

CITATION Nieman v. 15272122 Canada Inc., 2026 ONSC 2725
DIVISIONAL COURT FILE NO.: DC-26-3136
DATE: 2026/05/11

[2] In the alternative, the respondent seeks an order that the appellants shall pay all rent arrears owing from February 1, 2026 to the date of this order based on a monthly rent of \$715 per month and that the appellant shall thereafter pay ongoing rent for the premises.

[3] The respondent also seeks an order pursuant to Rule 61.13 to dismiss the appeal for delay.

Factual Background

[4] The factual history of this matter is summarized in the LTB decision dated January 9, 2026. The issues relate to significant arrears of rent with the previous owner, ongoing arrears of rent with the respondent and significant damage to the premises from an excessive number of cats in the premises. The eviction was ordered based on the Appellants' failure to remedy an N5 notice – Substantial interference & Willful or Negligent Damage - along with an N8 notice for persistent late payment of rent. The substantial interference claim relates to the condition of the unit as a result of what was reported at the time to be over 150 cats being found within the unit and photographs of the unit that it was in a severely unsanitary condition with overwhelming odor and visible contamination. The evidence at the hearing was that other occupants complained of odors migrating into their units. The landlord provided evidence from two witnesses that the repair of the damages would be between \$50,000 and \$63,000 based only for labour and materials and excluding architectural, engineering or permit fees. The LTB ordered that the Appellants pay damages of \$50,000.

[5] The appellants filed a Notice of Appeal of the LTB's decision and set out the following ground of appeal:

The LTB misapplied the law on landlord's entry, failed to consider relevant evidence, accepted unlawfully obtained evidence and denied procedural fairness.

[6] Except for the vague reference to misapplying the law on landlord's entry, which is void of any specifics as to how the LTB misapplied the law, the other grounds of appeal are effectively nonexistent. It is not a ground of appeal to say that a decision maker failed to consider relevant evidence without listing the relevant evidence that was not considered. It is not a ground of appeal to say that a decision maker accepted unlawfully obtained evidence without setting out what was the evidence in question that was obtained problematically. Finally, it is not a ground of appeal to claim a denial of procedural fairness without setting out any specific instances of a denial of procedural fairness.

[7] The Notice of Appeal is devoid of any specifics which would allow the opposing party to respond to it.

[8] Had the appellants taken the necessary steps to perfect their appeal, they may have been able to address the deficiencies in the Notice of Appeal to identify the questions of law being challenged. However, other than filing a notice of appeal, and allegedly ordering the audio portion of the hearing, the respondents have done nothing to advance this appeal, and they have not paid any rent since prior to the filing of the notice of appeal and possibly prior to the LTB hearing. As previously stated, the respondent is unable to respond to an appeal which does not contain any specifics as to the grounds of appeal and only includes boilerplate language with no detail.

[9] This Notice of Motion was filed over a month ago and the appellants have had ample notice of the relief being requested by the respondent. On the day before the hearing of this motion, the appellants filed an affidavit, jointly signed by them, which sets out the following:

1. They are currently caring for 76 cats. Although not clearly specified I can only assume that those 76 cats are all located inside the residential premises.
2. The appellants say that they are working with animal welfare services and rescue contacts in Toronto to have the cats spayed, neutered, vaccinated and rehomed. No evidence is provided to corroborate this allegation that they are working with anyone to rectify this situation. No timeline is provided by when and what steps will be taken.
3. The appellants state that it is not physically possible to relocate 76 animals safely. However, they created this situation. They have been on notice as a result of the detailed order made by the LTB that allowed them until January 31, 2026 to rectify the situation. It can be assumed that any person would know that having that number of animals in residential premises is problematic because the appellants have not presented any evidence to the contrary. It is now approaching the end of April 2026, and the appellants are unable to give any details as to when this situation will be rectified.
4. The respondents have indicated that they simply cannot pay the rent. One appellant earns minimum wage and cannot afford lump sum payment or the payment of arrears. Their financial situation is caused at least in part by their caregiving responsibilities to the 76 cats. They provide no timetable as to when they will begin to pay rent because they simply say that they cannot afford it. They seek to live rent-free pending a solution with the cats.

5. The respondents are unable to proceed with perfecting the appeal because they cannot pay for the transcripts of the hearing. They intend to order the transcript as soon as they can afford it, but they provide no timeline as to when this will be done. They request additional time to perfect the appeal without setting out what that time may be. They are seeking an indefinite delay to perfecting the appeal.
6. The appellants claim that the respondent overstates the financial prejudice due to the rent not being paid because other units in the building are also vacant. They challenge the landlord for not providing financial statements or evidence of actual losses. At the same time the appellants have not provided evidence to corroborate any of the information that they have included in the affidavit despite being on notice for over a month that this motion was going to be heard.

Applicable Law

[10] Section 134(3) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 grants the court the discretion to quash an appeal that is manifestly devoid of merit: *Schmidt v. Toronto Dominion Bank* 1995 CanLII 3502 (ON CA), 24 O.R. (3d) 1 (C.A.), at para. 6. In *Schmidt*, the Court of Appeal held that this power is to be exercised sparingly because it "is very difficult, in most cases, to reach the conclusion that an appeal is devoid of merit without hearing the entire appeal": *Zhou v. Rama* 2021 ONSC 4659 at para. 17.

[11] It is well established that a tenant has a right of appeal to the Divisional Court, but solely on a question of law. In this case, the Notice of Appeal is devoid of merit. There is no substance to the very general allegations made in the Notice of Appeal against the LTB decision. There is no suggestion that the Board did not apply the correct legal test except as a bald assertion.

[12] A landlord may bring a motion to quash because the appeal raises no question of law, and an appeal lies to the Divisional Court only on a question of law under s. 210(1) of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17. Alternatively, the landlord may bring a motion to quash on the basis that the appeal is devoid of merit (see for example *Shields v. Lancelotte*, 2016 ONSC 4422 (Div. Ct.)). In either case, as consequence of granting such a motion to quash, the stay of proceedings is lifted to allow for the enforcement of the underlying decision of the LTB.

[13] An appeal may also be quashed where it constitutes an abuse of process. An abuse of process arises where a litigant commences an appeal from an order of the LTB solely to obtain the benefit of an automatic stay of an eviction order, thereby using the court process to delay

enforcement and improperly avoid ongoing rental obligations: see *Hasan v. Taylor*, 2017 ONSC 102.

Analysis

[14] In the present case there is no doubt that the appeal as set out in the Notice of Appeal has no merit. There are no substantive grounds for appeal and the Notice of Appeal as currently drafted cannot be responded to. It does not raise a valid question of law.

[15] Also, the appeal before this court is an abuse of process because the only available inference is that the appeal was made in order for the tenants to try to buy time to rectify the problem that they created with the excessive number of cats that are found within the residential premises. They are trying to buy time in order to potentially reduce the number of cats but even that is unclear. There is no firm commitment from the appellants as to what they will do or how they will reduce the number of cats. There is no evidence in their affidavit as to how they can afford to have cats neutered or spayed or take care of their health problems. Their evidence seeks an unlimited amount of time during which they simply state that they cannot pay rent, and they cannot perfect the appeal.

[16] They simply state that they will do these things when they can afford to do it. This is unacceptable.

[17] This is not a case where the court can make an order requiring compliance with a timetable because the appellants are stating that they cannot perfect the appeal. The court cannot order them to pay rent and the arrears since filing the notice of appeal because they cannot pay rent. Additional time will do nothing.

[18] The appeal must be quashed because it has no merit and because to allow it to proceed will amount to an abuse of process.

[19] Under rule 63.01(5) of the Rules, a judge of the court to which an appeal is taken may order on such terms as or just that the stay provided by rule 63.01(3) does not apply.

[20] For the reasons set out herein, I order that the appeal is quashed, the stay shall be lifted and that the local sheriff is directed to enforce the LTB order within 30 days.

[21] I also dispense with the appellants' approval as to the form and content of the order.

Costs

[22] The respondent may provide written submissions on costs within 30 days, and the appellants will have 30 days to respond. All costs submissions will be a maximum of 3 pages, plus attachments.

Justice M. Labrosse

Released: May 11, 2026

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ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

BETWEEN:

ADAM NEIMAN and SARAH KLIMTSCHUCK

Appellants

– and –

15272122 CANADA INC.

Respondent

REASONS FOR JUDGMENT

Justice M. Labrosse

Released: May 11, 2026