



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

Citation: Al-Wuhaishi v Mcfadden aka birtch, 2023 ONLTB 68410

Date: 2023-10-17

File Number: LTB-L-054003-22

In the matter of: 31, 3635 SOUTHBRIDGE AVE
LONDON ON N6L0G8

Between: Salem Al-Wuhaishi and Nada Bazarah Landlords

And

Kathryn Mcfadden aka birtch, Isabella Birtch Tenants
aka McFadden and Abby Birtch aka
McFadden

Salem Al-wuhaishi and Nada Bazarah (the 'Landlords') applied for an order to terminate the tenancy and evict Kathryn Mcfadden Aka Birtch, Isabella Birtch Aka Mcfadden and Abby Birtch Aka Mcfadden (the 'Tenant') because the Tenant did not pay the rent that the Tenants owe ("L1 application")

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. ("L2 application")

These applications were heard together by videoconference on August 24, 2023. The Landlords were represented at the hearing by Noura Majoul. The Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

L1 Application

1. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,399.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$78.87. This amount is calculated as follows: \$2,399.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to August 31, 2023, are \$33,586.00.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$2,399.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$74.76 is owing to the Tenants for the period from May 27, 2022, to August 24, 2023.

L2 Application

10. The Landlords served the Tenants with an N5 notice of termination on June 9, 2022. The notice contains the following allegations:
 - Foul odour emanating from the cats' poop and urine everywhere in the unit;
 - Powder room was in a very filthy condition where cats' litter was all over the floor.
 - The Tenants do not seem to clean after their cats and let them defecate and urinate on the floor;
 - One of the bedrooms was used as a dumping room where tenants seem to throw garbage and any unwanted stuff there.
11. On this basis the Landlords seeks to terminate the tenancy.
12. In support of their application the Landlords provide the Board with photographs and videos substantiating the allegations contained in the notice. Based on the uncontested evidence before the Board I am satisfied the Tenants substantially interfered with the Landlords by keeping the rental unit in an unacceptable condition. I further find the Tenants did not void the notice of termination by returning the unit to an ordinary state of cleanliness within seven days of receiving the notice.
13. As a result, the Landlord's L2 application is successful I will issue an order for the non-remedial termination of the tenancy.

Relief from Eviction

14. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated pursuant to both the L1 and the L2 applications. **The Tenants must move out of the rental unit on or before October 28, 2023**
2. The Tenants shall pay to the Landlords \$30,792.12. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlords owe on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
3. The Tenants shall also pay the Landlords compensation of \$78.87 per day for the use of the unit starting August 25, 2023, until the date the Tenant moves out of the unit.
4. If the Tenants do not pay the Landlord the full amount owing on or before October 28, 2023, the Tenants will start to owe interest. This will be simple interest calculated from October 29, 2023, at 7.00% annually on the balance outstanding.
5. If the unit is not vacated on or before October 28, 2023, then starting October 29, 2023, 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 October 29, 2023.

October 17, 2023
Date Issued

Bryan Delorenzi
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 expires on April 29, 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.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenants must pay because the tenancy is terminated.

Rent Owing To Hearing Date	\$33,079.88
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$2,399.00
Less the amount of the interest on the last month's rent deposit	- \$74.76
Total amount owing to the Landlord	\$30,792.12
Plus daily compensation owing for each day of occupation starting August 25, 2023	\$78.87 (per day)