

CANADA / JUDGMENT

Barbosa v. Avdeev

2026 ONCA 73

COURT

Court of Appeal for Ontario

DECIDED

2 February 2026

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Barbosa v. Avdeev Collection Decisions of the Court of Appeal Date 2026-02-02 Neutral citation 2026 ONCA 73 Docket numbers COA-25-OM-0506, M56641 Judges Lauwers, Peter D. Subject Civil Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Barbosa v. Avdeev, 2026 ONCA 73 DATE: 20260202 DOCKET: M56641 (COA-25-OM-0506) Lauwers J.A. (Motion Judge) BETWEEN Abel Barbosa Moving Party and Victor Avdeev, Taulant Taraj and Elite Property Management Inc. Responding Parties Abel Barbosa, acting in person Spencer F. Toole, for the responding parties Eli Fellman, for the Landlord and Tenant Board Heard: in writing REASONS FOR DECISION

- [1] This motion proceeded in writing. The Landlord and Tenant Board (“LTB”) takes no position on this motion.
- [2] The LTB order Mr. Barbosa challenges is dated July 16, 2025 and was based on a consent agreement terminating the tenancy and requiring him to move out by August 31, 2025. The LTB denied the tenant’s request to review the July order by order dated August 15, 2025. The Divisional Court denied leave to appeal the LTB decision on December 19, 2025 and ordered the tenant to pay costs of \$3,142 inclusive.
- [3] Mr. Barbosa filed a notice of motion for leave to appeal to this court on December 29, 2025. The landlords, Victor Avdeev and Taulant Taraj, are pursuing eviction. The Sheriff has fixed February 9, 2026 as the date by which Mr. Barbosa and any other occupant must vacate. Mr. Barbosa has brought a motion to stay the eviction and enforcement of the Divisional Court’s costs award until his motion for leave to appeal in this court is determined.
- [4] Mr. Barbosa seeks to challenge the landlords’ right to seek possession of the unit under the legislation. That dispute led to the consent order that Mr. Barbosa now seeks to have set aside.
- [5] The landlords swear that as of November 17, 2025, they are owed \$20,352.42 by Mr. Barbosa and believe that in seeking leave to appeal to this court, Mr. Barbosa is seeking to delay moving out.
- [6] In his notice of motion for leave to appeal, Mr. Barbosa lists the following grounds for the motion:

1. The Divisional Court misapplied the legal test for leave to appeal and failed to determine whether the proposed appeal raised serious questions of law or issues of general importance.
2. The Divisional Court failed to meaningfully address procedural fairness and accommodation issues raised by the Applicant, including fairness obligations owed to a self-represented litigant.
3. The courts below improperly treated questions of mixed fact and law as unreviewable factual determinations, despite the presence of extricable errors of law, including the legal characterization of rent arrears, the availability of set-off and abatement, and the failure to account for tenant-incurred costs arising from landlord deficiencies.
4. The Divisional Court imposed a costs endorsement that creates a barrier to appellate review and access to justice, particularly where the Applicant is a recipient of Ontario Works and a pre-ODSP applicant.
5. The appeal process was procedurally unfair in that the Applicant properly served and uploaded appeal materials, yet counsel for the Landlord and Tenant Board failed to acknowledge receipt or engage with the materials prior to the hearing, appeared only at the hearing, and thereby undermined transparency, meaningful participation, and the Applicant's ability to respond
6. The proposed appeal raises questions of mixed fact and law containing extricable errors of law, and issues of general importance warranting consideration by the Court of Appeal.
7. The Applicant served and filed the Notice of Motion for Leave to Appeal with this Honourable Court on December 29, 2025. Despite being on notice of the pending appellate proceeding, and notwithstanding the Divisional Court's express statement that any stay would be lifted only if rent payments ceased, the Respondents proceeded with enforcement through the Sheriff the following day, December 30, 2025, resulting in a Notice to Vacate. This raises serious issues of procedural fairness, compliance with the conditional stay, and respect for the appellate process.
8. The motion for leave to appeal has not yet been heard. As of January 7, 2026, the Applicant has paid rent and has taken lawful steps to preserve housing stability by securing additional occupants who have paid rent for the premises, including for the purpose of remaining eligible for and complying with social assistance requirements relied upon to meet rent obligations. The Applicant has formally notified social assistance authorities of the eviction risk affecting both the Applicant and third parties residing in the unit. Enforcement in these circumstances gives rise to irreparable harm, prejudice to third parties, and the need to preserve the status quo pending determination of the motion for leave.
9. The Divisional Court endorsement did not order immediate eviction, direct enforcement by the Sheriff, or state that the Applicant was required to vacate the premises forthwith upon non-payment of rent. While the endorsement disposed of the appeal, the Applicant

remained in possession of the rental unit. In circumstances where rent was subsequently paid, occupancy arrangements were modified, and no express direction for immediate eviction was made by the Court, the initiation of enforcement without clarification, notice, or consideration of changed circumstances raises serious issues of procedural fairness, proportionality, and lawful process. Ordinarily, such matters fall within the supervisory jurisdiction of the Landlord and Tenant Board or require further procedural steps, rather than immediate physical enforcement.

- [7] Since filing the motion Mr. Barbosa has taken no steps to advance the motion, such as filing the requisite supporting material.
- [8] I add to my consideration that, as a general rule, there is no ability to appeal from an order of an intermediate court refusing leave to appeal, unless that court “mistakenly declined jurisdiction”: *Haudenosaunee Development Institute v. Metrolinx*, 2023 ONCA 122, at para. 8; *Hillmond Investments Ltd. v. Canadian Imperial Bank of Commerce* (1996), 29 O.R. (3d) 612, [1996] O.J. No. 1772 (C.A.), at paras. 36-38; and *Denison Mines Ltd. v. Ontario Hydro* (2001), 56 O.R. (3d) 181 (C.A.), at paras. 4-5, 8. The application of that test will be for the panel who considers the leave motion on the merits. That said, it is relevant to the test for whether to grant Mr. Barbosa a stay pending the hearing of that motion.
- [9] I agree with the landlords that the test for a stay requires Mr. Barbosa to satisfy the court that:
- (i) there is a serious issue to be tried; (ii) he will suffer irreparable harm if the motion is refused; and (iii) the balance of convenience favours granting the stay. *Windrift Adventures Inc. v. Ontario (Animal Care Review Board)*, 2024 ONCA 89, at para. 4.
- [10] Mr. Barbosa must establish a serious issue to be tried on his motion for leave to appeal. As I have noted, the question on that motion will be whether the Divisional Court mistakenly declined jurisdiction in refusing leave to appeal. This includes jurisdictional errors and disregard of essential statutory rights: *Hillmond*, at para. 36. It does not extend to considering the merits of leave to appeal motions, no matter how important the subject matter of those merits might be: *Haudenosaunee Development Institute*, at para. 10.
- [11] Mr. Barbosa’s grounds for leave to appeal in this court are set out above. He alleges the Divisional Court both misapplied the test for leave to appeal and failed to meaningfully address procedural fairness issues. However, he has advanced no cogent argument about errors of law or breaches of procedural fairness made by the Divisional Court in considering his motion for leave to appeal. His written submissions focus on purported errors made by the LTB in weighing the evidence of the landlord’s asserted need of the rental unit for personal use. The question before the Divisional Court was whether to grant Mr. Barbosa leave to appeal an LTB order to which he consented. Mr. Barbosa faced a high bar in establishing this, and the Divisional Court found no grounds on which to grant leave. It is not this court’s role to second-guess the merits of the Divisional Court’s determination. Further, the Divisional Court was not obligated to provide reasons for refusing leave to

appeal: Halton (Regional Municipality) v. F. Greco & Sons Limited (Greco Construction), 2021 ONCA 446, at para. 4. Mr. Barbosa has not established a serious issue to be tried with respect to whether the Divisional Court mistakenly declined jurisdiction of his appeal.

- [12] If the stay is refused and the eviction is enforced against Mr. Barbosa pending his motion for leave to appeal, this could cause irreparable harm to him. Mr. Barbosa asserts it will, although he has had ample time to make arrangements to live elsewhere, having consented to move out by August 31, 2025.
- [13] However, the balance of convenience weighs against granting a stay. I must consider how the obvious delay in the determination of whether to grant leave will affect the parties. The landlords served the notice of termination with a termination date of January 31, 2025, more than one year ago. On July 16, 2025, the LTB ordered on consent that Mr. Barbosa was required to vacate the unit by August 31, 2025. Granting a stay would prolong the delay in the landlords' repossession of the unit, more than five months past the point at which Mr. Barbosa agreed to move out. As I noted earlier, Mr. Barbosa has had ample time to make arrangements to live elsewhere. The significant outstanding amount of unpaid rent, notwithstanding some miscellaneous payments by Mr. Barbosa, also suggests the balance of convenience favours the landlords.
- [14] Mr. Barbosa swears there are now additional occupants residing in the rental unit and enforcing the eviction would prejudice them. He has provided leases he purportedly signed with these individuals, but he has not called any evidence from the third parties themselves as to their status in the unit. Additionally, he has not provided evidence that he obtained consent from the landlords to sublet the premises. In these circumstances, I would decline to put any weight on his assertions of prejudice to third parties in the analysis of whether to grant a stay.
- [15] The motion for a stay of eviction and stay of the costs award below is dismissed. The responding parties seek costs in the amount of about \$1,500. I grant costs of this stay motion in the amount of \$1,250, all inclusive. "P. Lauwers J.A."

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