

**CITATION:** *Telus v. 8174709 Canada Inc.*, 2025 ONSC 4272  
**COURT FILE NO.:** CV-19-00618469  
**DATE:** 20250723

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** TELUS COMMUNICATIONS INC., Plaintiff

**AND:**

8174709 Canada Inc., Defendant

**BEFORE:** Schabas J.

**COUNSEL:** James Renihan, for the Plaintiff

Wolfgang Kaufmann and Dylan Baker, for the Defendant

**HEARD:** May 6, 2025

**ENDORSEMENT**

**Overview**

- [1] The Plaintiff, Telus Communications Inc., and its predecessor company, Clearnet Inc., has rented a large amount of commercial office space from the Defendant, 8174709 Canada Inc. and a previous owner, Menkes Corporation, in two buildings at Consilium Place, in Scarborough, for almost 30 years, since 1997. Rent, including the “Proportionate Share of Property Taxes and Operating Costs” (the “proportionate share”) has been calculated in the same manner throughout the tenancy. In 2018, Telus questioned the calculation of the proportionate share, and in 2019 commenced this action, asserting it has overpaid its proportionate share.
- [2] In April 2024, Telus brought this motion for summary judgment. As the motion, and action, relate to a matter of contract interpretation and there are no material facts in dispute, the summary judgment process is appropriate and will resolve the action.
- [3] For the reasons that follow, I dismiss the motion and the action. In my view, the calculation of Telus’s proportionate share, which the parties accepted for over 20 years, complies with the lease agreements and makes commercial sense.

**Background: the provisions of the Leases**

- [4] Telus leases 332,407 square feet of office space in 200 Consilium, and 151,195 square feet of office space in 300 Consilium. The Leases for the space in the two buildings are substantially identical. In 200 Consilium, Telus leases approximately 98% of the office

space in the building, described in the Leases as the “Rentable Area of the Building.” In 300 Consilium, Telus leases approximately 46.22% of the “Rentable Area of the Building”, although prior to October 31, 2022, it leased 58.46%. The leased areas are described as the “Leased Premises.”

- [5] Telus is required under the Leases to pay “Rent” which means “Base Rent, Additional Rent and unless expressly stated to the contrary in this Lease, all other amounts payable by the Tenant under this Lease or pursuant to any other obligation in respect of the Leased Premises regardless of whether such amounts are payable to the Landlord or to another party.”
- [6] Base Rent is addressed in Article 4 and relates to the rent charged per square foot as set out in the Leases. Additional Rent is addressed in Article 5, and includes:
- (a) the Tenant's share of Property Taxes and other taxes payable to the Landlord in accordance with Article 8; and
  - (b) the Tenant's Proportionate Share of Operating Costs, which Operating Costs shall be as specified in Article 9.
- [7] Article 8 provides:
- The Tenant's share of Property Taxes shall be the portion of the Property Taxes that is attributable to the Leased Premises, as determined by the Landlord, acting reasonably. Without limiting the generality of the foregoing, the Landlord may allocate a portion of the Property Taxes to the Building, acting reasonably ... and may, if it so elects, determine that the Tenant's share of Property Taxes attributable to the Leased Premises shall be the Proportionate Share of the Property Taxes.
- [8] Article 9 contains a lengthy definition of Operating Costs which includes “the aggregate of all of the Landlord's expenses, costs and charges which are incurred in respect of the operation, maintenance, repair, management, administration and supervision of the Building including the Common Areas and Facilities together with the Building Proportionate Share of all such costs with respect to the Shared Common Facilities.”
- [9] “Proportionate Share” is defined as meaning “the fraction which has as its numerator the Rentable Area of the Leased Premises and which has as its denominator the Rentable Area of the Building, both determined in accordance with the provisions of this Lease.”
- [10] Telus also leases storage areas in the buildings, which under the Leases are not part of the Leased Premises or part of the Rentable Area of the Building. In 200 Consilium, Telus rents approximately 43.4% of the Storage Areas, and about 26% of the Storage Areas in 300 Consilium.
- [11] Article 57 of the Leases deals with the Storage Areas. It provides that Telus shall pay a gross rent per square foot for that space, fixed at \$12 per annum. Article 57 states that “the Storage Area shall not otherwise be subject to Base Rent or Additional Rent charges or

calculated in the determination of Usable Area, Rentable Area, Proportionate Share or otherwise considered part of the Leased Premises, except that, subject to the foregoing, this Lease shall apply to the Storage Area as if it were part of the Leased Premises.”

- [12] Since 1997, the Landlord, now the Defendant, has charged Telus Additional Rent based on its proportionate share of Property Taxes and Operating Costs on the entire buildings. Telus says this is incorrect, relying on the exclusionary words in Article 57 quoted above. As a result, Telus argues, it has been overpaying approximately \$100,000 per year.

### Analysis

- [13] Telus submits that the plain wording of Article 57 means that it should not be paying any Property Tax or Operating Costs attributable to the Storage Areas. It argues that the Defendant’s interpretation leads to a conflict in the contract, relying on the well-established principle that contracts must be interpreted to avoid conflicts and inconsistencies, citing *Prism Resources Inc. v. Detour Gold Corporation*, 2022 ONCA 326 at para. 16.
- [14] Telus is, of course, correct that contracts should be interpreted to avoid conflicts. But the first step in contractual interpretation is to determine the intention of the parties in accordance with the language used in the written document, accepting that they have intended what they have said. One must “read the contract as a whole, giving the words used their ordinary and grammatical meaning”: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 47. Contracts must be read in a manner that gives meaning to all of the terms and to avoid interpretations that would render one or more of the terms ineffective. One must also consider the surrounding circumstances and commercial context in order to reach an interpretation that “accords with sound commercial principles and good business sense, avoiding a commercially absurd result, objectively assessed”: *Prism Resources* at para. 16, quoting Brown J.A. in *Weyerhaeuser Co. v. Ontario (Attorney General)*, [2017 ONCA 1007](#) at para. 65.
- [15] Applying these rules of interpretation, there is no conflict between Article 57 and Articles 8 and 9 of the Leases. The Defendant’s calculation of the Proportionate Share of Property Taxes and Operating Costs accords with the Leases and makes commercial sense.
- [16] Article 8 grants the Defendant the discretion to allocate Property Taxes attributable to the Leased Premises, acting reasonably. It provides that in exercising its discretion to allocate Property Taxes, it may elect to “determine that the Tenant’s share of Property Taxes attributable to the Leased Premises shall be the Proportionate Share of the Property Taxes.” The term “Property Taxes” is broad and “means all taxes, rates, duties, levies, fees, charges (including local improvement charges) and assessments whatsoever, imposed, assessed, levied, rated or charged against the Lands, the *Building* or the Development...” [emphasis added] The term “Building” is broadly defined in the Leases.
- [17] Article 9 describes Operating Costs as expenses and costs relating to the “Building.”
- [18] Read together, Articles 4, 5, 8 and 9 mean that the Landlord may charge, and the Tenant must pay, Additional Rent to cover the Tenant’s Proportionate Share of Property Taxes

and Operating Costs for the entire Building, based on the formula which considers the Rentable Area of the Leased Premises and the Rentable Area of the Building. The fact that Storage Areas are not part of the Rentable Area is irrelevant to the formula for calculating Additional Rent attributable to the office space.

- [19] The exclusionary words in Article 57 do not change or affect the formula relating to the calculation of Additional Rent. Article 57 states that the rent charged for the Storage Areas is only the gross rent of \$12 and is not subject to Additional Rent. The exclusionary words make clear that the square footage of the Storage Areas shall not be included as part of the “Rentable Area” “or otherwise considered part of the Leased Premises” in calculating the proportionate share of taxes or operating costs on the Building.
- [20] In short, the Leases permit the Defendant to charge Additional Rent and Operating Costs for the Building, and the proportionate share is calculated in accordance with the proportion of office space rented, not storage space. Nothing in Article 57 conflicts with that interpretation, which simply provides that the storage space is not to be included in the calculation. The interpretation is in accordance with the plain wording of the Leases, makes commercial sense, and is how the parties have interpreted and applied the Leases for over 20 years.
- [21] The motion for summary judgment by Telus is dismissed. As this effectively resolves the action, the action shall also be dismissed, as requested by the Defendant.
- [22] In accordance with the agreement between the parties, the Plaintiff shall pay the Defendant costs of \$50,000 inclusive of tax and disbursements.

Schabas J.

**Date:** July 23, 2025