

CITATION: Holwill V Eccles [2024] NTLC 17

PARTIES: Paul Holwill and Christina Holwill T/A The Trustee for
Buddy's Cool Investments Discretionary Trust

V

Matthew James Eccles

TITLE OF COURT: LOCAL COURT

JURISDICTION: CIVIL

FILE NO(s): 2024-02878-LC

DELIVERED ON: 16 December 2024

DELIVERED AT: Darwin

HEARING DATE(s): 8 and 23 October 2024

DECISION OF: Judge Greg Macdonald

CATCHWORDS:

Leases – Notice to Quit – Dispute – Arbitration clause – the meaning of ‘retail shop’

Business Tenancies (Fair Dealings) Act 2003 s 5

Commercial Arbitration (National Uniform Legislation) Act 2011 ss 1C, 5, 7, 8, 9

Local Court Act 2015

Civil Mining & Construction Pty Ltd v Cheshire Contractors Pty Ltd [2021] QSC 75

Goldsmith Pty Ltd v GPT RE Ltd [2020] NTSC 30

IBM Australia Ltd v National Distribution Services Ltd (1991) 22 NSWLR 466

Incitec Ltd v Alkimos Shipping Corporation [2004] FCA 698

Shevill v Builders Licensing Board [1982] HCA 47

Subway Systems Australia Pty Ltd v Ireland & Anor [2014] VSCA 142

TCL Air Conditioner (Zhongshan) Co Ltd v Federal Court of Australia (2013) CLR 533

TTG Nominees Pty Ltd v Aileron Pastoral Holdings Pty Ltd [2020] NTSC 4

REPRESENTATION:

Counsel:

Applicants: Ms J Tinning with her Mr M Halkitis

Respondent: Mr E Withnall

Solicitors:

Applicants: Hunt & Hunt

Respondent: Withnall Haliwell

Decision category classification:

B

Decision ID number:

[2024] NTLC 17

Number of paragraphs:

34

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 2024-02878-LC

BETWEEN:

Paul Holwill and Christina Holwill T/A The Trustee for
Buddy's Cool Investments Discretionary Trust

AND:

Matthew James Eccles

Respondent

REASONS FOR DECISION

(Delivered 16 December 2024)

JUDGE Macdonald

1. This Application was heard on 8 October 2024, followed by written submissions, with final orders then being made on 12 December 2024. On that date the parties were advised that written reasons would be published, which are these reasons.

Background

2. On 5 February 2023 Mr Matthew James Eccles (the Respondent) entered into a lease with Mr Paul Holwill and Ms Christina Holwill trading as The Trustee for Buddy's Cool Investments Discretionary Trust (the Applicants) in relation to Unit 3/26 Mighall Place, Holtze (the Premises). The lease is entitled *Commercial Property Lease Agreement*, and comprises a body of documentation headed *Annexure A to lease* (the Lease).¹
3. The Lease was for a three year period commencing 6 February 2023, with rental being \$1,100 in advance per fortnight payable by EFT, and a further \$220 per fortnight payable in cash.² For various reasons, including the final determination of the Supreme Court referred to immediately

¹ That Annexure comprises a *Table of Contents*, a *Schedule* (containing 14 "items"), and a document entitled *Terms of Agreement*, containing 37 clauses. There is then a further Annexure A and B, however the "*Building Rules*" referred to in Item 12 do not appear to be attached. The Lease is Annexure PH1 to the Affidavit of Paul Holwill affirmed 4 September 2024.

² The significance of the dichotomy in payments was not apparent on the Application or evidence, however it is assumed that any true issue would have been raised in the earlier analogous Application made to the Local Court, decided 27 March 2024 then finally determined on appeal by the Supreme Court Orders made 2 August 2024 (the First Decision). Similarly, the conflict in instalment interval between Item 6 and clause 7 was not the subject of any dispute in the Application.

below, it can be confidently concluded that the Respondent is in arrears of rental by many months.³

4. In December 2023 the Applicants made application to the Local Court for a warrant of possession under s 131 of the *Business Tenancies (Fair Dealings) Act 2003* (the BTFD Act).⁴ That was following service of notices purporting to terminate the Lease. On 27 March 2024 the Local Court granted a warrant of possession and ordered the Respondent to pay \$14,300 to the Applicants in rental arrears. Those orders were appealed to the Supreme Court.⁵ On 2 August 2024 that Court set aside the warrant of possession but confirmed the order for payment of rental arrears.⁶ The Supreme Court's decision (the First Decision) has not been the subject of any appeal.
5. On 20 August 2024 the Applicants served a Notice to Quit invoking clause 34.2 of the Lease, and providing the Respondent with 14 days' notice within which to vacate the Premises. That notice period expired late on 3 September 2024.
6. At 9:08am on 4 September 2024 the Respondent by his lawyer emailed the Australian Disputes Centre (ADC) advising that the Respondent "... *intends to commence legal proceedings against [the Applicants] for breaches of the lease, associated loss of amenity and particularly breach of quiet enjoyment*" and stating the Respondent "... *hereby makes an arbitration application within the meaning of clause 33 ...*" of the Lease.⁷ That email was copied to the Applicants' lawyers at the time of despatch to the ADC.
7. Later on 4 September 2024 the Applicants made further application to the Local Court under s 131 of the BTFD Act for a warrant of possession, together with an order for the payment of all outstanding rent (the Application). That followed the Applicants effecting personal service of the Notice to Quit on the Respondent on 20 August 2024. The Applicants rely on clause 34.3 of the Lease, and Division 2 of Part 13 of the BTFD Act, headed *Repossession of business premises*.⁸
8. The Application was supported by various Affidavit evidence.⁹ No cross or counter application was filed, however the Respondents counsel objected to determination of the Application by

³ The Applicants' evidence at paragraph [9] of the Affidavit of Paul Holwill filed in the Application deposes to rental not having been paid since 13 November 2023.

⁴ Proceeding 2023-04334-LC.

⁵ Proceeding 2024-01174-SC

⁶ The basis of that decision was that the Notice to Quit relied upon did not satisfy the requirements prescribed Part 13 of the BTFD Act.

⁷ Annexure EW1 to Affidavit of Eric Withnall sworn 8 October 2024.

⁸ See *TTG Nominees Pty Ltd v Aileron Pastoral Holdings Pty Ltd* [2020] NTSC 4, in relation to the forms of lease and extent of application of the BTFD Act, and the manner in which other laws, including the common law, may relate. *Shevill v Builders Licensing Board* [1982] HCA 47 also refers.

⁹ Affidavit of Paul Holwill affirmed 4 September 2024, Affidavits of Michael Halkitis sworn 8 and 11 October 2024, and an Affidavit of Eric Withnall sworn 8 October 2024. An Affidavit of Matthew Eccles dated 28 June 2024 but sworn 1 July 2024 in the Supreme Court proceeding was also filed in the subject proceeding, and has been taken as read.

grant of the relief sought.¹⁰ That objection was on the basis of the “right” referred to in clause 33.1 of the Lease, when read in conjunction with his Affidavit sworn 8 October 2024 and the *Commercial Arbitration (National Uniform Legislation) Act 2011* (the CANUL Act).

9. Clause 33.1 provides;

All disputes from the implementation of this Agreement or related to this Agreement shall, in the first instance, be resolved through friendly consultation between both parties. If negotiation fails to settle the dispute, either party has the right to make arbitration application to the Australian Commercial Disputes Centre. The arbitration shall be the final verdict and have binding force on both parties.

10. The legal issue to be determined concerns the relationship between the CANUL Act, to the extent that clause 33.1 of the Lease may enliven that scheme, and the operation and effect of the BTFD Act, including in the context of the Local Court’s jurisdiction conferred by Part 3 of the *Local Court Act 2015*. In particular, does clause 33.1, in light of the Respondent’s express wish and steps taken, when read with the provisions of the CANUL Act, prevent or halt the application of the provisions of Division 2 of Part 13 of the BTFD Act until any arbitration has been conducted?

11. It must be noted that, in the event clause 33.1 properly applies to the issues sought to be litigated by the Application and if that clause has been properly invoked, ss 5 and 8 of the CANUL Act proscribe the Local Court from determining the Application and requires the court to refer the parties to arbitration, respectively.¹¹

12. Section 5 of the CANUL Act provides;

5 Extent of court intervention (Model Law Art 5)

In matters governed by this Act, no court must intervene except where so provided by this Act.

13. In that sense the issue raised by the Respondent is one of jurisdiction.¹² Given that issue could only be properly determined following receipt of evidence and hearing the parties, that course has been taken.¹³ The relief sought by the Applicants¹³ in bringing the Application was not challenged by the Respondent, other than as to jurisdiction.

¹⁰ Likewise, no other relief was formally sought by the Respondent in the circumstances. The Local Court has broad jurisdiction through Division 2 of Part 3 of the *Local Court Act 2015*, which includes in the nature of equitable relief; See *Goldsmith Pty Ltd v GPT RE Ltd* [2020] NTSC 30 at [27].

¹¹ Section 8 of the CANUL Act is conditioned on the relevant arbitration agreement not being “... null and void, inoperative or incapable of being performed”. Section 9 also provides an exception of any protective “interim measure” seen fit by the court.

¹² Acknowledging that s 8 of the CANUL Act also generally requires the court to refer parties to arbitration “... not later than when [the requesting or asserting party?] submitting the party’s first statement on the substance of the dispute...”

¹³ The qualifying (or disqualifying) terms of the CANUL Act, including in light of the procedure prescribed by Part 13 of the BTFD Act and events in the history of the dispute, render the situation to be more than simply statutory construction.

14. The court had the benefit of oral submissions from the parties' counsel on 8 October 2024, at which time they were invited to provide authorities and any written submissions promptly. Written submissions were then filed by the parties on 11 October 2024. The Applicants' written submissions cited no authority considering the interaction of the CANUL Act with the jurisdiction conferred by the BTFD Act (or any other jurisdiction), and primarily relied on statutory interpretation in the context of the Respondent's conduct and the earlier Local Court and Supreme Court proceedings, and what disputes (if any) the BTFD Act implicitly intends to exclude from arbitration.¹⁴ The Respondent's written submissions gave cursory contention to the BTFD Act and simply asserted that s 8 of the CANUL Act applied in a positive sense (without addressing the qualifications which may tell against the Respondent). Those submissions also cited passages from various Superior Court authorities concerning the breadth with which arbitration agreements should be read and applied, and the precedence which arbitration agreements may take over provisions enabling litigation before the courts.¹⁵
15. The authorities cited by the Respondent, so principles and law they enunciate, are either highly persuasive or binding on the court. However, none of the passages relied on engage with specific provisions of the BTFD Act or those aspects of the CANUL Act (or clause 33.1) which must first be satisfied in order to then found a valid arbitration application to commence an arbitral proceeding.
16. Lastly, although the BTFD Act provides a dichotomy of "*retail shop lease*" and "*any other agreement or contract (including a tenancy and sublease) under which business premises are let...*", which are compendiously defined as a "*business lease*", neither party sought to characterise the subject Lease either way. That Parts 1 to 12 of the BTFD Act apply solely to a "*retail lease*", with only Parts 13 and 14 applying to any "*business lease*" (which includes a "*retail shop lease*") is not insignificant.

Facts

17. The chronology of and respective steps taken by the parties, and the First Decision, are referred to above.
18. It is common ground that the BTFD Act generally applies to the Lease.¹⁶ Unlike in relation to the First Decision, no issue was taken by the Respondent in the Application with the form or content of the Notice to Quit, nor the proposition that rental is now in arrears by at least \$14,300.¹⁷ I therefore find that the Notice to Quit was valid in its terms, and that ss 125, 127

¹⁴ Noting that the Lease is also subject to rules or principles applicable in statutory construction.

¹⁵ *TCL Air Conditioner (Zhongshan) Co Ltd v Federal Court of Australia* (2013) CLR 533 at 550, *Subway Systems Australia Pty Ltd v Ireland & Anor* [2014] VSCA 142 at [7], *Incitec Ltd v Alkimos Shipping Corporation* [2004] FCA 698 at [36], *IBM Australia Ltd v National Distribution Services Ltd* (1991) 22 NSWLR 466 at 477 & 487 and *Civil Mining & Construction Pty Ltd v Cheshire Contractors Pty Ltd* [2021] QSC 75.

¹⁶ Other than the question of true character of the Lease, it was simply the manner and point in time at which various provisions of the BTFD Act may be invoked or relied upon which was in issue. It is unknown whether the Lease is registered, and neither party submitted that any provisions of the *Land Title Act 2000* or *Law of Property Act 2000* had any relevance to the Application.

¹⁷ The quantum now claimed, through the extant Application, is \$29,590.

and 130 of the BTFD Act were complied with from 20 August 2024 until at least 4 September 2024.

19. Whether the Lease is confined to the species of “*retail shop lease*” or is of the broader character of “*any other agreement or contract*” turns on the definition of “*retail shop*” provided by s 5 of the BTFD Act.¹⁸ Classification of the Lease determines, in some respects, what provisions of the BTFD Act may apply. The meaning of “*retail shop*” is pivotal to determining whether any lease is a “*retail shop lease*”. Section 5 of the BTFD Act relevantly provides;

retail shop means premises that are used wholly or predominantly for:

(a) **the sale or hire of goods by retail or the retail provision of services (whether or not in a retail shopping centre); or ... (emphasis added).**

20. Clause 3 and Item 14 of the Lease are not determinative of the precise character of the Lease. However, the Respondent’s evidence included that the Premises were used for “... *a furniture restoration business ... restoring the furniture for retail sale through Facebook Marketplace and other online methods*”.¹⁹ That is, the business conducted from the Premises entailed the restoration of furniture, which was then advertised for sale and retailed to the public. The Lease also designated 4 car-parking spaces to the Premises and notice is taken that some of the sales effected by the business would have entailed the attendance of customers purchasing restored furniture.²⁰ On those bases I conclude that the Lease is a “*retail shop lease*”.
21. It is noted that the Lease does not appear to expressly refer to any Territory laws for the purpose of regulating the landlord/tenant relationship, or the property interests inherent in the Lease, or for the determination of the rights of the parties.²¹ Its terms are unhelpful in that regard, although it may be assumed that Territory laws apply.

Legal issues and decision

22. The Respondent essentially contends that his request of 4 September 2024 properly enlivens clause 33.1 of the Lease, and therefore confers exclusive jurisdiction upon the ADC through application of the CANUL Act. Further, that as a consequence, the procedures prescribed by the BTFD Act and jurisdiction of the Local Court cannot be invoked, or are suspended or stayed, until any arbitration has been conducted and determined. The application of ss 5 and 8 of the CANUL Act, and relevance of authorities cited in submissions, are referred to at [11] to [15] above.²²

¹⁸ Noting that “*business lease*” and “*business premises*” are defined to include both a “*retail shop lease*” and the broader more amorphous species, but that the preponderance of provisions of the BTFD Act are specific to any “*retail shop lease*”.

¹⁹ Paragraph [4] of the Respondents Affidavit sworn 1 July 2023 and filed in the Application on 8 October 2024.

²⁰ Item 13 of the Lease comprising annexure PH1 to the Applicants’ Affidavit affirmed 4 September 2024.

²¹ For example, the BTFD Act, *Land Title Act 2000*, *Law of Property Act 2000*, *Local Court Act 2015* and *Supreme Court Act 1979* and associated legislation, or the CANUL Act.

²² The court has not considered any practice or procedural provisions through the CANUL Act or any possibly relevant delegated legislation (such as Order 91 of the Supreme Court Rules) concerning commencement of arbitral proceedings.

23. It is noted that determination of the Application will not prevent the Respondent from pursuing arbitration in relation to the articulated issues he wishes to have determined, or to seek relief of a court in the form of damages should he so choose. However, in order to determine the Application the court would first need to be satisfied that clause 33.1 is either inapplicable or has not been validly invoked. That is particularly so due to the proscription of s 5 and direction of s 8 of the CANUL Act.
24. A threshold question in relation to the Respondent's objection to the Application being heard and determined is whether clause 33.1 of the Lease constitutes an "arbitration agreement" as defined by s 7 of the CANUL Act.²³ Section 7 provides relevantly;

7 Definition and form of arbitration agreement (Model Law Art 7)

(1) An **arbitration agreement** is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) The arbitration agreement must be in writing. (emphasis added)

25. The Applicants contend, amongst other things, that clause 33.1 cannot be read so as to compel them to arbitration in the event of an unresolved dispute. Clause 33.1 provides that "either party has the right to make an arbitration application". Despite the absence of any reference to the CANUL Act, I consider clause 33.1 should be read in light of provisions of that Act. Clause 33.1 purports to confer a "right" on both parties, in that "... either party has the right to make arbitration application to the Australian Commercial Disputes Centre..." in relation to any "... disputes from the implementation of this Agreement or related to this Agreement ...".
26. The concept of "right" is referred to in various clauses of the Lease. For example the "right" of the Applicants "... to re-enter the Premises peacefully ... where the [Respondent] has failed to pay Rent for a period in excess of fourteen (14) days..."²⁴ Although the proper and valid invocation of the CANUL Act is also conditioned on some other matters, I consider clause 33.1 falls within the definition of s 7. Regardless of what the Applicants' understood on 5 February 2023 when they entered the Lease, clause 33.1 is an "arbitration agreement".²⁵ That includes that the ordinary and natural meaning of clause 33.1 is that the parties agree "... to submit to arbitration..." any dispute falling within the terms of clause 33.1. That conclusion is a natural concomitant of the "right" created by clause 33.1 I take that view despite that clause 33.1 does not state that the parties 'agree to participate in' any arbitration, or that any dispute "... is to be

²³ Noting the Applicants' contention that any "dispute" in relation to the Notice to Quit is either not a dispute within clause 33.1 or is a matter solely within the Local Court's jurisdiction. Those contentions each have some force. That includes because valid referral of a 'dispute' where the fact of non-payment of more than a fortnight's rent is accepted could wrough to nought the right conferred by clause 34.2 and provisions of Division 2 of Part 13 of the BTFD Act.

²⁴ Noting that any "right" provided by the Lease may be subject to qualification, restriction or condition through any relevant legislated provision; in this case the CANUL Act and BTFD Act.

²⁵ I also note that the Lease was proposed by the Applicants to the Respondent, and should be read and construed with that in mind.

*settled by arbitration ...*²⁶ (emphasis added). The situation is little different to the willingness (or otherwise) of Defendants to become embroiled in litigation. It is not to the point that the Applicants do not now wish to consent to arbitration.²⁷

27. It is also my conclusion that the grievances raised by the Respondent and advised to the ADC under clause 33.1 satisfy the CANUL Act requirement to be “*commercial*”.²⁸ The note to s 1 of the Act includes “*leasing*” and, despite the size of the subject matter of any dispute here, and the ambiguity of that classification, other aspects of the note point to the condition being satisfied.
28. However, it is also necessary to consider other aspects of the CANUL Act, and provisions of the BTFD Act, in order to properly consider the Respondent’s objection and contended course. A number of matters militate firmly in favour of proceeding to determine the Application.
29. Firstly, reservations exist in relation to the applicability of the CANUL Act, through its terms and due to qualifications found in the BTFD Act, to the dispute brought by the Applicants. Those reservations are prominent when considering s 1C of the CANUL Act. The paramount object of the Act is “... *to facilitate the fair and final resolution of commercial disputes ... without unnecessary delay and expense*”. The focus of the reservations are fixed on clause 33.1 not being raised until after the First Decision, and after both service of the Notice to Quit on 20 August 2024 and expiration of the relevant notice period on 3 September 2024. The Respondent’s conduct might properly be described as dilatory, and will certainly delay resolution of the issues the subject of the Applicants’ Application. Arbitration will also add to the expense entailed in final resolution of the Applicants’ issues.
30. Second, the Respondent’s objection to the Application provokes an issue concerning the nature of the “*dispute*”. The Application is for a warrant of possession and an order that rental arrears be paid. The Respondent does not challenge the compliance of the Notice to Quit with the BTFD Act or that the condition precedent of at least clause 34.2(a) of the Lease is satisfied. The absence of any appeal from the First Decision renders the order of 2 August 2024 in relation to the obligation to pay \$14,300 in rental arrears to be a final determination of right. The Respondent may be taken as having accepted the factual foundations relied upon by the Applicants in bringing their Application. I consider the Respondent seeks to invoke clause 33.1 as an alternative forum in which to ventilate a broad range of issues different to those the subject of the court’s consideration in the Application.²⁹ A disjuncture exists between the issues

²⁶ Which either of ss 1(3)(b) or 7 of the CANUL Act might be said to require.

²⁷ The quite different process of mediation within the scheme of the CANUL Act is apparently conditioned on consent.

²⁸ See s 1C of the CANUL Act in particular.

²⁹ It is also noted that there is no evidence of the Respondent having earlier referred any of his issues of dispute (many of which are said to have prevailed for an extended period of time) under clause 33.1, or resorting to the dispute resolution provisions of Part 11 of the BTFD Act. Although it may be open, I do not make a blanket finding that by the inclusion of Part 11 in the BTFD Act, Parliament intended to exclude the operation of the CANUL Act from any *retail shop lease* in the Territory, such that s 1(5) of the CANUL Act applies.

at bar and the issues which the Respondent seeks remedy of, being “... breaches of the lease, associated loss of amenity and particularly breach of quiet enjoyment”³⁰.

31. The issues which the Respondent seeks to arbitrate are fundamentally different to those which the Application poses. The Respondent’s submission that his application to the ADC is “... for arbitration of the dispute arising from the notice to quit” is not accepted.³¹
32. Thirdly, on one reading, the issues brought by the Application are not matters to which clause 33.1 apply. Certainly the phrase “... related to this Agreement ...” is of wide import. However, the course of ‘referral to arbitration’ mandated by s 8 of the CANUL Act is qualified by the court not finding the arbitration agreement to be “... null and void, inoperative or incapable of being performed”. In the subject Application the compliance of the Notice to Quit is not in issue. Nor is the final determination of the First Decision. Noting that the obligation to pay rent may not be a fundamental or essential term of the Lease, it is nonetheless a clear and quantified obligation which is not readily modified, with serious failure to comply producing a right in the Applicants to terminate.³² Despite the absence of reference to any legislated provisions in the Lease, I consider that the clear intent of clauses 5 and 34 of the Lease is to create a “right” to re-enter the Premises. That, together with the chronology and divergence in nature of the disputes between the Applicants and the Respondent, and the fact of the First Decision, result in clause 33.1 being at the least “inoperative” in relation to the issues the subject of the Application.³³
33. That conclusion is supported by s 9 of the BTFD Act concerning any “retail shop lease”, which provides;

9 Act overrides retail shop leases

- (1) This Act operates despite the provisions of a retail shop lease.
- (2) A provision of a retail shop lease is void to the extent that the provision is inconsistent with a provision of this Act.
- (3) A provision of an agreement or arrangement between the parties to a retail shop lease is void to the extent that the provision would be void if it were in the lease.

34. Part 13 of the BTFD Act, and particularly s 131, prescribe a procedure for the repossession of premises, including the employment of a Notice to Quit.³⁴ That procedure is conditioned on

³⁰ Affidavit of Eric Withnall sworn 8 October 2024.

³¹ Paragraph [3] of the Respondent’s written submissions filed 11 October 2024.

³² Through clause 34.2(a) of the Lease, when read in conjunction with clause 5. *Shevill v Builders Licensing Board* [1982] HCA 47 discusses the remedies at common law.

³³ That is, by at least 3 September 2024, on the expiration of the notice period provided by the Notice to Quit. It may be that, due to the matters referred to and the scheme of the BTFD Act, s 1(5) of the CANUL Act operates to support this conclusion.

³⁴ In *TTG Nominees Pty Ltd v Aileron Pastoral Holdings Pty Ltd* [2020] NTSC 4 at [42] his Honour Justice Mildren concluded that the BTFD Act was not a code and observed that a range of courses were open for the termination of a business lease. Those matters do not negate the requirement of s 124 of the BTFD Act that a Lessor cannot enter any “business premises” in the possession of a lessee or former lessee, and regardless of

sections 125, 127 and 130 being complied with. Once a valid Notice to Quit is served, subject to satisfaction of s 124 by the exercise of Local Court oversight and jurisdiction, the die is cast. I consider that, notwithstanding ss 5 and 8 of the CANUL Act, the operation of clause 33.1 is “*inconsistent with a provision of ...*” the BTFD Act from at least the point in time that a valid Notice to Quit has been served. In my conclusion clause 33.1, being a “*provision of a retail shop lease*”, must be treated as void from at least that point in time.³⁵

whether the lease has been terminated or the lessee is “*holding over*”, without first obtaining a Court order to do so. Criminal penalties apply to any breach.

³⁵ That conclusion is reached without considering the extent to which Part 11 of the BTFD Act might otherwise displace the operation and effect of clause 33.1. The conclusion is not that the entirety of clause 33.1 is void, does not oust the jurisdiction conferred by the CANUL Act, and applies to clause 33.1 in the context of the conduct, chronology and rights conferred by the Lease as a whole.