

CITATION.: Green v. Patel, 2025 ONSC 6867
COURT FILE NO.: DC-25-0125
DATE: 2025-12-09

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

BETWEEN:)	
)	
GREEN, Barbara)	
)	Self-Represented
Appellant)	
)	
- and -)	
)	
PATEL, Javinka)	
)	Self-Represented
Respondent)	
)	
)	
)	HEARD: December 4, 2025
)	

2025 ONSC 6867 (CanLII)

ENDORSEMENT

[1] The Appellant moves for an order extending the time to appeal and to bring her Application for Judicial Review, and for a stay of enforcement of the LTB's eviction order. The Appellant seeks to appeal from LTB decisions of 2 October 2025.

[2] The Respondent moves for a dismissal of the Motion/Appeal/JR on the basis that they are frivolous, vexatious, and an abuse of process.

[3] Both parties are self represented. The Tenant's materials are particularly difficult to read. Accordingly, for the purposes of this motion, I have read them broadly and generously, treating any statement of fact as if it were given under oath or affirmation in a proper Affidavit.

THE DECISIONS OF THE LTB

[4] The Appellant appeals from and seeks JR of the 2 October 2025 review decision of the Landlord and Tenant Board lifting the stay of execution of the LTB's eviction order. That order is the culmination of a number of other orders that preceded it:

- a) LTB-L-020230-25 issued 6 June 2025 - On the Landlord's Application to terminate the tenancy and evict the tenant for failure to pay rent, the LTB ordered that the tenant to pay arrears of \$13,436.00 at \$650 on the 15th of every month, and to pay regular rent of \$2,650.00 on the first of every month. If the tenant failed to make any payment, the Landlord was permitted to apply, without notice, to end the tenancy and evict the tenant. That this order was made on consent.
- b) LTB-L-054448-25 issued 10 July 2025 – The Tenant paid one installment against arrears as ordered but bailed to make the 1 July regular rent payment. The Landlord brought its ex parte motion. The LTB cancelled the consent payment order, terminated the tenancy, and ordered the Tenant evicted as of 21 July 2025 if payments of all arrears were not made by that date. The LTB calculated the arrears to that date at \$12,786.00.
- c) LTB-L-054448-25-SA issued 28 August 2025 – The Tenant brought a Motion, heard on 18 August, to set aside the ex parte order terminating the tenancy and ordering payment of arrears of \$12,786.00. The

Tenant did not appear at the hearing although properly served with the Notice of Hearing. She did not request to adjourn the hearing. The member held that the Tenant had abandoned her motion.

- d) LTB-L-054448-25-SA-RV issued 2 October 2025 (the order appealed from and which the Appellant Tenant seeks to have reviewed) – On 3 September 2025, the Tenant sought review of the 28 August 2025 order and asked that the 28 August order be stayed pending the review. LTB-054448-24-SA-RV-IN was issued staying the order pending the review. The review itself was heard by videoconference on 18 September. The Tenant declined the opportunity to speak to duty counsel. The Tenant argued that she never received notice of the 18 August hearing date. The LTB rejected this submission for two reasons. First, the LTB’s records showed that the tenant accessed the file through the Tribunals Ontario Portal on 3 July (and hence knew how) and second, in July she agreed to receive further correspondence from LTB through email. The Tenant confirmed that her email was that which she registered with the Board. The LTB’s records indicated that she was sent email on 17 July 2025 @ 10:59 advising her of the hearing. The tenant stated that she only checked her email once a month. The LTB held that the Tenant “...*made the active and conscious decision to receive communications from the Board, such as the Notice of Hearing, by email*” and the Board’s email was sent (a fact that the Tenant had denied). Aside from saying that she did not receive the email, the Tenant could not explain why her email account would not or could not accept the notice from the LTB, as she claimed. The member found that the Tenant was served and did not appear because of her habit of only sporadically checking her email. The review was denied, and the stay was lifted.

MOTION TO EXTEND TIME

[5] Since the Appellant did not file the Notice of Appeal or the Application for Judicial Review within 30 days, I deal first with the Appellant's Motion to Extend Time to Appeal or bring her Application for JR.

The Law

[6] A court may extend the time to appeal prescribed by r. 61.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, or to bring an Application for Judicial Review per s. 5(2) of the *Judicial Powers Procedure Act*, where it is in the interests of justice to do so based on such considerations as: (i) an intention to appeal within the appeal period; (ii) the length of the delay in appealing and whether that delay is persuasively explained; (iii) the degree of prejudice to the responding party; and (iv) the merits of the proposed appeal: *Enbridge Gas Distribution Inc. v. Froese*, 2013 ONCA 131, 114 O.R. (3d) 636, at para. 15; *Liu v. Chan*, 2024 ONCA 699, at para. 16; *Home Trust Company v. Pitters*, 2025 ONCA 818, para 2.

[7] These factors are not hurdles, each of which must be cleared for the Appellant to succeed; rather, they are to be weighed in their totality. The essential question is whether the justice of the case requires time to be extended.

Analysis

(i) *An Intention to Appeal or Seek Judicial Review within 30 Days;*

[8] I have no doubt that the tenants always had the intention to appeal or to seek JR.

(ii) Length of the Delay in Appealing or Commencing a JR Application, and Whether that Delay is Persuasively Explained;

[9] The appellant has not offered any explanation for her failure to bring her Application for Judicial Review or to file her Notice of Appeal within time. The delay, however, is quite short.

(iii) Degree of Prejudice to the Respondent;

[10] There is clear prejudice to the Respondent. But for one payment on account of arrears of \$650 in July 2025, the Tenant has paid no rent since February 2025, and arrears are approximately \$25,386.00.¹

(iv) Merits of the Proposed Appeal or JR

[11] The merits of the Appeal or JR, and hence the likelihood of success, are poor.

¹ Arrears of \$12,786 as of 1 July 1 plus \$13,250 being rent to 30 November (5 months x \$2,650) – 650).

[12] The decision appealed from or from which JR is taken is the 2 October 2025 Review decision of the LTB.

[13] A review by the LTB is a review of the procedural fairness of the decision reviewed, not a review of the substantive issues addressed in the original decision as would be an appeal. The member deciding the review merely held that the member making the decision reviewed followed policies and procedures set down by the board.

[14] The merits of the Appeal are also poor.

[15] The operative parts of the Notice of Appeal the Tenant filed in support of her Motion to Extend Time to Appeal are as follows:

THE APPELLANT ASKS that the judgment be set aside and the judgment granted as follows: (or that judgment be varied as follows or as may be): there is a request for the notice to vacate to be set aside and for a new payment plan to be put in place based on the financial ability to pay.

THE GROUNDS OF APPEAL are as follows: the order dated for 10/2/2025 is being questioned on the basis of section 210 of the RTA (2006).

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS: there was a question of appropriate use of the *Residential Tenancies Act (2006)* in the original review hearing at the Landlord Tenant Board. There is also a question of procedural fairness based on the decision of Ian Speers during the original virtual review hearing held on September 18th, 2025. There is a question of bias based on Speers behavior at the hearing.

[16] I address each ground.

Bias

[17] The Tenant raises the issue of bias of member Ian Speers at the “original review hearing” on 18 September 2025.

[18] This ground of appeal will not likely succeed for several reasons.

1. First, the 18 September 2025 hearing is not under appeal nor is it the subject of any request for JR – only the 2 October 2025 decision rendered by Member Alexandre Traboulsi. Indeed there does not appear to be a decision by any member named Speers.
2. Issues of an adjudicator’s bias must be addressed first to the adjudicator who must rule on the allegation concerning his own bias (see: *R. v. S. (R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484). The issues of Member Speer’s bias ought to have been his attention by way of a motion for him to recuse himself.
3. Allegations of bias or a reasonable apprehension of bias should be advanced as soon as it is reasonably possible to do so (see: *R. v. Curragh Inc.*, 1997 CanLII 381 (SCC), [1997] 1 S.C.R. 537 (S.C.C.), at para. 11. The issue of bias was first raised in the Notice of Appeal. No Review was sought of Member Speers’ alleged decision. It was not raised on the Review from which an appeal and JR is sought. Appeals are not the proper forum in which to raise brand new issues which significantly expand or alter the landscape of the litigation. On occasion, such issues can be raised on appeal where the party seeking to raise the new issue demonstrates that the interests of justice require an exception to the normal and accepted course of litigation (see: in *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19 at para. 27).
4. The bias issue is likely to fail because it is a bald allegation not supported by any evidence on the Motion.

Section 210 of the Residential Tenancies Act (2006)

[19] This appears as a bald allegation in the Notice of Appeal. It also appears to be irrelevant. Section 210 applies to appeals to Divisional Court from decisions of the LTB, the LTB's right to receive notice of any Appeal taken from its orders, and its right to be represented by counsel at the appeal.

Inappropriate use of the Residential Tenancies Act (2006) in the Original Review Hearing

[20] This ground of Appeal is also a bald allegation, unsupported by any facts in the supporting motion material. It also appears to relate to the alleged 8 September 2025 decision of Member Speers, a decision which is not in the materials filed, and which is not part of the proposed Appeal or Review.

The Justice of the Case

[21] The justice of the case requires that I not extend the Tenants' time to file their Notice of Appeal or commence their Application for Judicial Review. As I set out below, I find that they are abusing the appeal process to maintain the stay of execution, while paying no rent. Further, there is significant prejudice to the Respondents who continue to carry expenses for the unit the tenants occupy and other expenses for the building.

ABUSE OF PROCESS

[22] The Respondent moves to quash the appeal on the basis that it is vexatious and an abuse of process.

[23] Even though the appeal may have arguable merit, and even if I had granted the Tenant leave to bring her Appeal and Application for Judicial Review, I still would have dismissed the appeal as an abuse of process.

[24] On the record before me, I find that the proposed Appeal and Application for JR is an abuse of process. The Tenant has persistently not paid rent and has used the Court and the LTB system to obtain stays of execution so that she and her family can live rent free.

[25] In *Haye v. Siddiqui*, 2024 ONSC 6214, para. 30 et seq., Doi, J., held that a stay pending appeal from an eviction order of the LTB is an important protection for tenants as it allows them to bring their appeals while preserving their tenancies. The stay also preserves the court's ability to do justice to both sides at the conclusion of an appeal. It is not meant to give tenants rent free accommodations, however, while the appeal progresses (see: *Jayaraj v. Metcap Living Management Inc.*, 2021 ONSC 503 at para 23).

[26] A key indicator that a tenant is trying to game the system is when a tenant does not pay rent for a lengthy period without reasonable explanation or an intention to remedy the situation (see: *Wilkinson* at para 34; *Oladunjoye v. Jonker*, 2021 ONSC 1199 (Div Ct) at para 27; *Mubarak v. Toronto Community Housing Corporation*, 2022 ONSC 382 (Div Ct) at para 25; *Martel v. Purdy*, 2023 ONSC 1806 (Div Ct) at para 13).

[27] In a landlord and tenant case, the court may quash an appeal as an abuse of process where the appeal is being used as a stratagem to delay eviction (see: *Singh v Balogun*, 2018 ONSC 7506 (Div Ct) at para 27; *Wilkinson* at para 33; *Martel* at para 11).

[28] In this case, the tenants persistently have not paid rent for almost a year and a half since the first LTB decision, and their total arrears are \$25,386.00. There is no evidence that the tenants paid rent or made any payments on account of arrears of rent.

[29] Indeed, they have paid rent only twice since June 2025, both times under compunction. They paid \$650 on account of arrears per the LTB order, and they paid December's rent pursuant to my order. They promise in their Motion that they will pay rent regularly if they are granted an extension to file their Notice of Appeal and Application for JR. This promise rings hollow in all the circumstances. They promised to make payments that became the consent order of the LTB and did not. They promised to leave the premises by 31 October 2025 and did not. While making and not keeping these promises, the Tenants have pursued all challenges and reviews at the LTB and in the Divisional Court, as they had a right to do. In doing so, the Tenants have managed to keep the stay of eviction in place while they pursued their avenues of recourse.

[30] The Tenants in this case meet the very definition of tenants who are “gaming the system.”

Result

[31] The tenants’ motion to extend time to file their Notice of Appeal and to bring their Application for Judicial Review is dismissed. The Stay of Execution of the LTB’s eviction order is lifted. The Sherriff, however, may not evict the tenants earlier than noon on 31 December 2025.

COSTS

[32] I will determine who pays whom costs, and in what amount, based on written submissions not to exceed 2 double-spaced, type-written pages, excluding Bills of Costs and offers. The Landlords are successful on their motion and Ms. Green not. The Landlords are presumed entitled to their costs. The Landlord’s costs submissions re to be served and filed by 4 pm, 30 January 2026 and Ms. Green’s by 4 pm, 27 February 2026.

Trimble, J.

Released: December 9, 2025

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