] In summary, I have concluded the defendants breached the terms of the commercial lease that resulted in Miss Browns being ordered to vacate the premises effectively ending their business.

[136] I award the plaintiff $390,000 for general damages, $2,040 for special damages and $100,000 for punitive damages.

[137] The plaintiff is entitled to pre-judgment and post-judgment interest in accordance with ***The Court of King's Bench Act***, C.C.S.M. c. 280. I note Rabichuk's report included the calculation of pre-judgment interest for past losses up to June 30, 2023 (Exhibit 6, p. 6, section 8.8).

[138] Miss Browns is the successful party and is entitled to costs. If the parties are unable to agree on costs they are to schedule a time before me.

_____J.