

CITATION: Pakzad v. Pham, 2026 ONSC 2450
DIVISIONAL COURT FILE NO.: 720/25
DATE: 20260424

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

D.L. Corbett, McKelvey and Schreck JJ.

B E T W E E N :	)	
	)	
Mustafa Pakzad	)	<i>Mr Pakzad</i> , self-represented
	)	
Appellant / Moving Party	)	
	)	
- and -	)	
	)	
Yen Pham	)	<i>Yen Pham and Vinh Pham</i> , self-
	)	represented ¹
Respondent / Responding Party	)	
	)	HEARD by ZOOM: April 22, 2026

ENDORSEMENT

The Court:

[1] The Moving Party, Mr Pakzad, moves pursuant to s. 21(5) of the *Courts of Justice Act*, RSO 1990, c. C.43, to review orders of O'Brien J. imposing terms to maintain a stay of an eviction order pending appeal and lifting the stay when those terms were not followed.

[2] After hearing Mr Pakzad's submissions, we dismissed this review motion without calling on the Responding Party and advised that we would provide our reasons in due course, which we now do.

History of the Case

¹ Mr Pakzad raised issues with late delivery of responding materials and with the identity of persons appearing for and speaking for the landlord on this motion. We deferred dealing with the latter point until after hearing Mr Pakzad's submissions and concluded that we did not need to address it because we did not need to hear responding submissions. On the former point, we did not rely on the respondent's materials in reaching our conclusion that this motion should be dismissed.

[3] By decision dated August 13, 2025 (2025 ONLTB 61586), the Landlord and Tenant Board (“LTB”) found that Mr Pakzad was never a tenant of the landlord, was an “Unauthorized Occupant” of the landlord’s premises, fixed compensation to be paid by Mr Pakzad of \$5,775.84 for use of the premises from March 16, 2025 to August 6, 2025, plus \$40.11 per day thereafter, granted possession of the rental unit to the landlord, and delayed enforcement of its eviction order until after August 31, 2025.

[4] Mr Pakzad appealed to this court and obtained a statutory stay of the LTB eviction order.

[5] Matheson J. triaged this case and by email dated September 24, 2025, directed a case conference to be held October 7, 2025, to provide scheduling directions, and advised the parties:

At the case management conference, the court may make orders respecting payment with respect to compensation for use of the unit as a condition of continuing the stay pending appeal in this Court.

[6] Following the case conference, by email sent October 8, 2025, O’Brien J. directed as follows (among other things):

As a condition of the stay pending appeal, Mr Pakzad shall pay:

1. Compensation of \$1220 for October 2025 on or before October 10, 2025.
2. Compensation of \$1220 on the first of every month starting November 1, 2025.
3. \$5,000 towards arrears of compensation on October 15, 2025.
4. \$3,001.14 on November 12, 2025 for the remaining arrears owing.

All of the above payments shall be made by etransfer....

If Mr Pakzad fails to make any of the above payments on the date specified, the respondents may file a notice of motion and affidavit with the court, together with a copy of these directions, asking that the stay be lifted. Mr Pakzad shall have 7 days to file any responding materials. The court will then consider whether it can determine the matter on an expedited basis in writing.

[7] Mr Pakzad made the first required payment (\$1,220) by October 10, 2025, but did not pay the required \$5,000 towards arrears on October 15, 2025, or any payments thereafter. The landlord then delivered materials asking O’Brien J. to lift the stay pending appeal.

[8] On October 29, 2025, O’Brien J. directed as follows:

Following the summary process set out in my directions dated October 7, 2025, the landlord/respondent has filed a motion seeking a lifting of the stay of eviction pending appeal. In the directions, I ordered interim terms requiring the appellant to make

payments by certain dates as a condition of the ongoing stay pending appeal. The appellant was required to pay \$1220 on or before October 10, 2025 and on the first day of each month beginning November 1, 2025. He was also required to pay \$5,000 towards arrears on October 15, 2025 and \$3,001.14 on November 12, 2025.

The directions stated that if the appellant did not make any of the payments on the dates indicated, the respondent could file a notice of motion and affidavit asking that the stay be lifted.

The landlord has now filed a notice of motion and an affidavit stating that the appellant did not make the \$5,000 payment on October 15, 2025. The affidavit is dated October 16, 2025.

The appellant has had more than seven days to file responding material and has failed to do so. I therefore accept the respondent's evidence as accurate.

Given that the appellant has not complied with the conditions of the ongoing stay, the stay is lifted.

[9] Mr Pakzad then brought a motion seeking to vary or set aside the order of O'Brien J. and seeking a stay of her orders pending this new motion.

[10] By direction of D.L. Corbett J.² emailed November 10, 2026, the court directed as follows (among other things):

The tenant moves to reinstate a stay lifted by order of O'Brien J., made as a single judge of the Divisional Court. One basis of the motion appears to be that the landlord is represented by a litigation guardian who lacks legal authority because of defects in delegations of authority granted under the *Substitute Decisions Act*. This argument would not change the findings below that the Moving Party is in serious arrears of rent. The appellant's proposed interim payments – while they may be at the limit of the appellant's means – do not meet the payment terms ordered by O'Brien J. and do not provide alternative proposals for meaningful payments on account of arrears – they appear to be, on their face, insufficient.

In any event, the appellant may not move before another single judge of the Divisional Court to overturn the order of O'Brien J. Rather, the appellant would have to bring a motion to review the order of O'Brien J. before a panel of three judges of the Divisional Court pursuant to s. 25(1) (*sic*) of the *Courts of Justice Act*. This court would not likely grant a stay pending such a review motion without compliance with the payment terms

² It is normal, though not invariable practice in Divisional Court for a judge case managing a s. 21(5) motion to also sit on the panel hearing the review motion.

directed by O'Brien J. or alternative terms that address both ongoing rent and arrears. That said, if the tenant brings a review motion and brings a motion for a stay pending the review motion, this court will consider interim terms on the basis of the materials filed.

.... The interim terms proposed by the appellant do not appear to be reasonable: the appellant's means may figure in the analysis, but payment of the rent, in full, and meaningful payments towards arrears would ordinarily be minimum requirements for continuation of the statutory stay.

....

O'Brien J.'s order remains in effect unless and until the court orders otherwise. If the appellant is evicted prior to a review motion or the underlying appeal, they may still pursue those proceedings if they wish to do so.

[11] Mr Pakzad then delivered motion materials to review the order of O'Brien J. and again requested a stay pending the review motion. By direction dated December 9, 2025, D.L. Corbett J. directed as follows:

The court has now reviewed the appellant's motion to review the decisions of O'Brien J. before a panel of three judges of the Divisional Court pursuant to *CJA*, s. 21(5). The appellant raises four issues on the motion:

1. The LTB proceedings were "void ab initio" because of an ineffective power of attorney;
2. The LTB decision was unreasonable;
3. The appellant would suffer irreparable harm if the stay was lifted; and
4. The orders of O'Brien J. were procedurally unfair because they imposed "impossible" payment terms on the appellant.

This court is striking out the first two grounds of review pursuant to r. 2.1 of the Rules of Civil Procedure, without prejudice to any argument the appellant wishes to make about how an assessment of the merits of the appeal should weigh in the balance of imposing payment terms for continuing a stay ending appeal. The balance of the motion may proceed to a panel.

Explanation

The appellant's first two issues raised on the review motion are not issues that were before O'Brien J., but rather are issues to be addressed at the hearing of the appeal itself. The issue before O'Brien J. was to consider what payment terms ought to be

ordered pending the hearing of the appeal in order to balance the interests of the parties appropriately in light of the test that applies for a stay pending appeal. Further and in any event, even if an appeal panel found merit in the appellant's arguments in respect to issues 1 and 2, this would be no basis on which the appellant would be permitted to remain in the leased premises without paying the full amount of the rent as it fell due, whether as "rent" (if the appellant is a tenant) or whether as "occupancy charges" (if the appellant is a continuing occupant who is not a legal tenant). The responding parties should not be put to the time and expense of responding to these arguments on the review motion when it is patently clear that they are not material to the motion.

It is not clear that the appellant is raising an arguable basis to interfere with the order of O'Brien J. in respect of grounds 3 and 4. The jurisprudence is equivocal on whether loss of a tenancy is "irreparable harm" within the meaning of the test for a stay, but it is certainly arguable that it is. However, the impact of lifting the stay (eviction) was clearly apparent during the proceedings before O'Brien J. The fourth ground implies that where a tenant is unable to pay rent and arrears, they should be permitted to stay in leased premises. An inability to pay is an indication of a failed and unrecoverable tenancy: landlords are not required to subsidize their tenants. The appellant argues that the landlord's interest may be addressed by an award of damages (or, presumably, an order for payment of arrears) at the end of the appeal process but does not address the lack of security for such an order. That is the core issue on these motions, presented starkly on the facts of this case: the appellant is on public assistance and does not have the means to pay the rent or the arrears on a long-term basis. However, in my view these issues should be addressed by a panel on a review motion, after full argument.

....

Any objection the appellant may have with this court's decision to strike out the first two grounds of the review motion may be raised with the panel hearing the review motion.

Analysis

[12] Considerable deference is owed on a review motion pursuant to s. 21(5) of the *CJA* to a case management judge's exercise of discretion:

On a review motion pursuant to s. 21(5) of the *Courts of Justice Act*, the panel will not intervene to vary or set aside the order of a single judge absent an error of law or a palpable and overriding error of fact (*Marsden v. Ontario (Chief Coroner)*, 2012 ONSC 6118; *Ontario Federation of Anglers and Hunters v. Ontario (Natural Resources and Forestry)*, 2017 ONSC 518 (Div. Ct.), para. 7). Where the motion judge exercises discretion, a review panel will not interfere unless the moving party demonstrates that the decision is so clearly wrong that it amounts to an injustice or the motion judge gave no or insufficient weight to relevant considerations

(*Franchetti v. Huggins*, 2022 ONCA 111, para. 5). [*Rosen v. Reed*, 2024 ONSC, para. 6; *Galaxy Real Estate v. Kirpichova*, 2023 ONSC 593]

[13] A review motion is not a “second kick at the can” before a panel of three judges. As noted in *Galaxy Real Estate v. Kirpichova*, 2023 ONSC 593, para. 15:

During oral argument, the tenant argued that the terms ordered by O’Brien J. are too onerous and we should order less onerous terms, such as a monthly payment of \$1,800 pending appeal. It is not our task to conduct a *de novo* hearing on appropriate terms for maintaining the stay pending appeal. As stated by Sachs J. in a different context:

We are being asked to set aside a discretionary decision of a single Divisional Court judge. We owe that decision considerable deference and it is important that we do not encourage the use of s. 21(5) of the *Courts of Justice Act*, as an opportunity to get a “second kick at the can” in front of three, as opposed to one, Divisional Court judge. The strain on the already limited resources of our court that this causes is obvious. (*Kastner v. Health Professions Appeal and Review Board*, 2022 ONSC 5553, para. 54.

[14] Mr Pakzad has not identified any reviewable error in the impugned decisions of O’Brien J. Tenants are required to continue to pay rent pending appeal, and where there are material arrears, to make meaningful payment towards arrears. The same principle applies to an unauthorized occupant who remains in possession of a rental unit pending appeal: compensation in lieu of rent must be paid on an ongoing basis and on account of arrears to preserve the stay of eviction pending appeal.

[15] On this motion, Mr Pakzad has not challenged these principles. Rather, he argues that the entire proceedings are “void ab initio” because of a defect in a Power of Attorney. He should not be subject to any order of the LTB as a consequence, and he argues that O’Brien J. erred in failing to establish that there was a properly constituted LTB proceeding. Mr Pakzad also argues that the terms imposed – requiring almost immediate payment of more than \$8,000 in arrears – were unduly onerous and unfair, particularly given that his immediate dire financial circumstances have arisen through no fault of his own.

[16] We would not give effect to these arguments. On the merits, Mr Pakzad’s argument is, at best, an argument related to the merits of the appeal. If the case management judge had considered that this argument had substantial merit, she could have ordered that payments be made into court. She did not exercise her discretion to make that order, and she made no error in doing that. First, it is not clear to us that this argument was ever raised before the LTB, and so it may not even be available to Mr Pakzad on appeal. If it was raised before the LTB, then the LTB found, as a fact, that the landlord was properly before the LTB. That is a finding of fact that may not be appealed: *Residential Tenancies Act*, s. 210. Third, if the argument is available on the appeal, we are not persuaded that it is likely that it would lead to the court undoing the proceedings before the LTB unless the court was satisfied that the problem with the Power of Attorney (if there is one) is not a problem that could be cured. Put another way, it appears that, at most, there may have been a

defect in paperwork that is readily curable *nunc pro tunc*. Finally, even if it turned out that there is a fatal problem with the Power of Attorney, Mr Pakzad is still not entitled to occupy the landlord's rental unit without paying for that occupation. On his own evidence, he cannot afford to do that: his current monthly income is less than the monthly rent, and he is unable to pay any of the arrears.

[17] On the payment terms, Mr Pakzad's argument would have had more force if he had made a reasonable payment proposal to the case management judge. He had been living in the unit without paying anything since March 2025 – prior to that he had been paying rent to the “real tenant” – but he had stopped and not paid anything since March. The process of establishing interim payment terms is not reiterative. The case management judge exercises discretion based on the information provided during case management. Following the case management judge's decision, Mr Pakzad proposed alternative payment terms during case management of the s. 21(5) motion that were not reasonable, and then again before us he proposed terms that were less onerous than those imposed by O'Brien J. This court does not revisit these issues repeatedly: the time to make proposals for payment terms is at the case management conference at which the issue is addressed by the case management judge, following which the issue is decided: the decision of the case management judge is not the start of further negotiation of payment terms.

[18] Mr Pakzad told us that he has a monthly Ontario Works benefit of roughly \$750 and would have to rely on family members to make up the difference in his rent (an additional \$470 per month, plus payments on account of arrears). The court asked Mr Pakzad why he had not retained payments for arrears if he intended to pay but was sincerely concerned about the identity of the real landlord. He told us that he had retained funds for this purpose, but then he suffered unexpected financial reversals – his dog became very ill, and then died, and there were substantial vet bills. He was involved in an accident and then his employment ceased. We are very sympathetic – Mr Pakzad has had a truly awful year by any measure – but none of these things are the landlord's responsibility and taken together lead to the ineluctable conclusion that Mr Pakzad could not afford to meet reasonable interim payment terms pending appeal.

[19] We see no basis on which we should interfere with the orders of O'Brien J., who exercised her discretion on the basis of proper principles and the information that was before her. The review motion is dismissed without costs.

“D.L. Corbett J.”

“McKelvey J.”

“Schreck J.”

Released: April 24, 2026

CITATION: Pakzad v. Pham, 2026 ONSC 2450
DIVISIONAL COURT FILE NO.: 720/25
DATE: 20260425

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

**D.L. CORBETT, McKELVEY and SCHRECK
JJ.**

BETWEEN:

MUSTAFA PAKZAD

Appellant / Moving Party

– and –

YEN PHAM

Respondent / Responding Party

REASONS FOR DECISION

D.L. Corbett J.

Released: April 24, 2026