

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Percival v. Ti Developments Ltd.*,
2026 BCCA 220

Date: 20260424
Docket: CA51455

Between:

Joshua Percival and Cassandra Fisher

Appellants
(Petitioners)

And

**Ti Developments Ltd., Ian Harris, the Director of the
Residential Tenancy Branch, and the Attorney General of British Columbia**

Respondents
(Respondents)

Before: The Honourable Justice Iyer
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
March 12, 2026 (*Percival v. Ti Developments Ltd.*, Kelowna Docket S145113).

Oral Reasons for Judgment

The Appellants, appearing in person
(via videoconference):

J. Percival
C. Fisher

Counsel for the Respondents,
Ti Developments Ltd. and Ian Harris
(via videoconference):

E. Wood

Place and Date of Hearing:

Vancouver, British Columbia
April 24, 2026

Place and Date of Judgment:

Vancouver, British Columbia
April 24, 2026

Summary:

The appellant tenants apply for a stay of eviction pending appeal from an order cancelling the stay that was previously in place until the judicial review of a Residential Tenancy Branch decision is heard on its merits.

Held: Application dismissed. The appeal and underlying judicial review are of little merit. There is little evidence of irreparable harm to the appellants. The balance of convenience favours the respondent landlords because much of the delay in hearing the judicial review on its merits lies with the appellants.

IYER J.A.:

Introduction

[1] The genesis of these proceedings is a landlord-tenant dispute. The appellants, Joshua Percival and Cassandra Fisher, are tenants of a West Kelowna residence owned by the respondents, Ti Developments Ltd. and Ian Harris. The tenancy started in October 2023, and rent is \$4,500 per month. On July 29, 2025, the respondents obtained a writ of possession from the Residential Tenancy Branch (“RTB”). The appellants sought judicial review.

[2] Since then, the appellants have made many applications in the Supreme Court and filed a second judicial review petition. On March 12, 2026, Justice Hewson granted the respondents’ application to vacate a stay of proceedings that had been issued by another judge, joined the two petitions, and granted other relief. Justice Hewson ordered the stay would end on March 31.

[3] Two weeks later on March 27, the appellants filed an appeal to this Court together with an urgent application to stay Justice Hewson’s order cancelling the stay. The matter was heard by Registrar Outerbridge on March 30. He commented that there was limited explanation for the two-week delay, and the timeline meant the respondents would have no time to prepare their materials. However, he permitted the appellants to apply for an emergency stay.

[4] Justice Francis heard the application that afternoon. She too noted the unfairness to the respondents of having to respond to a stay application effectively without notice. However, she noted that refusing the stay might make the appeal moot, as the tenants would be evicted. She granted a short stay until today’s date so the stay application could be heard. That is the application before me today.

Background

[5] This matter has a protracted procedural history. I have summarized the salient orders below as best as I can. I note there is voluminous correspondence between the appellants and the Supreme Court registry.

[6] In the spring of 2025, the respondents sought to evict the appellants for non-payment of rent and served them with a 10-day notice to end the tenancy under s. 46 of the *Residential Tenancy Act*, S.B.C. 2022, c. 78 [Act]. The appellants applied to the RTB to cancel the notice. The respondents cross-applied for an order of possession and the rent owing. On May 27, an RTB arbitrator cancelled the notice because the amount of unpaid rent on the notice was erroneously stated as \$4,770, when it actually was \$4,500 (“First RTB Order”).

[7] The respondents applied for review, which was denied on May 30, 2025 (“First Review Decision”).

[8] On June 23, the respondents issued a new 10-day notice to end tenancy. The amount outstanding at that time was \$4,300. The appellants disputed this notice as well. On July 29, an RTB arbitrator found on the evidence presented by the respondents that this amount was owing and granted an order of possession within seven days and a monetary order of \$4,400 (outstanding rent and \$100 filing fee) (“Second RTB Order”).

[9] The appellants were evicted on August 14 and temporarily resided at an Airbnb. On August 18, the appellants filed a petition for judicial review of the Second RTB Order, essentially seeking to set it aside and stay the writ of possession. The appellants brought a without-notice application for a stay that day, and Justice Hori granted a stay for 30 days.

[10] On or about August 22, the appellants moved back into the property and have resided there since.

[11] The appellants applied for review, which was denied on August 29, 2025 (“Second Review Decision”).

[12] On October 9, after receiving the First Review Decision, the appellants filed a separate petition for judicial review. I refer to the August 8 petition for judicial review as the “first petition” and the October 9 petition as the “second petition”. In the second petition they sought to quash the Second RTB Order, saying it was an

invalid re-litigation of the First RTB Order, based on the doctrine of *res judicata*. They sought to quash the Second Review Decision based on procedural unfairness, bias, and lack of jurisdiction. They also sought a stay.

[13] From the filing date of their first petition, the appellants have made numerous without-notice and short-notice applications, mainly about staying the writ of possession. The first without-notice application was the August 18 application before Justice Hori. On September 15, Justice Hardwick extended the stay until October 15, conditional on the appellants paying rent for September. She also ordered the appellants not to make any further without notice or short-notice applications.

[14] The appellants unilaterally set the first petition for hearing on October 6. Justice Hewson heard the petition and reserved judgment. On October 15, he wrote to the parties to say there was no indication the appellants had given the mandatory notice of the petition to the RTB and Attorney General of British Columbia (“Attorney General”). He required them to do so, providing the court with proof of service. He extended the stay to the later of seven days after the release of his reserved judgment or October 31, 2025.

[15] On October 14, the appellants made a without-notice application, in the second petition proceeding, seeking a stay of eviction. That was heard by Justice Wilson. He granted a stay to the later of October 31 or seven days after issuance of the judicial review decision. It appears (although I am not certain) the appellants did not inform Justice Wilson about Justice Hewson’s order.

[16] On October 22, the appellants made a without-notice application and requisition for short leave seeking to extend the stay granted by Justice Wilson. On the same day, they served an amended version of the second petition on the respondents and set it for hearing on January 5, 2026.

[17] On October 27, Justice Maisonville denied the appellants' October 22 without-notice application, refused to extend the stay, and ordered costs to the respondents in any event of the cause. I understand the appellants have not signed the order and dispute that costs are payable.

[18] On November 21, the appellants "force filed" another notice of application, seeking to strike certain of the respondents' affidavits, as well as directions on other matters. This application was adjourned and has not been heard.

[19] Justice Hewson issued his decision on the first petition on November 24, 2025: 2025 BCSC 2299. He wrote that, as no proof of service on the Attorney General and RTB had been filed despite his order, the court could not proceed with the petition or any application within it. He set aside the stay, saying it is an equitable remedy, "not meant to give the petitioners the benefit of an indefinite delay": at para. 13.

[20] On December 2, the respondents applied to the court for directions relating to the two petitions.

[21] On December 12, the registry informed the parties Justice Hewson was now seized of both proceedings, directing them to attend a judicial management conference on December 17. On that date, Justice Hewson ordered the appellants to pay \$2,000 into court as security for costs by January 9, 2026, he granted a stay to January 30 and prohibited the appellants from bringing any further applications without his leave.

[22] The appellants retained counsel and posted security.

[23] On February 24, the appellants filed a notice of application seeking to amend the petition without first obtaining leave from Justice Hewson.

[24] On March 12, Justice Hewson heard the respondents' December 2 application. In that hearing, the respondents sought cancellation of Justice Wilson's stay order.

[25] Justice Hewson ordered that the stay be cancelled, effective at midnight on March 31, 2026. This is the decision the appellants appeal.

Should a Stay be Granted?

[26] The test for a stay of proceedings is that established in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117. The applicant must show:

- a) there is some merit to the appeal, in the sense it is not frivolous or vexatious;
- b) the applicant will suffer irreparable harm if the stay is refused, in the sense that it cannot be remedied if the appeal is successful; and
- c) the balance of convenience, or which party will suffer the greater harm, favours granting the stay.

[27] The appellants say the appeal is meritorious because Justice Hewson erred by dismantling the *status quo* aimed at preserving possession until the judicial review could be heard on its merits. If that were true, a stay could never be vacated before litigation is dispensed with on its merits. That is not so. They also say that Justice Hewson had an incomplete record before him. There is no evidence this is the case; rather it appears that after Justice Hewson made his decision, the appellants sought to put further evidence before him and he denied that request.

[28] A decision to grant or vacate a stay is discretionary and, as the case management judge, Justice Hewson had considerable knowledge of the circumstances. For both these reasons, this Court will apply a very deferential standard of review. The appellants have not provided me with Justice Hewson's oral reasons. Mr. Percival submitted that Registrar Outerbridge's reasons affirmed that the record before Justice Hewson was incomplete. On my review of Registrar Outerbridge's reasons he simply states that the appellants were "unsatisfied with the representations made at the hearing": at para. 8. Based on the standard of review, I consider the appeal very weak.

[29] The underlying judicial review also appears very weak. The Second RTB Order explained that the arbitrator was not bound by the First RTB Order because that decision focused on errors in the 10-day notice. It did not resolve the substantive dispute over whether the appellants were in arrears. As the Second RTB Order was based on a different notice of eviction respecting a different time period than the First RTB Order, *res judicata* cannot apply.

[30] The appellants say they will suffer irreparable harm if the stay is not granted because they and their children will be evicted from their home. As they rent out part of the home to sub-tenants, they say these individuals will also be harmed. I do not have any evidence from the tenants. The appellants also say they use the property for business activities. They have provided no evidence about why having to move would harm their businesses.

[31] The respondents say the appellants will not face irreparable harm, pointing to other available rental properties in Kelowna for equivalent rent.

[32] While I accept there might be some element of harm to the children and tenants that cannot be compensated readily, I am not satisfied that the appellants will suffer irreparable harm from having to move. I do consider there is a risk the judicial review could be moot if the stay is not granted. However, the judicial review is of dubious merit. Even where there is some irreparable harm the test for a stay requires the court to consider all three prongs of the *RJR-MacDonald* test, even provable irreparable harm is not sufficient alone to justify a stay.

[33] With respect to the balance of convenience, a large part of the responsibility for the fact that the second petition has still not been heard on its merits lies with the appellants. Their conduct has included repeated and unnecessary applications and disregard of court orders. Importantly, since appearing before Justice Hewson on March 12, the appellants have taken no steps to set the petition down for hearing. The appellants did not file their notice of appeal from Justice Hewson's order for two weeks until March 27. In his decision, Registrar Outerbridge found the appellants had not brought their urgent application with necessary diligence:

at para. 9. The respondents provided some evidence that FortisBC has repossessed a gas line at the property, into which the appellants were allegedly physically breaking to obtain without payment. In the hearing before me, the parties referred to this and other ongoing conflicts about payment of rent. It is clear their relationship remains fraught. I consider the balance of convenience strongly favours the respondents.

[34] In light of the weakness of the appeal, questionable irreparable harm, and the balance of convenience favouring the respondents, the appellants have not persuaded me a stay of Justice Hewson's order is warranted.

[35] For these reasons, I dismiss the application for a stay.

"The Honourable Justice Iyer"