

In the Court of Appeal of Alberta

Citation: 1049104 Alberta Ltd v Singh Jewelers Ltd, 2026 ABCA 24

Date: 20260127
Docket: 2401-0222AC
Registry: Calgary

Between:

1049104 Alberta Ltd. and Tony Parmar also known as Movinder Parmar

Appellants

- and -

Singh Jewelers and Manjit Singh Mutti

Respondents

The Court:

**The Honourable Justice Anne Kirker
The Honourable Justice William T. de Wit
The Honourable Justice Tamara Friesen**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice M.R. Gaston
Dated the 29th day of July, 2024
Filed on the 28th day of October, 2024
(Docket: 2201 08295)

Memorandum of Judgment

The Court:

Introduction

[1] The appellant landlord, 1049104 Alberta Ltd and Movinder (Tony) Parmer sought damages from the respondent tenant, Singh Jewelers and Manjit Singh Mutti, for alleged breaches of a commercial lease agreement. The chambers judge dismissed the application for damages and ordered the appellant to return any of the respondent's belongings which remained at the premises.

[2] The appeal is dismissed for the following reasons.

Background

[3] The respondent operated a jewellery store and retail enterprise on the appellant's premises pursuant to the terms of a commercial lease which was in place from May 18, 2010 until April 30, 2022.

[4] Section 11.1 of the lease required the respondent to "keep" the premises in a "first class condition" over the course of the lease, and to return the premises to the appellant in that same condition on termination of the lease. "First class condition" is not defined. Schedule C, section 1.1 of the lease specifies the respondent took the premises on an "as is" basis. There was no evidence before the chambers judge regarding the condition of the premises when the tenant commenced occupancy. The notice provisions of the lease indicate that if the landlord is asserting a breach for reasons other than non-payment of rent, for example damage to the premises, it must give written notice. The tenant then has 10 days to remedy that breach before further steps can be taken.

[5] On January 3, 2022 the appellant provided the respondent with a reconciliation statement claiming it was owed certain amounts for unpaid rent. The respondent, whose agreed upon rent was paid, sought further clarification about the amounts allegedly owed. The appellant explained that the amounts owed were not for unpaid rent for the premises, but rather, expenses related to the building's shared common area.

[6] Around the same time as the first demand for money was made, the parties began discussing lease renewal, which was set to expire on April 30, 2022. No agreement was reached, and on May 1, 2022, the respondent became an overholding tenant subject to a monthly tenancy. The same day, the appellant provided notice of the termination of the respondent's monthly tenancy to occur on June 1, 2022. The appellant denied the respondent's request to extend the lease

until October 1, 2022, which would have allowed the respondent time to find a new premises and arrange to move its equipment.

[7] On June 8, 2022, the appellant sent a bailiff to evict the respondent. The respondent was given one hour to remove its property. Given the weight and composition of the jewelry industry specific counters, safes, and machines, this was simply not possible and the respondent was forced to leave much of its property behind. The locks on the premises were changed.

[8] In the following months, the respondent attempted to work with the appellant to get its property out of the premises, but for a variety of reasons was unable to do so. The respondent tenant's owner, Mr Mutti, managed to enter the premises on one occasion in mid-September, 2022 having found the door unlocked, and he removed some of the property at that time.

[9] On July 14, 2022, the appellant commenced proceedings against the respondent claiming breach of contract, and damages on a number of bases. At one point, the appellant indicated that the respondent's refusal to remove its property from the premises had prevented the appellant from leasing it to other businesses. The appellant later asserted that it was holding the respondent's assets as security until the respondent paid the amounts allegedly owed.

[10] The appellant contacted the City of Calgary to perform an inspection which resulted in a declaration that the premises was unfit for occupation. The appellant obtained an estimate which indicated it would cost \$29,164.80 to repair the premises for reoccupation. On November 21, 2022, the appellant further asserted that it was owed damages because the respondent has left the premises in disrepair contrary to the terms of the lease. The asserted damages included damages to the door, walls, and roof. There was evidence the premises had been broken into on at least two occasions after the respondent was evicted.

[11] The respondent defended, indicating it was not responsible for some of the asserted damages, the appellant was aware of many of the modifications to the premises now asserted as damages, and some of those modifications improved the value of the property and therefore could not be considered damages.

[12] The parties appeared before the chamber's judge on November 23, 2023. The chambers judge released written reasons on July 29, 2024 dismissing the appellant's application and ordering the return of the respondent's property.

[13] The chambers judge determined that the appellant had not met its evidentiary burden to establish that it was entitled to the damages claimed. Further, the chambers judge found that there was insufficient evidence to assess what the quantum of damages would be, even in respect of modifications the tenant admitted making. More specifically, the chambers judge found that the record was unclear as to which modifications to the premises, now claimed as damages, were made at the start of the tenancy with the appellant's permission and assistance; which occurred during the tenancy but without permission; and which occurred subsequent to the respondent's eviction.

Relevant to this appeal, the chambers judge also found it significant that “there was no evidence regarding the state of the premises when the tenant took possession.” In this respect, the chambers judge reasoned that “without a baseline reference regarding the condition of the premises”, the appellant had failed to meet its burden to establish a breach of the lease and failed to provide an evidentiary record on which she could reasonably assess damages.

[14] The appellant appeals the chambers judge’s decision, arguing she committed a palpable and overriding error in finding that the record before her was not sufficient to ground a finding that the respondent had breached the terms of the lease by not leaving the premises in “first class condition.”

Decision

[15] The chambers judge considered the terms of the lease and the whole of the evidentiary record in determining whether she could grant the relief claimed. Her interpretation of the contract and findings of fact are reviewable for palpable and overriding error: *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at para 50; *Housen v Nikolaisen*, 2002 SCC 33 at paras 10-18.

[16] Before this Court, the appellant argues that the state of the premises at the beginning of the tenant’s lease is irrelevant and that the chambers judge “misdirected her analysis of the tenant’s obligations under the lease to maintain and return the premises to the landlord in a particular condition.” All that is relevant, the appellant submits, is that the tenant was required to return the premises to the appellant in a “first class condition.” The appellant suggests the meaning of this is self-evident and was reflected in the quotes it obtained to repair the premises. Put differently, the appellant argues that the evidentiary record was sufficient to conclude that the “first class condition” requirement under the lease was not met and that the chambers judge fell into reviewable error concluding otherwise. We note this was not the only basis upon which the appellant’s case failed. In any event we disagree.

[17] It is evident the chambers judge understood the principles of contractual interpretation. To decide whether the respondent was entitled to the damages it claimed, the chambers judge had to determine “not ... what the parties subjectively intended but what a reasonable person would objectively have understood from the words of the [lease] read as a whole and from the factual matrix”: *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, 2017 ABCA 157 at para 79, leave to appeal to SCC dismissed, 37712 (5 April 2018), citing Geoff R Hall, *Canadian Contractual Interpretation Law*, 2nd ed (Markham: LexisNexis, 2012) at 33; see also, *Sattva* at paras 47 and 49. As the chambers judge noted, the lease specified that the tenant took the premises on an “as is” basis. The lease contemplated the tenant making modifications for the proper conduct of the tenant’s permitted business. The lease also stated that the tenant would “keep” the premises and all improvements in first class condition and that at the expiry or termination of the lease would “leave the premises in the same condition as it was required to keep them in during the term.” To interpret what the parties objectively intended by these and their other words, it was reasonable to consider that the parties themselves would have known or ought to have known what

state the premises was in at the inception of the lease. This was part of the factual matrix or surrounding circumstances that could properly inform the interpretation of the contract: *Sattva* at para 58. The initial state of the premises was also relevant to determining the extent to which modifications made by the tenant might constitute compensable damage.

[18] The chambers judge made no reviewable error in finding that without any evidence as to the initial condition of the premises she could neither determine whether a breach of the lease had occurred, nor quantify the damages arising from such a breach.

[19] The burden lay on the appellant to prove the breach and the damages arising from that breach and the chambers judge did not err in determining they failed to discharge that burden. The appeal is therefore dismissed.

Appeal heard on January 16, 2026

Memorandum filed at Calgary, Alberta
this 27th day of January, 2026

Kirker J.A.

de Wit J.A.

Friesen J.A.

Appearances:

G.R. Frank
for the Appellants

G.M. Hickerson, KC
S. Baweja
for the Respondents