



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Fisher Kay Ltd. o/a Fairway Place Apts. v Middlebrook, 2023 ONLTB 78573

Date: 2023-12-01

File Number: LTB-L-053030-22

In the matter of: 502, 2004 SHEPPARD AVE W
NORTH YORK ON M3N1A1

Between: Fisher Kay Ltd. o/a Fairway Place Apts. Landlord

And

Sylvia Middlebrook Tenants
Michelle Middlebrook
Ken Middlebrook

Fisher Kay Ltd. o/a Fairway Place Apts. (the 'Landlord') applied for an order to terminate the tenancy and evict Sylvia Middlebrook, Michelle Middlebrook and Ken Middlebrook (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex have wilfully or negligently caused damage to the premises;
- the Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex have seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenants, another occupant of the rental unit or someone the Tenant permitted in the residential complex have wilfully caused undue damage to the premises.

This application was heard by videoconference on January 30, 2023, and September 5, 2023.

The Landlord's agent, A. Brown, the Landlord's legal representative, D. Strashin, and the Tenants, S. Middlebrook, attended the hearing on September 5, 2023. The same parties

attended the hearing on January 30, 2023. K. Middlebrook also attended the hearing on January 30, 2023.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The application is based on N5 and N7 notices of termination, both served in August 2022. The allegations are that the Tenants are harbouring at least 8 dogs and 29 rabbits, in and outside their rental unit, in very unclean and unsafe conditions. The Landlord alleges in the notices of termination that the rental unit is not in a state of ordinary cleanliness, that it is cluttered and dirty, there are obstacles to ingress and exit to various rooms, and that there is a substantial amount of damage to flooring, walls, baseboards, tiling. The Landlord alleges that the cost of repair of the damage exceeds \$35,000.00, the Board's jurisdictional limit. In the N5 notice of termination served on the Tenants, the Landlord requested a payment of \$45,000.00 to repair the damage. The Landlord alleges that the condition of the unit constitutes a substantial interference with the Landlord's rights, privileges and interests, and it also constitutes a fire hazard and a serious impairment to safety.
4. The Tenants did not pay the Landlord anything to repair the damage. The Tenants deny that they caused any damage, and they allege that any damage is due to the Landlord's failure to maintain and repair the rental unit.
5. Since the Tenants did not pay anything to repair the damage alleged during the week of August 8, 2022, which was the voiding period of the N5 notice of termination, nor have they paid anything since then, I determined that the N5 notice of termination was not voided.
6. The rental unit is a 4 bedroom townhouse, surrounded by other townhouses that constitute the residential complex. It is a 2 storey townhouse, with an unfinished basement. There is also a high rise tower of apartments that is also part of the residential complex.
7. The allegations arise out of two visits made by the Landlord's employees to inspect the property in July and August 2022
8. One of the main issues in this matter is that the Landlord has been denied entry to inspect the property since the summer of 2022, when the Landlord served the notices of termination. The Landlord's witness testified that the Tenants have barred entry, acted in a hostile fashion, and/or called the police when the Landlord's employees have attempted entry. He also said that the Landlord's employees have been intimidated and have felt threatened by the number of dogs in the rental unit, and the potential for danger that they represent, and they have been afraid to enter in the face of hostility from the Tenants. I find that the Tenants did not present any credible evidence or testimony that disproved

the Landlord's allegation that the Landlord has been denied entry since 2022, and the Landlord has therefore been unable to properly assess the damage and state of the rental unit since that time.

9. The Tenants primary contention is that they have submitted work orders to the Landlord for years, and the Landlord has failed to carry out the repair work, and the Landlords have therefore breached their maintenance responsibilities. The Tenants deny that they have refused entry, and the said they have been welcome and receptive to any repair work the Landlord seeks to undertake in their unit. The Tenants had no documentary evidence of requested repairs in the period prior to April 2023, after the first hearing. They also submitted into evidence some old looking documents entitled "work order", but they were not legible, and they were not dated. The Tenants allege, that it is the Landlord's fault if there is any damage to the property, because the Landlord failed to repair the unit.

Landlord's Evidence:

10. The Landlord's witness, A. Brown (AB), is the maintenance and operations manager for the Landlord. He said that he personally took all the photos submitted into evidence.
11. AB said that he attended the rental unit on July 7, 2022, because there were a number of complaints about dogs barking constantly at the Tenants' property, and foul odour related to dog feces and urine.
12. AB said that when he arrived, he observed a large fenced construction, created with patio blocks and covered with a tarp, around the patio area in the back of the property. He said that he observed it to be a kennel construction for numerous dogs. AB said that he observed a number of dogs in the kennel construction. The photos support AB's observations. It appears that there are approximately 3 German Shepherds in the kennel on that day. AB said that one of the Tenants had told him that the Tenants breed dogs.
13. AB said that as a result of the inspection on July 7, 2022, the Landlord determined that he should carry out an inspection of the interior of the rental unit. He said that he attended the rental unit on August 4, 2022, with the complex manager. AB said that he saw a rear section of the main floor with an additional kennel area, and he saw a number of crates with dogs in them. AB said that he also saw clutter and debris everywhere, including motorized scooters, and he also observed a whole surveillance area with monitors and cameras in the living-room. He submitted into evidence photos of the same. The main floor of the rental unit is completely cluttered with large objects and debris, with no passage through. There is a surveillance area and crates. However, there are no dogs observable in the photos of the crates on the main floor.
14. AB said that the bedrooms upstairs are cluttered and full of debris, as was the basement. The photos support AB's observations. The basement is particularly cluttered and chaotic. AB testified, and a photo supported his testimony, that there was a pen in the basement where the Tenants were breeding rabbits. He said that stench of urine and feces was terrible. It is difficult to count how many rabbits are in the photo, but it looks like there are

at least 20 in a large pen on the floor. One of the photos shows a large fly trap covered in insects.

15. AB said that he determined that the clutter is a serious impairment to safety because there is no access, no passageways in a case of emergency, and the debris creates a fire hazard. He said that there is no proper access to the furnace, and all the clutter around it is combustible material, creating a fire hazard.
16. AB said that he attempted a further inspection on September 14, 2022, because he had referred the matter to animal services. He said that he attempted to enter the property with animal services on September 14, 2022. He said that the Tenants were served with a proper 24 hours' notice of entry, but nobody answered when he arrived. He said that he heard barking, and he saw one of the Tenants look through the mail slot. He said that the Tenant, K. Middlebrook (KM) yelled at them, told them to stop harassing the Tenants, and threatened that he would call the police. AB said that because of the threats and hostility, he did not enter that day with animal services.
17. AB said that animal services obtained a warrant to come with the police on November 8, 2022. He said that the Tenants refused entry again that day, and the police opted not to enter because of their fear of the potentially aggressive animals. AB said that there is still an open investigation of the rental unit by animal services.
18. AB said that the Landlord is concerned about the treatment of the animals, and the cramped and crowded conditions. He said that there is also concern about insect infestation, animal excrement and urine, and ongoing complaints from neighbours.
19. AB said that the Landlord is unable to carry out grass-cutting around the rental unit because workers are intimidated by the dogs and their excrement, and because the dogs do not seem to be controlled or leashed.
20. AB said that after the August 2022 inspection, he determined that repair of the rental unit would necessitate a complete replacement of all the flooring, repair of walls, baseboard and cabinets. He said that the Landlord would have to carry out pest control throughout the rental unit.
21. AB said that initial estimates for all the repair work are in the range of \$45,000-50,000.00. He submitted into evidence estimates from a contractor for flooring, walls and baseboards, painting and tiling that totalled over \$40,000.00. He also submitted into evidence an estimate for kitchen cabinet replacement in the range of \$6,000.00.
22. The Landlord requests an order for termination. The Landlord submits that the Tenants have never informed them about a requirement to have service dogs, and if the need to keep dogs was an issue, then it does not make sense that the Tenants never raised the

issue before. The Landlord submits that the Tenants have shown a disregard of the state of the unit, and it is cluttered, dirty, and in a deplorable state. The Landlord submits that the rental unit presents a fire hazard to the Tenants, but also to adjacent units.

Tenants' Evidence:

23. S. Middlebrook (SM) testified on behalf of the Tenants. She said that the Landlord has neglected and ignored multiple work orders from the Tenants. She said that leaking from kitchen counter caused mould and contributed to a fly and cockroach infestation. The Tenants did not submit into evidence any documentary evidence of a work order referring to a kitchen counter leak, nor for any pest infestation.
24. SM admits that they have around 20 rabbits and they are "trying to reduce" the number to 10. She said that the Tenants listed the rabbits for sale on Kijiji in January 2023, and there have been no new babies.
25. SM said that all the Tenants are disabled, and each Tenant has service dogs. She said that she has a letter from her doctor stating that she requires service dogs, three dogs each for her, her husband and her daughter. To the date of this hearing, the Tenants had not submitted any documentation to support the Tenants' requirement for a service dog. I permitted them to disclose the documents after the hearing. On the day of the hearing, the Tenants uploaded to the portal three documents. One document was dated August 1, 2023, for SM. In it, Dr. D. Kim states that "patient is currently under my care and due to a medical issue require 3 dogs as service animals." One document, for KM, dated August 1, 2023, is also by Dr. D. Kim, and states the exact same thing as the previously mentioned note for SM. The third document has a header for Dr. Roland Wong, and it is for Karla Middlebrook, the other occupant of the rental unit. It is dated September 5, 2023, and it states "Middlebrook (Karlyle) karla is a patient at Sherbourne Health. Due to her medical condition, she states that she requires three service dogs. Please accommodate if possible."
26. SM would not explain why she, her husband and daughter each require three service dogs. She said that they each have more than one disability. She also said that the dogs are not aggressive, and they simply do their job, without specifying what that job is.
27. SM said that the Tenants clean up the animal feces and urine all the time, and she said the patio is clean. She said that the dogs never "do their business" in the house. She did not submit into evidence documentation or photos of the current state of the house.
28. SM said that the only reason there is some debris piled up in the hallway or other rooms is because the Tenants have to move their belongings all around from one area to another because of the leaks.

29. SM said that she has informed the Landlord that the Landlord is permitted to enter the rental unit to do maintenance and repairs, but they do not repair anything.
30. SM said that the Tenants have lived in the rental unit for 11 years. The monthly rent is \$1,800.00 plus utilities. She lives in the rental unit with her husband, and her two children, 31 and 27 years old. She said that they are all disabled, and none of them work. She said that their source of income is ODSP. She said that the monthly income for all of them combined is about \$5,000.00. SM said that they have looked for alternative housing, but it is impossible to find anything within their budget, and which also caters to their disability needs.
31. The Tenants submit that the Landlord's application should be dismissed. They submit that the Landlord has breached its maintenance obligation, and there is no problem with the Tenants' dogs.

Reasons and Analysis:

32. The Landlord submitted testimonial as well as documentary evidence, including photos, about the state of the rental unit in the summer of 2022. There was ample photographic, and testimonial, evidence of a number of dogs, kept in unsafe conditions outside, and inside the rental unit. The photos showed a number of dogs left unattended outside, and in conditions from which they could escape without much difficulty. Although the photos did not show any dogs inside the rental unit in the crates, there were nevertheless a number of crates for animals, strewn all over the living area on the ground floor, which suggests that the Tenants keep animals indoors in those crates. The Tenants had received notice of the inspection in August 2022, so they had had time to ensure that the animals were located elsewhere during the inspection.
33. The photos from the inside inspection in August 2022, showed a hoarding situation. Every room in the house was in a cluttered, untidy, dirty condition. There was debris everywhere, no passageways between or inside rooms. The photos of the basement were particularly bad, showing a pen that looked like dirt had been placed in it as the floor, and that contained over 20 rabbits. There was also clutter and debris everywhere, as well as signs of insect infestation.
34. The Tenants' allegation that any damage caused in the rental unit is the fault of the Landlord was not supported by evidence. The Tenants had no documentary evidence of work orders asking for maintenance or repairs prior to April 2023, which date was immediately after a particularly acrimonious incident between the parties. That incident was not relevant to this application. However, on April 17, 2023, the Tenants wrote to the Landlord. Their email of that date was the first documentary evidence of any maintenance complaint from the Tenants to the Landlord. They wrote, "As you are aware,

the Tenants have made numerous requests for essential repairs and maintenance at their rented premises, which have been consistently ignored or inadequately addressed. There are numerous health and safety concerns, including water leaks mixed with electrical wiring, sewage leakage from toilets in the dining room, kitchen, and basement at the bottom of the stairs. Mold growth, pest infestation, peeling and cracking paint, rotting and falling debris from the ceilings, and rotting kitchen countertops and floorboards in cupboards under the sink....”

35. I find that the timing of the Tenants’ complaints to the Landlord, after a number of refusals of entry to the Landlord, months after the Landlord’s service of the N5 and N7 notices of termination, in the absence of any written prior maintenance request to the Landlord, and a few months after the first hearing of the Landlord’s application, make the Tenants’ request for maintenance lack any credibility. After the hostile incident between the parties in April 2023, which involved further refusal to permit entry to the Landlord, the Landlord had every reason to believe that the Tenants were continuing to deny access to the rental unit for inspection or repair.
36. I find that the testimony of the Landlord’s witness, supported by photos, proves, on a balance of probabilities, that the state of the Tenants’ rental unit, inside the house, and outside in the patio area, creates a substantial interference with the reasonable enjoyment of the Landlord and other tenants, as well as a substantial interference with the lawful rights, privilege, and interests of the Landlord and other tenants. There were complaints of dogs barking, dogs leaving feces and urine all over the common areas outside. The inside of the house was not in an ordinary state of cleanliness, as required by the *Residential Tenancies Act, 2006* (the ‘Act’). The clutter, mess and debris created an insect infestation. The Tenants have refused entry to the unit after the summer of 2022, and there is no evidence before me that there have been any changes in the rental unit since that time.
37. I find that the Landlord’s evidence also proves, on a balance of probabilities, that the Tenants have damaged the rental unit. I find that this damage is wilful. Keeping a pen in the basement with over 20 rabbits, with the accompanying animal feces and urine, as well as an undetermined number of dogs, kept in crates inside the rental unit in a confined, cluttered space that leads to flooring and wall damage, as well as pest problems, is not merely negligent, but wilful.
38. The Landlord is entitled to reimbursement for the damage. I find that it is not an unreasonable estimate that the painting, drywall, tiling and flooring repair throughout the rental unit will cost in excess of \$40,000.00, not including any cabinetry that will require replacement. In any case, the Landlord did not submit photos into evidence of damaged cabinetry.

39. There was an excessive amount of clutter, and the lack of pathways, and a profusion of combustible material all around, including near the furnace, created problems with egress during an emergency, and could contribute to creating a fire, as well as the acceleration of a fire. Therefore, I find that the Tenants, another occupant of the rental unit, or a person permitted in the residential complex by the Tenants have seriously impaired, and continue to seriously impair the safety of the Tenants, and other tenants. This conduct occurred in the residential complex.
40. Although the Tenants had failed to mention any requirements to keep service dogs at the first hearing, and they had submitted no documentary evidence for that requirement prior to the second hearing, I permitted them to submit documentation after the hearing.
41. After the hearing, the Tenants submitted the three notes mentioned above in paragraph #25. I find that the notes are terse and lacking in detail. They were also all written after the first hearing of this matter, and at least a year after the first inspection giving rise to this application. There is no explanation in any of the notes for why the person in question requires a service dog, let alone why they require three each, nor is there an explanation of what services the dogs are to perform. In particular, the note for Karla Middlebrook merely states that Karla, herself, told the doctor that she needs a service dog. Even if there is no requirement to prove that the animals in question are certified or trained to provide a particular service, at the very least the note should provide some information about the nature of the medical condition, and why the animal is needed to assist with that condition. The post-hearing submission medical notes of the Tenants provide no detail at all. SM also refused to elaborate in her testimony.
42. In addition, the Tenants refused entry to the Landlord since the summer of 2022, so there is no way to be certain how many dogs now live in the rental unit. The Tenants provided no evidence, documentary or testimonial, about how many dogs are now living in the rental unit. Therefore, there is no evidence of which dogs live in the unit, and which dogs are required to provide which service for which tenant.
43. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
44. The Landlord collected a rent deposit of \$1,749.16 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$324.72 is owing to the Tenant for the period from June 1, 2012 to September 5, 2023.
45. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Section 83 Considerations:

46. The Tenants have lived in the rental unit for 11 years, and they all have disabilities. The Tenants were not explicit about what exactly is their total monthly income, but it is limited.

It will be difficult, with the Tenants' limited monthly income, to quickly find living accommodation for four adults, as well as all their medical aids, living expenses and food.

47. The Tenants said that they require the dogs as service animals, presumably to support their assertion that the Landlord should be required to accommodate their disability by permitting them to keep all the dogs. The Tenants did not directly state or request this accommodation need, but I nevertheless consider it here. In the *Human Rights Code*, R.S.O. 1990 ('HRC'), the Landlord has a duty to accommodate the Tenant to the point of undue hardship because of their disabilities, pursuant to subsection 2(1) and 17(1) of the HRC.
48. The Tenants have not disclosed information about what they require in accommodation from the Landlord, nor information about their disabilities, nor information about what dogs they own, nor what service any of the dogs provides. It is difficult to assess the Tenants' accommodation needs in this vacuum. However, in the event, I find that the Landlord has already suffered undue hardship because of the Tenants' dogs. I find that it is an undue hardship for a Landlord to be forced to accommodate a plethora of dogs creating mess, noise, nuisance and disturbance for all residents of the residential complex. The dogs, and the condition in which these dogs are being kept in the rental unit, are also contributing to the creation of a fire hazard on the residential complex, which is a serious impairment to safety of all persons on the residential complex. Creation of such a serious impairment to safety is beyond any undue hardship that the Landlord is obligated to undergo in order to accommodate the Tenants.
49. I have considered all of the disclosed circumstances above in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until January 31, 2024 pursuant to subsection 83(1)(b) of the Act. This would give the long-term Tenants with disabilities, as well as a limited income, more time to find an alternative place to live.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before January 31, 2024.
2. The Tenants shall pay the Landlord \$35,000.00 for the wilful damage caused by them to the rental unit.
3. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The Tenants shall pay the Landlord the total amount owing on or before January 31, 2024. If the Tenants do not pay the full amount on or before January 31, 2024, interest will start to accrue. This will be simple interest calculated from February 1, 2024, at 7.00% on the balance outstanding.
5. If the unit is not vacated on or before January 31, 2024, then starting February 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

6. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after February 1, 2024.

December 1, 2023

Date Issued

Nancy Morris

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on August 1, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.