

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Qayumi v. 0881789 B.C. Ltd.*,
2025 BCSC 84

Date: 20250121
Docket: S241329
Registry: New Westminster

Between:

Masood Qayumi

Petitioner

And

0881789 B.C. Ltd.

Respondent

- and -

Docket: S243671
Registry: New Westminster

Between:

0881789 B.C. Ltd.

Petitioner

And

**Masood Qayumi and
Masood Qayumi doing business as King's Barber Shop**

Respondents

Before: The Honourable Mr. Justice Hori

Reasons for Judgment

Counsel for the Petitioner/Respondent,
Masood Qayumi:

R. LaPlante

Counsel for the Respondent/Petitioner,
0881789 B.C. Ltd.:

S. Sehdev

Place and Date of Hearing: New Westminster, B.C.
October 16, 2024

Place and Date of Judgment: New Westminster, B.C.
January 21, 2025

Introduction

[1] These two petition actions were heard at the same time pursuant to an order pronounced on August 9, 2024. The petitions relate to the termination or continuation of the same commercial lease (the “Lease”).

[2] The Lease is dated December 11, 2016, and it is a lease of property located at Unit 2, 12044 88 Avenue, Surrey, British Columbia (the “Leased Premises”). The landlord is 0881789 B.C. Ltd. (the “Landlord”). The tenant is Masood Qayumi (the “Tenant”).

[3] The Landlord’s petition seeks the following:

- a) an order that the Lease expired on January 1, 2022 and that the Tenant has been overholding the Leased Premises since then;
- b) a writ of possession for the Leased Premises;
- c) an order that the Tenant was not entitled to renew the Lease because he was in default of its terms;
- d) an order for double rent for the period that the Tenant was overholding the Leased Premises; or
- e) in the alternative, if the Lease is renewed, an order for increased rent pursuant to the terms of the Lease.

[4] The Tenant’s petition seeks the following:

- a) a declaration that the Lease is a valid lease;

- b) a declaration that the Tenant validly exercised his option to renew the Lease pursuant to the terms thereof; and
- c) and injunction restraining the Landlord from interfering with the Tenant's use of the Leased Premises.

[5] The Tenant is one of a number of other tenants in the building. The Tenant runs a barber shop from the Leased Premises. The other tenants in the building include a daycare and residential occupants.

The Lease

[6] Paragraph 7 of the Lease provides that the term of the Lease commences on January 1, 2017, and ends on January 1, 2022. However, in the same paragraph, the parties inserted and initialed a handwritten phrase in the following terms: "with a five year option".

[7] Paragraph 9 of the Lease provides for the creation of a month to month tenancy should the Tenant remain in possession of the Leased Premises after the expiry of the Lease term with the Landlord's consent. Paragraph 9 also provides that the month to month tenancy is "terminable" upon either party giving one month's notice to the other party. At the end of paragraph 9, the following handwritten insertion appears without initials: "If tenancy is continued after five years,". Unfortunately, this insertion is not a complete sentence and, as a result, has no meaning.

[8] There is no further reference to the renewal option in the Lease. In particular, there is no reference to any pre-conditions that the Tenant must meet before he can validly exercise the option to renew.

Implied Terms

[9] In order to overcome the lack of express terms relating to the exercise of the Tenant's option to renew, the Landlord submits that I should imply the following terms into the Lease

- a) That the Landlord has the option to refuse a renewal of the Lease; and
- b) That the Tenant may exercise his option to renew only if he had not breached the Lease.

[10] The Lease is a commercial agreement between the Landlord and the Tenant. The court will not impose contractual terms on the parties by implication in a commercial agreement unless it is necessary to give business efficacy to the agreement. In *G.M. Pace Enterprises Inc. v. Tsai*, 2003 BCSC 1336, Justice Taylor held:

[100] The imputing of a term into a contract, as observed some 85 years ago in *Reigate v. Union Manufacturing Co. (Ramsbottom)*, [1918] 1 K.B. 592 (Eng. C.A.), is not done as a mere matter of convenience.

[101] A term can only be imputed if it is necessary in the business sense to give efficacy to the contract. That is to say, that if at the time the contract was being negotiated someone had said to both parties "What will happen in such a case?" they would have then replied, "Of course so and so will happen, we did not trouble to say that: 'it is too clear'." Unless the court comes to such a conclusion, that such was contemplated but not committed to in writing, it ought not to imply a term which the parties themselves have not expressed.

[11] In this case, I do not see any business efficacy to a term allowing the Landlord to refuse to renew the Lease when the Tenant exercises his option to renew. Such an implied term would render the Tenant's option to renew meaningless because the Landlord retains the ultimate discretion to allow the renewal or not. In such a circumstance, business efficacy dictates that the Lease remain silent on a renewal and simply leave it to the parties to re-negotiate a new lease at the end of the term.

[12] With respect to a term that allows the Tenant to renew the Lease only if the Tenant had not breached its terms, I am not satisfied that the parties would have agreed to such a term had they considered it when they executed the Lease. While the Landlord may have preferred such a term in the Lease, it is not likely that the Tenant would have agreed. The Landlord has tendered very little, if any, evidence relating to the circumstances existing at the time the parties entered into the Lease.

Therefore, I am unable to say, with any certainty, what the parties' intentions were and whether such a term is necessary to give business efficacy to the Lease.

[13] In any event, if I were to imply such a term, business efficacy dictates that I imply further terms that require the Landlord:

- a) to give notice of any breaches to the Tenant; and
- b) to give the Tenant a reasonable opportunity to remedy the breaches.

The Notice to Renew and the Basis for Termination

[14] On July 19, 2021, the Tenant delivered written notice of his intention to exercise the option to renew. The renewal notice is in the following terms:

Please be advised that this is a formal notice to notify you that the Tenant is exercising the option to renew the Lease with the Landlord, for a further term of five years contained in paragraph 7 of the Lease.

[15] The Landlord responded to the Tenant's notice on August 10, 2021, with the following e-mail:

Pursuant to paragraph 9 of the Commercial Lease Agreement dated December 11, 2016, the landlord can provide a one month's written notice to terminate the lease upon the natural expiration of the said original lease contract. It is the intention of the landlord not to renew the lease with you or your firm after the expiration date of January 1, 2022. The landlord expects vacant possession of the leased premises as of 12 noon on January 1, 2022.

[16] The Landlord's response of August 10, 2021, is of no consequence. The Landlord's reference to paragraph 9 of the Lease and its reliance on the one month's notice to terminate did not apply as of the date of the response. Paragraph 9 of the Lease only applies if and when the Tenant does not exercise the option to renew and continues in possession of the Leased Premises after the expiration date with the consent of the Landlord. That was not the circumstance applicable to the Lease on August 10, 2021.

[17] Further, the Landlord's intention not to renew the Lease is not relevant. The Lease does not give the Landlord the right to refuse the renewal. It is also of note

that the Landlord's response of August 10, 2021, does not allege any breaches of the Lease as a basis for its refusal to renew.

[18] The Landlord first gave written notice that its refusal to renew the Lease was based on breaches of the Lease by the Tenant on October 5, 2021. In a letter dated October 5, 2021, the Landlord stated that the reasons for not allowing the renewal of the Lease were the Tenant's breach of the Lease, particulars of which were:

- a) the repeated late payment of rent;
- b) failing to conduct his business in a reputable manner by allowing his staff and customers to:
 - i. use another tenant's parking slots;
 - ii. smoke cigarettes in a non-smoking area; and
 - iii. talk loudly and use offensive language;
- c) engaging in loud parties after business hours; and
- d) subletting the Leased Premises without the Landlord's consent.

[19] The breaches set out in the Landlord's letter of October 5, 2021, except the allegation that the Tenant is subletting the Leased Premises, are the same breaches that the Landlord relies upon in these applications to deny the Lease renewal and terminate the Lease. However, in these applications, the Landlord relies also on an allegation that the Tenant made renovations to the Leased Premises without the Landlord's consent.

[20] At the hearing of these applications, the Landlord did not rely on the subletting allegation as a basis upon which to deny the renewal of the Lease. Therefore, I will consider that the Landlord has abandoned that allegation.

Reliability of the Evidence

[21] The evidence of the Landlord relating to the alleged breaches of the Lease, except for the evidence related to the late payment of rent and the renovations, is largely hearsay and conjecture. In order to bolster his position with respect to the allegations related to inappropriate business conduct and loud parties, the Landlord has relied upon an affidavit of the operator of the daycare in the building, Jasmeen Teja, and a handwritten, unsworn statement of a residential tenant, Alfredo Montes.

[22] The affidavit of Ms. Teja deposes to the conduct of the Tenant in and around the building. The affidavit claims that the Tenant, his employees and his customers smoke cigarettes and consume illicit drugs around the building and occupy parking stalls designated for her business.

[23] The handwritten statement of Mr. Montes appears to corroborate the evidence of Ms. Teja.

[24] However, after becoming aware that the Landlord was using his statement in this application, Mr. Montes swore an affidavit deposing that the contents of this handwritten statement were largely untrue. Mr. Montes deposes as follows:

- a) that English is his second language and that he can speak but not read English;
- b) that his grandchildren attend the Tenant's barber shop for haircuts;
- c) that his grandchildren attend the daycare in the building and that he does not feel unsafe for his grandchildren attending the daycare for any reason related to the Tenant;
- d) that Jasmeen Teja approached him in the summer of 2023 and asked him to sign the statement. Ms. Teja told him that the statement had to do with loud music at the property;

- e) that he agreed to sign the statement because he recalled hearing loud music coming from the Leased Premises one night after business hours during the COVID-19 lockdown, but he has not noticed anything similar since then;
- f) that he did not know the statement contained allegations about drug trafficking fights, illegal construction or other activities taking place around the building; and
- g) that the contents of the statement, except for the first three sentences, are false.

[25] Based on the affidavit of Mr. Montes, it is my view that the Landlord, with the assistance of Ms. Teja, used the statement of Mr. Montes to manipulate the evidence in favour of his position. As a result, I find that the evidence of Ms. Teja and the evidence of the Landlord is not reliable.

Analysis

[26] The Landlord’s petition alleges that the Tenant lost his right to renew the Lease when he breached the terms of the Lease during the tenancy. In order to pursue the remedy it seeks, the Landlord submits that the Lease included the implied terms that I have already outlined in these reasons.

[27] Since I have found that the Landlord has failed to establish a basis for implying the terms proposed, the Landlord cannot succeed in its claims. The Lease does not establish any pre-conditions that the Tenant must meet before exercising his option to renew and the Lease does not give the Landlord any option to refuse the Tenant’s renewal.

[28] Accordingly, on this basis alone, the Landlord’s petition is dismissed and the Tenant’s renewal of the Lease is validated.

[29] Even if there was a basis to consider that a breach of the Lease could vitiate the Tenant’s option to renew, I find that the Landlord has either failed to establish the

alleged breaches or has failed to establish that the alleged breaches have vitiated the option to renew.

Payment of Rent

[30] The Landlord submits that the Lease renewal is not effective because the Tenant consistently failed to pay the rent on time. There is no allegation that the rent was in arrears at the time of the Lease renewal.

[31] The Landlord's evidence is that over the first five-year term of the Lease, the Tenant was late paying his monthly rent on ten occasions. The documents tendered by the Landlord in support of this allegation show that on one occasion the payment was 14 days late and on another occasion it was 13 days late. With respect to the balance of the late payments, the Tenant made those payments between one and five days after the payments were due.

[32] The failure to pay rent on time is not a sufficient basis to deny the Tenant his option to renew the Lease. The rental payments were not in arrears at the expiry of the first Lease term and the Tenant remedied the late payments within a short period of time.

[33] In *SCP 173 Dining Limited v. Costa Del Sol Holdings Ltd.*, 2021 BCSC 1252, Justice Watchuk held, at para. 74, that where a tenant's right to renew depends on its compliance with any conditions precedent, the tenant may cure any defaults by the operative date. Where the renewal clause is silent as to the operative date, the relevant date is the expiry of the existing term.

[34] Since the Tenant cured any defaults in the payment of rent by the expiry of the term, the Landlord has no basis upon which to refuse the renewal for non-payment of rent.

Conduct of the Tenant's Business

[35] The Landlord alleges that the Tenant is in breach of the Lease because he is failing to conduct his business in a reputable manner. For the reasons given earlier

in this judgment, I find that the evidence of the Tenant's disreputable conduct is not reliable. Therefore, I find that the Landlord has failed to establish any breach of the Lease on these grounds.

Loud Parties

[36] The Landlord's evidence that the Tenant holds loud parties after business hours is also not reliable for the reasons I have previously outlined. Therefore, the Landlord has failed to establish that the holding of loud parties is a basis to refuse the Tenant's renewal of the Lease.

Renovations

[37] The Lease provides that the Tenant will obtain the Landlord's written permission before removing or adding walls, or performing any structural alterations. The Landlord claims that the Tenant has made renovations to the Leased Premises without its permission.

[38] The Tenant claims that the Landlord knew about the renovations and consented to them. He also alleges that the Landlord's construction workers assisted him with the renovations.

[39] For the reasons set out earlier, the reliability of the Landlord's evidence is tainted by his conduct with respect to securing the evidence of Mr. Montes and Ms. Teja. As a result, I am not prepared to accept the Landlord's evidence where it is in conflict with the evidence of the Tenant.

[40] Further, the renovations made by the Tenant were obvious to anyone, including the Landlord, who entered the Leased Premises. The Landlord made no complaint about the renovations until after the term of the Lease expired.

Conclusions

[41] Based on the foregoing, I find that the Tenant renewed the Lease for a further term of five years commencing at 12:00 noon on January 1, 2022 and ending at 12:00 noon on January 1, 2027.

[42] The parties will establish the rent payable for the renewal term in accordance with clauses 13 and 14 of the Lease.

[43] The Landlord's petition is dismissed.

[44] As a result of my finding that the Tenant renewed the Lease, the injunction orders sought in the Tenant's petition are not necessary. The Landlord is expected to comply with the terms of the Lease.

Costs

[45] The Tenant has been successful in both petition actions. Therefore, the Tenant should have his costs of both actions. However, there will be only one set of costs for both actions after August 9, 2024, when the court ordered that the two actions be heard at the same time.

[46] If there are facts of which I am not aware that affect the issue of costs, the parties have leave to make submissions if they cannot agree. In that event, the parties will schedule a costs hearing within 60 days.

"D.K. Hori J."

HORI J.