

CITATION: Delic v. Henley Group Ltd., 2026 ONSC 5264
DIVISIONAL COURT FILE NO.: DC-26-00000042-0000
DATE: 2026-09-17

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: DELIC, ANDREW, Plaintiff

AND:

HENLEY GROUP LTD., Defendant

BEFORE: Trimble, J.

COUNSEL: Self-Represented, for the Plaintiff
Email: Andrewdelic@gmail.com

JACKSON, SOPHIE, for the Defendant
Email: Sjackson@georgestreetlaw.ca

HEARD at Brampton: September 16, 2026, in Writing

ENDORSEMENT

[1] The Respondent brings this motion for an order quashing the appeal as being devoid of merit. Alternately, the Respondent seeks an order lifting this Court’s Stay of Enforcement of the Landlord and Tenant Board Tribunal’s 13 April 2026 Eviction Order because of the Appellant’s failure to make payments required by my Case Management Conference Endorsement of 29 July 2026. If I do not grant either order, the Respondent seeks an order that the Appellant pay security for costs on the Appeal.

FACTS

[2] In May 2023, the Respondent brought an application to the Board to terminate the Appellant’s tenancy due to unpaid rent. On 5 June 2023, the LTB ordered the Appellant to pay the rent arrears over a set payment schedule.

[3] In March 2024, the Appellant stopped making the required payments. On 16 September 2024, the LTB granted an order terminating the tenancy by 27 September 2024 unless he paid the rent arrears which totalled \$8,892.00.

[4] The Appellant requested a review of this order which the parties settled by consent order dated 25 November 2024. The consent order set out a timetable for the Appellant to pay the rent arrears of \$11,794 and ordered the Appellant to pay monthly rent according to the lease. The consent order also provided that if the Appellant breached any of its terms, the Landlord could move under s. 78 of the Residential Tenancies Act for an order of eviction without further notice.

[5] On 1 December 2024, the Appellant requested an extension to make that month's payment which the Respondent agreed to 6 December 2024. Instead of paying by the extended date, on 6 December 2024 the Appellant delivered a Notice of Appeal from the consent order triggering the automatic Stay of Enforcement of the Board's Eviction Order. The Appellant paid no further rent or contributions towards arrears.

[6] On 26 March 2025, Shore, J. dismissed the Appeal pursuant to Rule 2.1, finding the appeal to be "manifestly devoid of merit", and on 24 April 2025, she ordered the Appellant to pay costs to the Respondent of \$8,500. Those costs remain unpaid.

[7] On 2 April 2025, the Respondent issued an L4 Application to the Board for an order evicting the Appellant for having breached terms of the consent order, and on 10 April 2025, Member Frank Ebner issued an order dismissing the First L4 Application for being filed out of time.

[8] On 2 April 2025, the Appellant delivered two notices of motions in the Court of Appeal: a motion for leave to appeal and a motion for a stay of the order pending appeal. The Court of Appeal dismissed both motions and ordered costs against the Appellant for both motions in the amount of \$2,500 and \$5,000, respectively. Both costs orders remain unpaid.

[9] The orders in the Court of Appeal Motions were not issued and entered until December 9, 2025, because the Appellant refused to agree to their form and content.

[10] On 6 January 2026, the Respondent again applied to the Board for an order to end the tenancy and evict the Appellant for having breached the consent order by failing to pay rent on time while the arrears remained outstanding. This application was brought ex parte pursuant to s. 78 of the RTA but on 29 January 2026, the Board directed an oral hearing on notice to the Tenant. It also directed that the Parties provide written submissions on specific issues related to the timing of the First L4 Application and the stay of the Consent Order.

[11] The hearing was held by videoconference on 19 February 2026 with both parties present and represented by counsel. All parties gave written submissions in advance of the hearing. After hearing brief oral submissions, Member Case adjourned the hearing and directed a Board-Initiated Review of the Ebner Order (the “BIR”). She further directed that the BIR would be heard together with the Second L4 Application and ordered that the Parties may make further written submissions on various issues.

[12] The hearing continued on 13 March 2026, by videoconference with both parties present, represented by counsel, and having provided written submissions ahead of the hearing.

[13] On 13 April 2026, Member Case granted the BIR and issued the Eviction Order in the First L4 Application, terminating the tenancy effective April 24, 2026. The Board also ordered the Appellant to pay over \$30,000 in rent arrears alongside daily compensation until he vacated the Unit. Further, the Board denied the Tenant’s request for relief from eviction and a delay in the eviction.

[14] After the release of the Eviction Order, the Tenant brought this appeal, thereby obtaining an automatic Stay of Enforcement of the Board’s Eviction Order pursuant to s. 25(1) of the *Statutory Powers Procedure Act*.

[15] On 30 April 2026, I provided directions to the Parties with respect to the conduct of the Appeal, including directing the Appellant to either pay the arrears and ongoing rent into Court pending the appeal or provide particulars to the Court disputing the Board's calculations.

[16] The Appellant did neither. Accordingly, the Respondent brought this motion to quash.

[17] I convened a Case Management Conference, to timetable the filing of Appeal material, the motion to quash, and to address the Tenant's non-payment of rent and arrears.

[18] The CMC was held on 29 July 2026. In my Endorsement of that date, I ordered that the Appellant shall pay the ongoing monthly rent of \$1,518 on the first day of each month, commencing August 1, 2026, and pay an additional \$8,000 per month toward the accumulated rent arrears of \$40,314.52 until the arrears are satisfied. I ordered that any default in those payments could result in the statutory stay of the eviction order being lifted and set out a procedure for how the Tenant's non-payment could be addressed expeditiously.

[19] The Appellant still owes the Landlord Rent Arrears of approximately \$23,765.51.47, having made the 1 August and 1 September payments I ordered. He has not paid the three different costs awards made against him in the prior appeal proceedings which total \$16,942.42 (inclusive of interest up to September 11, 2026), from none of which he has appealed or sought leave to appeal.

RESULT

[20] The Appeal is quashed, and as a consequently, the stay of enforcement is lifted.

THE LAW AND APPLICATION

[21] This Court 's jurisdiction to quash an appeal is found in s. 134(3) of the *Courts of Justice Act*.

[22] A Court may quash an appeal (1) where the appeal does not raise a question of law; (2) where the appeal is manifestly devoid of merit, and (3) where the appeal is an abuse of the court's process, such as an appeal for the sole purpose of obtaining a stay of eviction. Under Rule 2.1.01(1) of the *Rules of Civil Procedure* also gives this Court the authority to dismiss an appeal if it appears on its face to be frivolous, vexatious, or an abuse of process. Finally, a Court may also grant an order under Rule 63.01(5) that the automatic stay of eviction be lifted on the basis that an appeal is without merit.

A Question of Law

[23] Section 210(1) of the Residential Tenancies Act provides that an appeal of a decision of the Board lies to the Divisional Court, but only on a question of law. The Board is required to be correct on issues of law (see: *Sterling v Guillaume*, 2021 ONSC 1160, at para. 25 & 26).

[24] A question of pure law is, for example, what is the correct legal test to be applied. A question of fact is what took place between the parties. A question of mixed law and fact is a question, for example, is whether the facts satisfy the legal test (see *Solomon v. Levy*, 2025 ONSC 2556, at para. 33). Challenges to the Board's findings of fact, its weighing evidence, or its exercise of discretion, are questions of fact, or of mixed fact and law, the Divisional Court does not have the jurisdiction to hear the appeal on those bases (see: RTA s. 83).

[25] Under s. 83 of the RTA, in an application concerning a breach of an order of for non-payment of rent, the Board's decision is an exercise of discretion, requiring the Board to consider all the circumstances before deciding whether an eviction should be granted, denied, delayed or refused on a mandatory basis. The Board's exercise of its discretion involving weighing of relevant factors is owed discretion (see: *Ali v. New Spadina Garment Industry Corp.*, 2020 ONSC 3244, at para. 47). The Board does not need to expressly review each and every factor that it considered (see: *Frolov v Shakori*, 2026 ONSC at par. 62).

[26] An appeal does not raise a question of law where an appellant merely alleges that the Board gave insufficient weight to certain evidence, improperly balanced the relevant factors, or reached the wrong conclusion under s. 83 after considering all of the circumstances (see: *Devenne v. Sedun*, 2020 ONSC 6141, at para. 34 to 37; *Maynard v. Kerr*, 2022 ONSC 4259, at para. 19; *Chan v Tralen Investments Inc.*, 2023 ONSC 4345, at paras. 17-19; *Collins-Neely v. 2540507 Ontario Inc.* et al, 2025 ONSC 1171, at para. 15. 62)

[27] For example, in *Maynard*, supra, the Divisional Court held that a tenant's appeal of the Board's determination that it would be unfair to grant relief from eviction under s. 83(1) did not

raise a question of law. The Court found that the tenant was merely challenging the Board's consideration of the circumstances and the conclusion reached, which are matters of discretion rather than appealable legal errors. As a result, the motion to quash and lift the stay was granted pursuant to s. 134(3) of the *CJA*.

[28] This appeal does not raise a question of law.

[29] The Appellant appeals on the basis that the Board “erred in law and/or exercised its discretion unreasonably under s. 83 of the RTA by failing to give adequate weight to 4 things:

- a. The Appellants improved financial circumstances and willingness to retire arrears in 1 to 2 months;
- b. The Appellants serious recurring health issues and the irreparable harm the eviction would cause;
- c. The unique importance the location of the rental unit had for the Appellant;
- d. The decision was unreasonable in it concluded that there would be no irreparable harm.

[30] In this case, the Appellant is not alleging that the Board considered the wrong factors. He is challenging the Board’s weighing of those factors. This is not a question of law. In any event, the Board’s decision is owed discretion. I see no error in the Board’s decision. The Appellant merely reargues in this appeal what was rejected by the Board.

Abuse of Process

[31] It is an abuse of process to appeal solely to delay eviction through the benefit of an automatic statutory stay. This is gaming the system (see: *Oladunjoye v. Jonker*, 2021 ONSC 1199, at para 17; *Wilkinson v. Seritsky*, 2020 ONSC 5048 (Div. Ct.) at para. 34; *Regan v. Latimer*, 2016 ONSC 4132 (Div. Ct.) at para. 25). Gaming the system includes using the Stay of Enforcement of an Eviction Order to continue to live rent free or to obtain more time to pay arrears after the Board has already considered and rejected relief from eviction under s.83 of the RTA (see: *592182 Ont. Ltd. v. Red*, 2024 ONSC 4935, at para 5 to 7).

[32] As the Court stated in *Red*, *supra*, an appeal to Divisional Court from the Board's decision is not a hearing de novo, nor an opportunity to cure defaults that existed at the time of the Board's hearing. Absent an error of law, Divisional Court cannot intervene. An appeal to Divisional Court is not intended to provide tenants with a convenient way to delay a lawful eviction order made by the Board.

[33] In this case, the tenant has been in chronic default in rent and has been afforded several chances and a long period in which to cure the pattern of default. He has resorted to appeals internally at the Board and to Divisional Court, all of which have been unsuccessful. He says that all he wants is a reasonable chance to pay arrears and rent ongoing,. He has been given them and not met them. His costs orders remain unpaid. He remains in the unit and is not paying rent. It is clear that he is 'gaming the system'.

[34] The crux of the appeal is that the Appellant merely wants reasonable time and terms to pay the arrears. This is no ground of appeal for three reasons each of which is sufficient, alone, to reject it.

- a. This raises no legal question.
- b. As the Divisional Court noted in *Red*, *supra*, the Divisional Court is a statutory court and has no jurisdiction to intervene where an LTB order discloses no error of law and no procedural unfairness.
- c. The position that the Appellant only wants reasonable time and terms to pay the arrears is evidence of his gaming the system. He has been given them by at least two Board orders, one on consent. He has not followed the orders, event the consent order. Notwithstanding his professed interest, he has made no meaningful attempt to retire the arrears until my 29 July 2026 Endorsement, by which time this motion had been brought.

[35] Given the foregoing, the appeal is quashed.

Lifting the Stay of Enforcement of the Board's Eviction Order

[36] As an alternative to quashing the appeal, the Respondent seeks an order lifting this court's automatic Stay of Enforcement of the Board's Eviction Order which this Court has jurisdiction to do under 134(2) of the *CJA* and Rule 63.01(5).

[37] This aspect of the motion is dismissed.

[38] In my Endorsement dated 29 July 2026, I ordered that, as a term of maintaining the Stay of Enforcement of the Board's Eviction Order, the Appellant, by 4 pm, on 1 August, and on the first of every month thereafter, had to pay the regular rent of \$1,518.00, and a \$8,000.00 contribution to arrears which totalled, at that time, \$40,314.52.

[39] The Appellant's Affidavit addressing compliance with my Endorsement indicates that he complied, although not strictly. He says that he sent \$6,000.00 on 1 August by Interact transfer with a further \$3,518.00 on 4 August. He said that he paid in this fashion for three reasons a) there was a daily limit to his ability to transfer funds, b) the holiday weekend intervened, and c) he was awaiting further funds. He made the September payments.

[40] While the Appellant has complied with my Endorsement, barely, his appeal remains an abuse. To quote the Appellant at para. 9 of his Affidavit in support of the motion,

[41] By making these substantial payments under the schedule directed by this Court, and by pursuing the appeal rights available to me under the *Residential Tenancies Act*, I have been relying on the court processes available to me in order to address the arrears through a structured, court-supervised arrangement rather than to avoid payment or to abuse the process.

CONCLUSION AND ORDER

[42] The Appeal is quashed.

[43] The request to lift the Stay of Enforcement of the Board's Eviction for failing to abide by my 29 July 2026 payment order is dismissed. The Stay of Enforcement is lifted, however, automatically as the appeal is quashed.

[44] If the Appellant does not vacate the unit by 4:00 p.m., 30 September 2026, the Sherriff may evict the Appellant thereafter.

[45] I find that the arrears of rent as of today are \$24,314.52.

COSTS

[46] The Respondent is successful on this Motion to Quash and resumed entitled to its costs of the Appeal.

[47] I will decide who pays whom costs and in what amount based on written submissions not to exceed 3 double spaced, typewritten pages excluding offers and Bills of Costs. I note that the Respondent has filed its Bill of Costs.

[48] The Respondent's costs submissions must be served and filed by 4:00 p.m., 9 October 2026, and the Appellant's by 4:00 p.m., 30 October 2026. There will be no right of reply.

[49] I find that the costs awards bade by this Court of \$8,500.00 on 24 April 2025, and the Court of Appeal of \$2,500.00 and \$5,000.00, made on 28 May and 22 September 2025, and interest accrued thereon, remain unpaid.

Trimble, J.

Date: September 17, 2026

2026 ONSC 5264 (CanLII)

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ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

BETWEEN:

DELIC ANDREW

Self-Represented, for the Plaintiff

AND:

HENLEY GROUP LTD.

Jackson Sophie, for the Defendant

ENDORSEMENT

Released: September 17, 2026

