



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

Citation: 20 STONEHILL INC. v Pana, 2023 ONLTB 65649

Date: 2023-10-05

File Number: LTB-L-053908-22

In the matter of: 202, 20 STONEHILL CRT
SCARBOROUGH ON M1W2Y6

Between: 20 STONEHILL INC. Landlord

And

Valentin Pana Tenant

20 STONEHILL INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Valentin Pana (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on September 21, 2023.

The Landlord's Agent Shalina Nasser and the Landlord's Legal Representative Jeff Shabes and the Tenant Valentin Pana attended the hearing.

Determinations:

Preliminary Issue

- At the hearing, the Tenant requested an adjournment to obtain legal representation. The Tenant also pointed out the Landlord had disclosed approximately 40 pages of evidence to

him the morning of the hearing. The Landlord's Legal Representative, Mr. Shabes, acknowledged this was correct. Mr. Shabes stated it had only been provided to him by the Landlord the day prior to the hearing.

2. I denied the Tenant's adjournment request on the basis he needed more time to obtain legal representation. The Tenant acknowledged he received the N7 notice almost a year prior and the Notice of Hearing approximately two months prior to the hearing. I did not find there was any reasonable explanation provided as to why the Tenant had not been able to retain and instruct a legal representative with this amount of time in which to do it.
3. I reserved my decision on the late disclosure of evidence to the Tenant. I held the file down to allow the Tenant an opportunity to review the evidence so that he could advise the Board if he could proceed or would need more time to prepare.
4. When I recalled the file, the Tenant had not completed his review of the late evidence. At this point, Mr. Shabes stated the Landlord was prepared to proceed without the late evidence as they did not want the file adjourned. Since the late evidence was no longer an issue, the hearing proceeded.

L2 Application

5. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed.
6. The Tenant was in possession of the rental unit on the date the application was filed.
7. On August 18, 2022, the Landlord served the Tenant an N7 notice of termination. The termination date in the notice is August 31, 2022 and it alleges the Tenant or someone visiting or living with Tenant has used the rental unit or the residential complex in a way that is inconsistent with its use as residential premises and this has caused or can be expected to cause serious damage. The N7 goes on to allege:
 - a) On July 13, 2022 it was discovered based on a complaint that you have been utilizing your rented premises for a short-term rental. A male individual introduced himself as Ana's dad which is the name used on Kijii however he later identified himself as "Teodor". This individual is large in stature and approximately 5'11". This person arrived in a black Honda Civic. This individual entered through the north door and a tour of the rented premises took place. Various conversations by text took place between the potential renter and a staff member.
 - b) The above constitutes utilizing the rented premises in a manner inconsistent with its intended use.
8. Section 63(1)(b) of the Residential Tenancies Act, 2006 (the Act) is the section this application for termination and the N7 notice is based upon. It reads as follows:

Despite section 62, a landlord may give a tenant notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex,

(b) uses the rental unit or the residential complex in a manner that is inconsistent with use as residential premises and that causes or can reasonably be expected to cause damage that is significantly greater than the damage that is required in order to give a notice of termination under clause (a) or subsection 62 (1).

9. It was not disputed the rental unit is a three-bedroom apartment. It was also not disputed the Tenant resides in the rental unit with his wife and child.
10. The Landlord's Property Manager, Shalina Nasser, testified that on July 14, 2022 she was contacted by Leonardi Joewono, who wanted to report fraudulent activity going on at the rental unit. According to Ms. Nasser, this person was looking for a room to rent and responded to an add on Kijiji for a room within the rental unit on July 13, 2022. This person advised Ms. Nasser he intended to move into this room on August 1, 2022. The rent amount was to be \$675.00 and there were locks on each bedroom door. Ms. Nasser testified she had last been inside the rental unit approximately 18 months prior to the hearing.
11. The Landlord called Ekin Kilic to testify. Mr. Kilic currently resides in one of the rooms in the rental unit. He moved into the room on September 2, 2023. He stated the rent for the room is \$700.00 per month plus \$100.00 for parking. Mr. Kilic testified he is moving out on October 1, 2023 because the Tenant does not want him there anymore. His evidence was the Tenant asked him to move out after instances of Mr. Kilic coming home late and waking up the Tenant.
12. Mr. Kilic testified two other people live in the rental unit and they also pay rent to the Tenant. He has a lock on the door to his room. He testified the Tenant lives in the rental unit with his family. Mr. Kilic testified the Tenant sleeps in the living room and made a wall to prevent access to the area. Mr. Kilic testified there is a main fridge in the kitchen and that he has his own smaller fridge. There are 1.5 bathrooms in the rental unit.
13. Mr. Kilic's evidence was he told the Landlord about the situation once the Tenant asked him to leave. He testified there have been a number of people coming to the unit to see the apartment.
14. The Landlord's Superintendent, Javier Arzila, testified that approximately two years ago he attended the rental unit to perform maintenance and an unknown person answered the

door. When he entered the rental unit he did not recognize another person that was in the room. He also testified he was told about a complaint from July 13, 2022.

15. Mr. Arzila testified that two days prior to the hearing he inspected the rental unit and found locks on the doors to each bedroom. He testified the kitchen has two entrances and the entrance leading to the dining room is blocked. He stated the dining room is being used as a bedroom and the Tenant has built a three-foot-high wall beside the kitchen in the dining room. Mr. Arzila stated that at the time of this entry there were four people in the rental unit.
16. The Tenant testified that he does rent the extra rooms in the rental unit. He stated he charges \$700 for each room and the monthly rent is \$1,462.00. He testified he uses the third bedroom with his wife and child.
17. The Tenant testified that he does sometimes sleep in the dining room to give his wife and child some extra space.
18. The Tenant's evidence was the duration of time people live in the rooms depends on their needs. He explained that some people stay for six months and some have stayed for a year. He gave students as an example of the people he rents a room to. The Tenant testified he is not participating in short term rentals.
19. The Landlord asked the Tenant if he had any proof he was not renting the bedrooms on a short-term basis and the Tenant responded the ad itself asks for someone on an ongoing basis.
20. The Landlord asked the Tenant what allows him to partition off a room in the rental unit and the Tenant responded that he has not modified any of the architecture. He explained he has placed a thin piece of insulation over one of the kitchen entrances to the dining room. He stated it used to be a curtain and is now a piece of insulation. The Tenant also explained that he built a 3 X 3 foot moveable wall out of drywall and some studs. It is not attached to anything. He described it as a moveable partition that provides privacy.
21. The Tenant testified he is currently unemployed and his primary source of income is the rent he receives from those who rent the rooms from him.
22. At the hearing, the Landlord argued the Tenant was operating a business by renting rooms within the unit to others since the Tenant's evidence was he has no other source of income. The Landlord also argued the locks on the bedroom doors and Mr. Kilic's evidence supports the finding the Tenant uses the rental unit for short term rentals.
23. The Tenant argued he is doing nothing that the Act does not permit. He submitted he is allowed to sleep in the dining room area if he wishes stating it is his space.

Analysis

24. The only evidence the Landlord called that was remotely related to the N7 notice of termination was the mention of July 13, 2022. No evidence whatsoever was called to support the claim particularized to the Tenant. I heard no evidence about Ana's dad or a

5'11" person named Teodor who arrived in a Honda Civic and was given a tour of the rental unit. No evidence was submitted of text messages that took place between this person and a staff member. I do not find the evidence of the property manager Ms. Nasser, related to the allegation on the N7 notice, particularly since she stated she spoke to someone named Leonardi Joewono.

25. The Landlord chose the allegation they particularized on the N7 notice of termination. It is the allegation the Tenant was put on notice he had to answer to in this application. The Landlord must prove what they claim and in this case I find they have not done so. For this reason alone, the application must be dismissed.
26. Additionally, the evidence presented by the Landlord and largely agreed to by the Tenant, shows a Tenant without income renting the additional rooms within the unit so that he can pay the monthly rent to the Landlord and maintain his housing.
27. I do not find Mr. Kilic's evidence supports a finding the Tenant is engaging in short term rentals. In my view, the Tenant determined Mr. Kilic was not a good fit for the household and asked him to leave. No evidence was presented showing an ongoing pattern of people renting a room from the Tenant for a short period of time. Locks on bedroom doors are not out of the ordinary particularly when a roommate living situation exists. Even if the Landlord had proven the allegation on the N7 notice, I do not find the Tenant is using the rental unit for a purpose other than a residential premises. The application is dismissed for this reason also.
28. Lastly, section 63(1)(b) also requires evidence the inconsistent use of the rental unit or the residential complex has caused or can be expected to cause serious damage. While not specifically argued at the hearing, I am not of the view the installation of locks on the bedroom doors constitutes serious damage. I also do not find the placing of a piece of insulation over an entrance to the kitchen is evidence of any damage let alone that of a serious nature. I heard no evidence the 3 x 3 foot portable wall built by the Tenant has damaged anything. I am not satisfied on a balance of probabilities any serious damage has been done to the rental unit or that any serious damage can be expected to occur. The application is also dismissed for this reason.

It is ordered that:

1. The Landlord's application is dismissed.

October 5, 2023

File Number: LTB-L-053908-22
Date Issued

John Cashmore
Member, Landlord and Tenant Board

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

2023 ONL TB 65649 (CanLII)