

IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

	)	<i>A. Goldman</i>
	)	<i>on their own behalf</i>
)	
<i>AARON GOLDMAN</i>	)	<i>S. A. McIntosh</i>
	)	<i>for the Respondents</i>
<i>(Applicant) Applicant</i>	)	<i>F. Wang and P. Jiang</i>
)	
<i>- and -</i>	)	<i>T. Sandulak</i>
	)	<i>for the Respondent</i>
<i>FEI WANG, PING JIANG and</i>	)	<i>The Residential Tenancies</i>
<i>THE RESIDENTIAL TENANCIES</i>	)	<i>Commission</i>
<i>COMMISSION</i>)	
	)	<i>Chambers motion heard:</i>
<i>(Respondents) Respondents</i>	)	<i>July 17, 2025</i>
)	
	)	<i>Decision pronounced:</i>
	)	<i>September 26, 2025</i>

TURNER JA

Introduction

[1] The applicant has brought a motion for an extension of time to file a notice of appeal pursuant to rule 42 of the MB, *Court of Appeal Rules (Civil)*, Man Reg 555/88R [the *CA Rules*].

[2] For the reasons that follow, the applicant's motion is granted, in part.

Background

[3] In November 2024, the respondent, the Residential Tenancies Commission (the RTC) granted an order of possession to the respondents, Fei Wang and Ping Jiang (the respondent landlords), regarding a property where the applicant and his spouse were tenants.

[4] The applicant and his spouse refused to vacate the property, so the respondent landlords obtained a writ of possession from the Court of King's Bench (the KB), after which the applicant and his spouse were evicted.

[5] The applicant applied for judicial review of the RTC's decision. At an appearance on the civil uncontested list, a judge, on his own motion and without prior notice to the parties, ordered the applicant to pay security for costs. The judge further ordered that, if the security for costs was not paid by April 4, 2025, the application would be struck.

[6] On April 16, 2025, the parties appeared before another judge of the KB. The applicant had not paid the security for costs; however, he raised several arguments regarding why his application should not be struck. The judge struck the application at the conclusion of the hearing and awarded costs to the respondent landlords, with reasons to follow. His reasons were set out in an endorsement in which, after reviewing the applicant's arguments and a brief history of his previous litigations, the judge wrote:

I cannot overlook the fact that the applicant is intimately familiar with the court's processes and the consequences when he fails to comply with an order. Viewed in its full context, there is no reason to show such indulgence for the applicant's inability to comply with the order to pay security for costs that was made on

March 17, 2025. I am therefore striking the Application in its entirety.

[7] An order striking the application and awarding costs to the respondent landlords was filed on June 2, 2025 (the order). The applicant received a copy of the order by email on June 4, 2025.

[8] The applicant filed his notice of motion for an extension of time to appeal on July 7, 2025.

Discussion

[9] A notice of appeal is to be filed within thirty days after an order is filed (see the *CA Rules*, r 11(1)); however, the Court or a judge of the Court has the discretion to allow for an extension of time (*ibid*, r 42).

[10] The four factors to consider in determining whether an extension of time should be granted were set out in *Delichte v Rogers*, 2018 MBCA 79 at para 16:

1. the applicant had a continuous intention to appeal from a time within the period when the appeal should have been commenced;
2. the applicant has a reasonable explanation for the delay;
3. the applicant has an arguable ground of appeal; and
4. any prejudice suffered by the other party if an extension of time is granted can be addressed.

[11] These factors are not meant to strictly limit the exercise of a judge's discretion. Regardless of whether these criteria are met, the Court or a judge

may still grant or refuse the extension of time if it is right and just in the circumstances to do so (see *Hunter v Hunter*, 2000 MBCA 134 at paras 6, 11).

[12] Given that the order was filed on June 2, 2025, the deadline to file a notice of appeal was July 2, 2025. I note that the applicant filed his notice of motion for an extension of time the following Monday, on July 7, 2025 (five days beyond the deadline).

Continuous Intention to Appeal

[13] The respondent landlords do not dispute that the applicant had a continuous intention to appeal. I agree. On May 6, 2025, one of the respondent landlords emailed the applicant to ask when he would be paying the costs ordered at the April 16, 2025 hearing. The first line of the applicant's reply was: "The decision is going to be appealed and the costs order will be stayed."

Reasonable Explanation for the Delay

[14] The applicant asserts that he thought the deadline to file a notice of appeal was July 4, 2025—thirty days after he received a copy of the order. However, that argument does not provide a reasonable explanation given that he was still past that date when he filed his notice of motion for an extension of time.

[15] The applicant also raises his cognitive disability, which is well-documented in several letters from his family doctor and two psychologists. Both psychologists note that the applicant is very intelligent but has deficits in multi-tasking, organization and completing certain tasks within designated

time frames. An April 15, 2025 letter from the applicant's family doctor speaks to the applicant's difficulties with memory, language, organization and sustained attention.

[16] I note that during the appeal period, the applicant was dealing with a motion before this Court that had a filing deadline for materials of June 4, 2025 and was heard on June 26, 2025.

[17] Also during the appeal period, the applicant's assistant was involved in a car accident that took her away from work from June 28, 2025 to July 5, 2025. I understand that the applicant relies heavily on his assistant to keep him organized and aware of deadlines.

[18] The applicant's affidavit in support of his application states that, during the appeal period, he was dealing with a financial matter that arose in his family and he had to travel to northern Manitoba for work.

[19] Given that the applicant has provided extensive and detailed documentation from his doctor and psychologists regarding his cognitive disability and the difficulties it presents, I am prepared to accept that he has a reasonable explanation for the five-day delay in filing his notice of motion. However, neither the applicant nor anyone else should take this as authority to ignore deadlines imposed by the *CA Rules*. It is only in the particular circumstances of the applicant's well-documented diagnosis of a cognitive disability, its impacts on the applicant and the circumstances that arose during the appeal period that I find he had a reasonable explanation for the delay.

Arguable Ground of Appeal

[20] In examining the merits of the proposed appeal, my role is not to consider the full merits of the case but, rather, to conduct a preliminary examination of the grounds of appeal mindful of the applicable standard of review. If there is an arguable ground of appeal, the threshold is met (see *Boryskiewich v Stuart*, 2014 MBCA 77 at para 9).

[21] Most of the grounds listed in the proposed notice of appeal raise issues related to the judicial review itself rather than the order for security for costs and the order striking the judicial review application. Given that there was no decision in the KB regarding the merits of the applicant's judicial review, those grounds of appeal have no merit. Quite simply, at this time, there is no decision on the merits of the judicial review to appeal.

[22] On a generous reading of the proposed notice of appeal, in the "Relief Sought on Appeal" section, the applicant has articulated some grounds related to the order for security for costs. At the hearing of this matter, the applicant articulated grounds of procedural unfairness regarding the fact that the order for security for costs was raised by the judge himself and was done without advance notice to the applicant.

[23] There are two grounds of appeal in the proposed notice of appeal that relate to the order to strike the application. First, that the judge improperly relied on a previous decision in which the applicant was a litigant (see *Gobeil v Goldman*, 2025 MBKB 16) and therefore was biased against the applicant. Second, that the judge erred in awarding costs to the respondent landlords.

[24] On a preliminary assessment of the grounds related to the order for security for costs and the grounds related to the order to strike the application, I do not think that the applicant has a strong chance of success; however, on the low threshold that I am to apply, I cannot say that the grounds on those two issues have no merit.

Prejudice to the Other Party

[25] Often potential prejudice to an opposing party can be addressed with an award of costs. However, the applicant has a history of not paying court ordered costs and judgments against him. As I noted in *Gobeil v Goldman*, 2025 MBCA 66, the applicant had not paid approximately \$14,000 in costs ordered during those proceedings in the KB. In addition, he has not paid at least three judgments and costs awards issued by the KB: an outstanding judgment of \$1,321,896.27 (see File No. CI14-01-88130), a costs award of \$75,000 (see File No. CI14-01-88513), and a costs award of \$13,000 (see File No. CI14-01-88514).

[26] The potential prejudice of time and legal costs to the respondent landlords weighs in favour of not granting the extension of time; however, when balanced against the other considerations, it does not weigh so heavily as to deny the extension of time.

Conclusion

[27] When I weigh the factors listed above, as well as consider the final question of whether it would be right in the circumstances, I am prepared to grant the applicant an extension of time to file his notice of appeal based only on the grounds regarding the order for security for costs and the order striking

the application. I come to this conclusion particularly because the delay in filing was only five days and because of the applicant's personal circumstances at the time of the appeal period.

[28] To be clear, the applicant is granted an extension of time to appeal only on the following questions:

- Was it procedurally unfair for the judge, on his own motion, to order the applicant to pay security for costs without prior notice to the applicant?
- Was the judge who struck the application biased against the applicant?
- Did the judge who struck the application err in awarding costs to the respondent landlords?

[29] The applicant is not granted an extension of time to pursue the grounds listed in his proposed notice of appeal that relate to the judicial review itself.

Costs

[30] While the applicant has been successful in his request for an extension of time to appeal, the respondent landlords have had to incur the expense of having counsel appear on the motion (which would not have been necessary had the applicant filed his notice of appeal in a timely manner). I am prepared to order the applicant to pay a total of \$1,000 costs to the respondent landlords.

[31] The RTC did not request costs; therefore, none shall be ordered.

[32] I expect that this appeal will progress in a timely manner. As such, the applicant will adhere to the following deadlines or the appeal will be dismissed without any further order:

- (1) The applicant will file his notice of appeal no later than October 14, 2025, together with confirmation that he has ordered and paid for transcripts of the March 17, 2025 and April 16, 2025 appearances in the KB (File No. CI24-01-49852) (the number of copies shall be in compliance with the *CA Rules*).
- (2) The applicant will file an appeal book, the contents of which and number of copies shall comply with the *CA Rules*, no later than forty-five days after the transcripts have been filed.
- (3) The applicant will also file his factum, the contents of which and number of copies shall comply with the *CA Rules*, no later than forty-five days after the transcripts have been filed.

[33] If the applicant has complied with the above deadlines, the respondents will file their facta, the contents of which and number of copies shall comply with the *CA Rules*, no later than thirty days after the applicant's factum has been filed.