

CITATION: Fatima & Dua Limited v. Munawar Hanif, 2025 ONSC 4339
COURT FILE NO.: CV-25-00736869-0000
DATE: 20250730

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
FATIMA & DUA LIMITED, also known as)
Hot Plate) Obaidul Hoque, for the Applicant
)
Applicant)
)
– and –)
) Arif Raza, for the Respondent
)
MUNAWAR SULTANA HANIF)
)
Respondent)
)
)
) **HEARD:** June 9 and 10, 2025

2025 ONSC 4339 (CanLII)

REASONS FOR JUDGMENT

AKAZAKI J.

OVERVIEW

- [1] Fatima & Dua Limited (“Fatima”) operated a restaurant called The Hot Plate in Mississauga, under a five-year lease with Munawar Hanif. The lease started on December 13, 2019, and expired on December 12, 2024. The lease contained a tenant’s option to renew, to be exercised in writing at least six months prior to the expiry of the term.
- [2] Fatima did not exercise the option by June 2024. Instead, on October 26, 2024, its principal Tanveer Alam sent the landlord an ambiguous WhatsApp message indicating his intention to instruct his lawyer to renew the lease. There ensued a meeting between Fatima’s lawyer and Ms. Hanif, but Ms. Hanif received no notice of renewal. After the lease expired, Ms. Hanif locked Fatima out. Mr. Alam changed the lock and re-entered. On January 6, 2025, Ms. Hanif hired bailiffs to lock the tenant out again.
- [3] Fatima then brought an application for a court order restraining the landlord from terminating the lease, declaring the lease renewed for another five years, and providing

relief from forfeiture. Because of the contested factual issues, the court directed a summary trial, with live cross-examination on the affidavit evidence.

- [4] Fatima admittedly failed to exercise the option to renew in the manner prescribed under the lease. Therefore, the only issue for the court to determine on the evidence was the availability of relief from forfeiture. After providing further background regarding this issue, I will provide reasons why the court must dismiss the application.

BACKGROUND

- [5] Unbeknownst to Ms. Hanif, Mr. Alam operated the restaurant for many years prior to the lease. The former tenants employed him, and at some point he simply took over. He claimed to have paid \$80,000 for the goodwill of the business and spent \$140,000 on renovations. He kept no records substantiating these sums. Mr. Alam stated that the restaurant was his sole means of supporting his family. That said, the rent from the premises was Ms. Hanif's sole source of income for her family. This dispute is over a commercial tenancy between the landlord and a corporation. The parties' family interests or obligations do not figure in the legal outcome.
- [6] Mr. Alam may have spent the funds on the purchase of the business, but he owed an obligation to the landlord to alert her of the change in ownership. If he spent funds to renovate the restaurant, he could not prove it at trial. His evidence during the trial differed from his affidavit evidence that he spent \$240,000 to improve the premises. Based on the vague evidence he provided, I did not consider the renovations anything more than what may have been required to keep it up to municipal licensing standards. The potential loss of the benefit of leasehold improvements was not so great as to spur Mr. Alam to take greater care to exercise his legal rights.
- [7] Fatima suggested that Ms. Hanif ought to have known about the business takeover, because she collected monthly rent from Mr. Alam. She said she had to attend to collect the rent, because she would not receive it, otherwise. She knew Mr. Alam as a worker at the restaurant. She was unaware of his role in the business, until he signed the lease in 2020.
- [8] According to Mr. Alam, he and Ms. Hanif were close, and she became a family friend. This accounted for the informality of their relationship. Apart from a few instances, he professed to have paid the rent dutifully on time. Mr. Alam relied on the friendship and informality of the relationship to support his assertion that the renewal clause should not be technically construed or enforced.
- [9] Ms. Hanif denied their closeness and his regular payment of rent. Mr. Alam knew nothing about her and her family circumstances. They met only when she went to the restaurant to pick up the rent. He never paid taxes, maintenance, and insurance ("TMI"), as required under the lease. However, there was no evidence that she ever billed him for the TMI until after the end of the lease term. She had been undergoing cancer treatments and had simply put up with his underpayment of the rent, including additional rent for TMI. She did not

provide a tally of the unpaid TMI until December 2024. She had allowed him to stay until the lease term ended and did not terminate the lease on account of unpaid TMI.

- [10] Much of the trial evidence dwelled on the different versions of the parties' relationship, because Fatima sought to persuade the court to relieve it of the formal requirements of the lease renewal notice. The evidence of the informality did not rise to a waiver of the notice requirement. Ms. Hanif was not thrilled by Mr. Alam's underpayment of rent and by having to collect it every month. Any informality was one-sided, in that Mr. Alam did not approach his tenant obligations in a business-like manner. She did not want him as a tenant but also did not want to take steps to evict him.
- [11] The dispute over the termination issue turned on Mr. Alam's evidence about Ms. Hanif coming to see him in January 2024. Evidently frustrated by deficiencies in rental payments, she came to the restaurant to tell him: "This is the last month for you." Both Mr. Alam and Ms. Hanif testified that she said this. Ms. Hanif told him to read the lease. Mr. Alam seemed to have misinterpreted her statement as the end of the lease term. He failed to understand that she meant she was not going to put up with his rent underpayment any longer. I also found that this evidence contradicted his testimony that the two were close friends.
- [12] Mr. Alam said her remark prompted him to read the lease. He had not read it when he had signed it. He asked his daughter, Dua Tanveer, to read it because her English was better than his. He then consulted his lawyer. The lawyer told him the lease ended in December 2024, but it could be extended for another five years. He then told Ms. Hanif that she could not force him out until December 2024. However, he only learned toward the end of 2024 that he had to give her notice to extend the lease.
- [13] During 2024, the parties had oral discussions about renewing the lease. Ms. Hanif did not tell Mr. Alam she intended to allow him to renew it. She told him to read the lease. By this, I understood that she knew there was a renewal clause. By telling him to read the lease, at least she was alerting him to the mechanism for renewing the lease legally. There was no evidence supporting a court order declaring the lease renewed, in the absence of a valid exercise of the renewal option.
- [14] The lease showed that Dua Tanveer was the president of the company. Mr. Alam had signed the lease only as a guarantor of the rent. Ms. Tanveer did not testify about the company's failure to exercise the renewal option.

RELIEF FROM FAILURE TO RENEW THE LEASE

- [15] The lease contained a tenant's right to renew for a further five years, provided the tenant has "duly and punctually" performed all obligations. There was some doubt whether Fatima had fulfilled this condition, because Mr. Alam acknowledged he had never paid TMI. There was also doubt whether he paid HST. I find that Ms. Hanif tolerated Fatima's non-payment of the full rent by failing to claim the TMI until the end of the term and by stopping by every month to pick up the rent cheque. She therefore waived the "duly and

punctually” condition for a five-year renewal. The landlord cannot rely on any breach of the lease during the term. Fatima’s lack of punctuality and underpayment of rent could have been considered waived, or provide grounds for relief from forfeiture, if Fatima had exercised its right to renew the lease.

[16] However, the lease specified how the tenant could exercise this option:

Such renewal right shall be exercisable by notice in writing to Landlord by not later than six (6) months, and not earlier than twelve (12) months, prior to the expiry of the Term hereof, failing which such right shall be null and void and forever extinguished.

[17] There was no dispute that Fatima did not provide notice in writing by June 2024, when the right to renew had to be exercised. Moreover, Mr. Alam’s evidence that he read the lease with his daughter and his lawyer in January 2024 meant that all three of them had the opportunity to inform themselves of Fatima’s renewal rights. According to his affidavit, he was the company’s “principal director.” Not only did Fatima fail to exercise its right of renewal as stipulated in the lease, but there was also no evidence that it ever exercised that right, either late or verbally.

[18] The parties’ evidence aligned that Mr. Alam asked Ms. Hanif to renew the lease, and Ms. Hanif declined. Asking whether the landlord would renew the lease is not the same as exercising the option to renew. The exercise of the right would have committed the tenant to a further five years, as well – contracts are not one-sided. The rationale for the six-month notice period is to permit the landlord a reasonable time to find a new tenant, so as not to have the property sit idle and not earning rent.

[19] Fatima therefore had not exercised its legal rights under the lease to renew it for another five years: not late or imperfectly, but rather not at all.

[20] Fatima applied for relief from forfeiture under s. 98 of the *Courts of Justice Act* and s. 20 of the *Commercial Tenancies Act*. Both provisions relieve against harsh results from contractual breaches resulting in the loss of a contractual benefit. Under s. 20 of the *CTA*, the relief is against landlords’ exercise of re-entry or forfeiture because of non-payment of rent or other cause.

[21] In *Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co.*, [1994] 2 S.C.R. 490, at p. 504, the Supreme Court stated the following about the equitable remedy:

The power to grant relief against forfeiture is an equitable remedy and is purely discretionary. The factors to be considered by the Court in the exercise of its discretion are the conduct of the applicant, the gravity of the breaches, and the disparity between the value of the property forfeited and the damage caused by the breach: *Shiloh Spinners Ltd. v. Harding*, [1973] A.C. 691 (H.L.); *Snell's Equity* (29th ed. 1990), at pp. 541-42.

- [22] The general formulation of the equitable remedy of relief from forfeiture entails a three-step analysis of the circumstances of the breach and the proportionality of the consequences. However, the landlord did not lock the tenant Fatima out in early 2024 because of a breach. Rather, the landlord locked Fatima out after the expiry of the lease term, because the tenant no longer had a right to enter the premises. The tenant's failure to exercise the option to renew as stated in the lease resulted in the lease's expiry.
- [23] Where the preconditions for lease renewal are in issue, the jurisdiction to grant relief from forfeiture is narrower. The court must find that the tenant made diligent efforts to comply with the renewal option but failed due to no default on the tenant's part: *McRae Cold Storage Inc. v. Nova Cold Logistics ULC*, 2019 ONCA 452, at para. 10; and *2324702 Ontario Inc. v. 1305 Dundas W Inc.*, 2020 ONCA 353, at paras. 23-24. In the latter decision, the Court of Appeal denied relief from forfeiture despite the tenant's large investment in the premises, because the loss of the lease was consequential to its own decisions.
- [24] I do not know what the half-hearted WhatsApp message in October was meant to accomplish. The lawyer did not issue a notice. Mr. Alam's difficulty with English cannot excuse the company, because he consulted his daughter (the president of the company) and his lawyer in January 2024. His company was within its rights to send a notice of renewal at that time. Why the lawyer did not issue a notice at that time is an issue between Fatima and its leasing lawyer. One can only speculate whether Ms. Hanif would have contested the tenant's right to do so, based on insufficient rent.
- [25] I therefore conclude that Fatima's failure to exercise the renewal option during June 2024, or any reasonable time, thereafter, disentitles it from seeking relief from forfeiture to found a claim that the lease renewed for a further five years.
- [26] The evidence established that Fatima did not take any steps to notify the landlord in writing of the exercise of the renewal option. There being no evidence of grounds to relieve Fatima from the loss of the renewal option, the court cannot grant the relief.
- [27] The application is therefore dismissed, with costs. If costs cannot be agreed, counsel for the respondent may file *and* provide my judicial assistant with a bill of costs and costs submissions within 14 days hereof. With 14 days of the receipt of the respondent's bill of costs and costs submissions, the applicant may file and send my judicial assistant its responding costs submissions.

Akazaki J.

Released: July 30, 2025

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