



Order under Section 69 / 90 Residential Tenancies Act, 2006

Citation: Toronto Community Housing Corporation v Hernandez-Santa, 2026 ONLTB 707

Date: 2026-01-08

File Number: LTB-L-076568-24

In the matter of: 104, 800 EGLINTON AVE W
TORONTO ON M5N1G1

Between: Toronto Community Housing Corporation Landlord

And

Giovanny Alberto Hernandez-Santa Tenant

Toronto Community Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Giovanny Alberto Hernandez-Santa (the 'Tenant') because:

- the Tenant has knowingly misrepresented the Tenant's income or the income of other members of the Tenant's family who occupy the unit.

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

The Landlord also applied for an order requiring the Tenant to pay the money the Tenant would have been required to pay if the Tenant had not misrepresented their income or that of other members of their household.

This application was heard by videoconference on October 7, 2025.

The Landlord's agent, C. Abraham, the Landlord's legal representative, T. King, and the Tenant attended the hearing. The Landlord's witness, G. Rosen, also attended the hearing.

Determinations:

Preliminary Issue: Costs Requested by Landlord

1. The matter was adjourned on February 4, 2025, because the Tenant said that they required Spanish translation. The Member advised the Tenant that he was to come prepared to the next hearing with translation support, and if he did not, the Landlord would

be permitted to make submissions for costs.

2. The Tenant attended the hearing without translation support, so the Landlord requested costs.
3. The Landlord submits that they are entitled to \$700.00 costs for the last hearing because they had to prepare for, and attend, the hearing with their legal representative. They submit that the Tenant has had eight months to arrange for translation support, and the adjournment request was merely a way to delay the hearing, and it constitutes an abuse of process.
4. The Tenant did not have a response to the Landlord's submissions.
5. Rule 23.3 of the Board's Rules of Procedure provides that a party who engages in unreasonable conduct that causes undue delay or expense may be ordered to pay costs to another party.
6. The Tenant did not have a reasonable explanation for why they have not arranged for translation help over the last eight months. It is undisputed that the Tenant's request for an adjournment delayed the proceedings for at least eight months.
7. Based on the above disclosed circumstances, I find that the Tenant's conduct was unreasonable, and it caused undue delay, as well as expense for the Landlord. The Landlord came to this hearing with a legal representative, as well as a witness. It is before me to determine the appropriate quantum for costs.
8. The hearing record shows that the Landlord's application was adjourned quite early in the day, before 10 a.m. Therefore, that hearing appearance did not require an entire day of attendance at the Board for the Landlord. Similarly, the Landlord's legal representative would have had to prepare for the hearing on whatever day the matter was heard. However, there was undoubtedly cost and extra legal representation costs incurred by the adjournment and the delay. I find that \$300.00 is an appropriate amount of costs to impose on the Tenant.
9. The Landlord submitted into evidence a Household Income and Assets Review Form from 2019, in which the Tenant ticked the box attesting that he understands English. Since the Tenant appeared to understand the proceeding, and he was able to provide his own evidence in English, I found that it was appropriate to proceed with the hearing in English.

The Landlord's Application:

10. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
11. The Tenant was in possession of the rental unit on the date the application was filed.

12. On September 9, 2024, the Landlord gave the Tenant an N6 notice of termination, alleging that the Tenant misrepresented his income on his RGI unit. The Landlord discovered that the Tenant had been subletting his unit in late 2023, and early 2024.
13. The Landlord's witness, G. Rosen (GR) is an investigator for the Landlord. She investigates fraud and aids the Landlord to mitigate risk. GR said that her unit received an inquiry from the Landlord's management staff to investigate the Tenant in December 2023 because they believed that the Tenant was illegally subletting his RGI unit. GR said that her investigation revealed that the Tenant was subletting his unit to Katherine Gonzalez (KG) since July 2023. She submitted into evidence a history of texts from the Tenant, between the Tenant and KG, an advertisement for the unit for rent for a monthly rent of \$1,350.00, e-transfers to the Tenant for that amount of rent, a lease between the Tenant and KG. She also submitted into evidence photographic evidence that the Tenant was out of the country during this period, and he was posting items on social media while he was out of the country. She said that she confirmed the social media names, "G. Multichikyto" and "Gio Hernandez" were, in fact, the Tenant. Some of the text exchanges between the Tenant and KG include complaints about pest control and a bathroom repair. GR said that she did a credit investigation of the Tenant that revealed that he closed credit accounts during the period in question, and she said that suggests he was not actively living in Toronto.
14. GR said that there was a unit inspection carried out on January 5, 2024, and they discovered female clothing and lots of children's items and toys while the Tenant had claimed to be the sole occupant of the rental unit. She submitted photos into evidence.
15. GR said that during this period, from July 2023 until early 2024, the Tenant reported that his household unit consisted of only him, and he was collecting ODSP. The subsidized monthly rent was \$139.00, paid by ODSP directly to the Landlord. She said that the documentary evidence and the investigation revealed that the Tenant was charging, and accepting, \$1,350.00 per month rent from KG during this period. GR submitted into evidence a page from her report on the investigation which was completed in March 2024, and it states that the calculation of rent collected by the Tenant, and not paid to the Landlord is \$10,602.00 from the period when the Tenant entered a lease with KG (July 2023), and until March 2024.
16. GR said that her team contacted ODSP, and they learned that he did not report to them that he was out of the country. She said that ODSP informed her that they heard from the Tenant again around the same time that the Landlord heard from him again, which was in April 2024. GR said that ODSP suspended payments to the Tenant, and their investigation is still ongoing.
17. After the Landlord attempted to make contact with the Tenant, after December 2023, they had no response from him until January 19, 2024, when he said he was at St. Michael's Hospital. GR said that they contacted the hospital and were told there was no patient in their care with the same name as the Tenant. GR said that the first time they saw the Tenant after December 2023, was when he showed up at the Landlord's central office on April 12, 2024 to discuss his tenancy. She said that the Tenant told them he went out of the country because his mother passed away, and then he was in hospital. She said that

a meeting was scheduled for April 23, 2024, and the Tenant was told to bring any documentation he had to prove his explanation above.

18. GR said that at the meeting on April 23, 2024, the Tenant told them he did not remember all the Landlord's policies about guests and visitors. GR submitted into evidence the lease and postings in all the Landlord's buildings that explain the guest and visitor policy. The guest policy for RGI units is that guests can stay overnight for a maximum of 30 days in a twelve month period.
19. GR said that the Tenant initially told them that his brother came to visit him on occasion, but he never stayed with him overnight. She also said that the Tenant told them it was his brother who posted about renting the unit while the Tenant was in hospital for three months because he broke his hand, he believes his brother stayed in the unit for about a month, and he does not know KG, and he knew nothing about the sublet. She said that when they asked the Tenant about the social media postings from abroad in late 2023, he said that he took the photos in July but posted them later. He also told them that his brother had access to his tablet. She said that the Tenant also admitted that he was in Colombia for about a month in July 2023 because his mother was sick and passed away, but he returned to Canada and then broke his hand. GR said that the Tenant submitted documentation about his mother's passing in July 2023, but he has never provided any medical documentation to support his hospital stay.
20. GR said that the Tenant denied that most of the credit accounts were his, and he never produced any documentation to support the story above in paragraph #19, though he requested more time to provide it, as well as requested a second meeting in May 2024.
21. GR said that the Tenant lost his subsidy on September 1, 2024, and the rent was \$1,317.00 market rent, and it rose to \$1,349.00 on September 1, 2025. She said that the amount the Landlord is claiming since the misrepresentation of income is \$16,492.00. This represents the amount the Tenant would have been liable to pay in market rent since July 2023, (had the Tenant not misrepresented his income) until the Tenant lost his subsidy in August 2024, less the amount the Tenant actually paid (\$139.00 per month) in rent.
22. The Landlord's agent, C. Abraham (CA) said that the Tenant has not paid the rent since the incident began, and the arrears are \$19,753.00. The Landlord is asking for daily compensation since the N6 termination date of October 9, 2024, in addition to the amount mentioned in paragraph #21 above.
23. The Tenant said that he has lived in the rental unit for 10 years with no issues. He said that he went to Colombia on July 3, 2023, because his mother was very ill. He said that he stayed for over six months because his mother passed away, all his brothers live in Canada, and it was just he and his sister who were left in Colombia. He said that it took six months to find a place to bury his mother.
24. The Tenant said that he was in St. Michael's clinic for three months in December 2023, and he said that he had produced the documentation of the hospital stay. However, there is no documentary evidence disclosed by the Tenant for this application.

25. The Tenant said that when he went to Colombia he asked his brother to watch the unit, and his brother had access to the Tenant's laptop. It was his brother who arranged any sublet of the rental unit, and he himself never received any extra money for the unit. He said that he was not able to ask his brother to come as a witness because he has "disappeared".
26. The Tenant said that he seeks to remain in the rental unit. He said that he does not believe he owes any arrears to the Landlord because ODSP has paid his rent since December 2023. The Tenant said that his income is ODSP of \$1,038.00 per month and his rent is \$139.00.

Reasons and Analysis:

27. Subsection 60(1) of the *Residential Tenancies Act, 2006* (the 'Act') provides that a landlord may give a tenant a notice of termination of the tenancy if the rental unit is in a non-profit housing project, and the tenant has knowingly and materially misrepresented his or her income.
28. I find, on a balance of probabilities, that Tenant lives in a rent-geared-to-income unit and he has knowingly and materially misrepresented the Tenant's income for the following reasons.
29. While I find that much of the Landlord's evidence and allegations would have better aligned with the service of an N5 notice of termination for substantial interference with the lawful privilege, interest or right of the Landlord, the acts or omissions of the Tenant, alleged by the Landlord, also align with an N6 notice for misrepresentation of income for the following reasons.
30. The Landlord had overwhelming documentary evidence from their investigation that the Tenant did not inform the Landlord, nor did he inform ODSP, that he was living outside of the country as of July 2023, and he sublet his RGI rental unit to an unqualified person, while he continued to pay \$139.00 monthly for rent on the basis of a sole income from ODSP. This was a period in which he was collecting \$1,350.00 rent for the same unit. The Tenant was therefore making a profit of \$1,211.00 on the Landlord's unit for a period of nine months, while he was out of the country, while representing that he was on ODSP and living in his unit. It is undisputed that the Tenant did not inform the Landlord that he ever left the country, and it is undisputed that he did not inform the Landlord that he unlawfully sublet the rental unit and collected \$1,211.00 profit per month on the unit. While there is no evidence of direct lying to the Landlord about his income, during the period of the sublet, nor was there evidence that the Tenant directly informed the Landlord that he was only receiving an income from ODSP when he was, in fact, receiving ODSP as well as the profit from the sub-let of his unit, he did confirm at the meeting in April 2024 that he was only receiving ODSP, and that he was entitled to continue receiving ODSP upon his return to Canada. The Landlord already had evidence that the Tenant was under investigation by ODSP at this time. The Tenant denied that he was receiving the extra income from the sub-let, even though he was directly asked about it by the Landlord. He

told the Landlord, and he repeated at the hearing, that it was his brother who arranged a sublet, and it was his brother who received the income. Therefore, I find that the Tenant's misrepresentation of income was constituted by a misrepresentation of his financial situation to the Landlord at the meetings in April and May 2024, when confronted by the Landlord about whether he had sublet the unit and about whether he was in hospital, and also about when he was in or out of the country. At that time, he directly represented that he was in the country at the end of 2023, entitled to ODSP, and ODSP only, when he was at the same time, also receiving extra income for his unit that he failed to report to the Landlord. Taken together, I find that this comprises a misrepresentation of his income, and it commenced on July 1, 2023.

31. The Tenant's explanations for his absence were not credible, and they were mutually contradicted. There is credible evidence that the Tenant left the country in July 2023 because his mother was ill, but none of the Tenant's evidence accounting for the period after July 2023 is either credible or consistent. He said that he was away for six months from July 2023, while at the same, he also said that he was in Canada in late 2023 because of a broken hand, in a hospital that had no record of his stay, and for which he was unable to provide any documentary evidence. He also provided contradictory testimony about when, and if, his brother was living in his unit. The Tenant's testimony about the state of his accounts, which accounts belonged to him, and about how his brother could have access to all of his social media and texts without the Tenant becoming aware of it, had no credibility. In essence, none of the Tenant's evidence was credible, nor was it even comprehensible or mutually consistent.
32. Section 90 of the Act provides that if a landlord has a right to give a notice of termination under section 60, the landlord may apply to the Board for order for the payment of the money the tenant would have been required to pay if the tenant had not misrepresented his or her income.
33. The Landlord submits that section 90 should be read together with section 203 of the Act which provides that it is not for the Board to determine decisions of housing providers about eligibility for rent-gear-to-income assistance.
34. I find, on a balance of probabilities, that the Landlord is entitled to the \$16,492.00 requested, which is the difference in the amount the Tenant should have paid for market rent from the date he began misrepresenting his income, that is July 1, 2023, at a market rent of \$1,317.00, and the amount he actually paid (\$139.00 per month), until August 31, 2024, when he lost his subsidy. The Landlord determined that, had the Tenant not misrepresented his income as solely ODSP, he should have paid market rent of \$1,317.00. Pursuant to section 203 of the Act, it is not for the Board to determine whether \$1,317.00 is the correct market rent for the unit.
35. The Landlord is also entitled to the following amounts for rent to which it is entitled had the Tenant not misrepresented his income. The Landlord said that the Tenant has not paid any rent since the subsidy stopped in August 2024. The rent increased to \$1,317.00, market rent, on September 1, 2024, and it rose to \$1,349.00 on September 1, 2025. The Landlord is entitled to \$1,317.00 per month from September 1, 2024, to October 9, 2024, the termination date in the N6 notice, or $\$1,317 + \$389.70 = \$1,706.70$. They are also

entitled to daily compensation from October 9, 2024, to the date of the hearing, $(326 \text{ days} \times \$43.30) = \$14,115.80 + (37 \times \$44.35) = \$1,640.95$, or a total of \$15,756.75. The total of the amounts to which the Landlord is entitled after August 31, 2024, is \$17,463.45 to the date of the hearing.

36. Based on the monthly rent of \$1,349.00, the daily compensation is \$44.35. This amount is calculated as $\$1,349.00 \times 12$, divided by 365 days.
37. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
38. There is no last month's rent deposit.
39. 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 for the following reasons. The Tenant unlawfully sublet his rental unit, made a substantial profit on the Landlord's unit, and then continued to obfuscate and create a fictional, mutually contradictory, account of what happened. He then stopped paying the rent and he was unable to provide a reasonable explanation for why he stopped, when he was well aware that ODSP had suspended his payments and his subsidy. The Tenant committed a fraud on the Landlord, he has never admitted to it, and he continues to live in the rental unit rent-free. I find that it is prejudicial to the Landlord for the tenancy to continue.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 19, 2026.
2. If the unit is not vacated on or before January 19, 2026, then starting January 20, 2026, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 January 20, 2026.
4. The Tenant shall pay to the Landlord \$16,492.00 for the amount to which the Landlord is entitled had the Tenant not misrepresented his income, to August 31, 2024.
5. The Tenant shall also pay to the Landlord \$17,463.45, which represents compensation for the use of the unit from September 1, 2024 to October 7, 2025, had the Tenant not misrepresented his income..
6. The Tenant shall also pay the Landlord compensation of \$44.35 per day for the use of the unit starting October 8, 2025 until the date the Tenant moves out of the unit.
7. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
8. The Tenant shall also pay \$300.00 costs to the Landlord.
9. The total amount the Tenant must pay the Landlord is \$34,441.45.

10. If the Tenant does not pay the Landlord the full amount owing on or before January 19, 2026, the Tenant will start to owe interest. This will be simple interest calculated from January 20, 2026 at 4.00% annually on the balance outstanding.

January 8, 2026

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 July 20, 2026 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.