



**Landlord's Self-Help Centre**

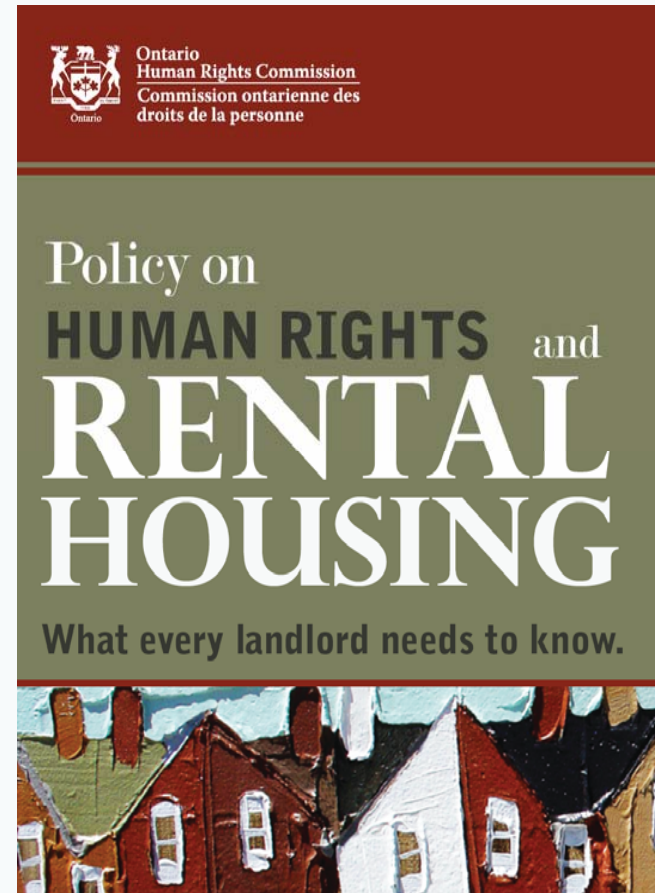
# **Landlord Learning Webinar**

Landlord's Self-Help Centre is pleased to present the ***Human Rights Code in Rental Housing*** webinar.

This Landlord Learning Webinar is intended to help landlords develop a better understanding of the Ontario Human Rights Code, its Policies and Guidelines and how they impact the rental relationships and the small scale landlord community.

Human Rights Code is Rental Housing is presented by Harry Fine.

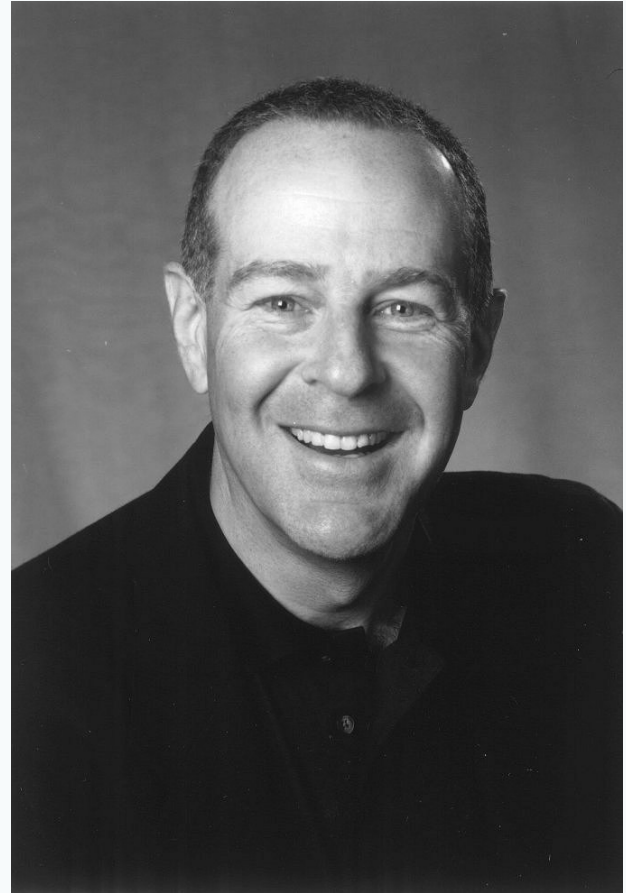
Note: The original webinar broadcast included live narration provided by Harry Fine. This webinar includes slides only.



# Harry Fine

Harry Fine is a paralegal specializing in the area of the landlord and tenant law and an advocate for Ontario landlords. His experience includes:

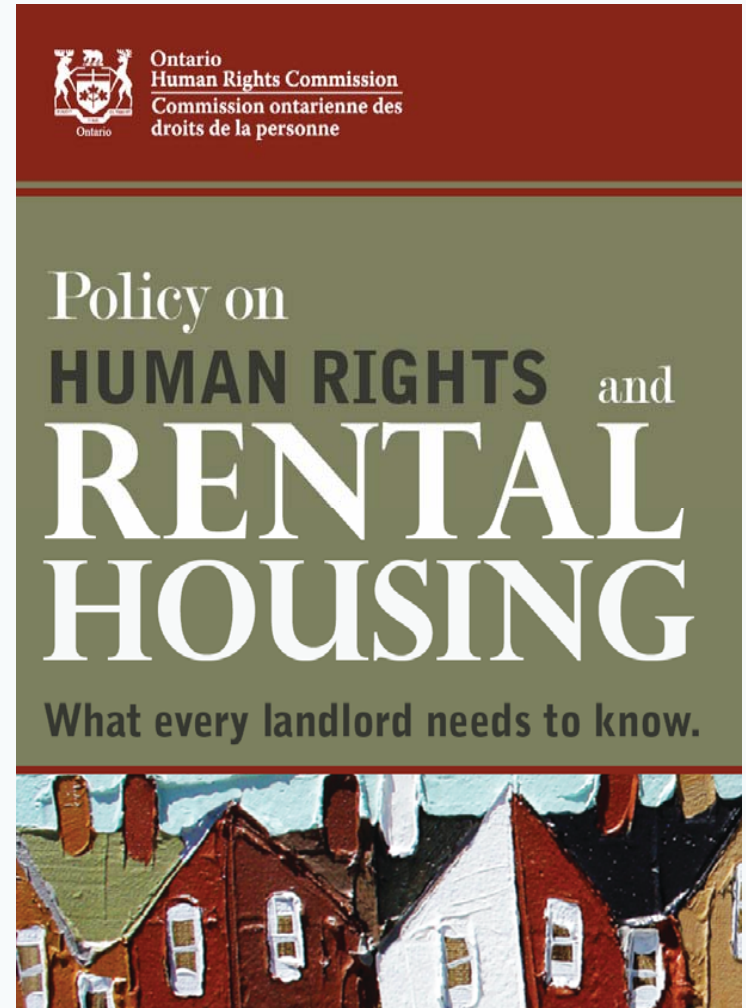
- ❑ Former member of the Ontario Rental Housing Tribunal (ORHT)
- ❑ President, Landlord Solutions
- ❑ Paralegal licensed by the Law Society of Upper Canada
- ❑ Director, Landlord's Self-Help Centre's Board of Directors



## Disclaimer

The Landlord Learning Webinar is intended to provide general information, it is not legal advice.

# Human Rights Code in Rental Housing



February 2010

# **Human Rights Code in Rental Housing**

## **Part I / Introduction**



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# Introduction to the Code

- ❑ The modern Human Rights Code was brought into force in 1962 in Ontario
  - ❑ The Human Rights Commission came into being in 1961 in Ontario
  - ❑ The Code occupies a special place in the laws of Ontario, being paramount to other laws. The *RTA* recognizes primacy of Code in Section 3(4) of the *RTA*.
  - ❑ Restrictions are found in the *Ontario Human Rights Code* and Policy Guidelines.
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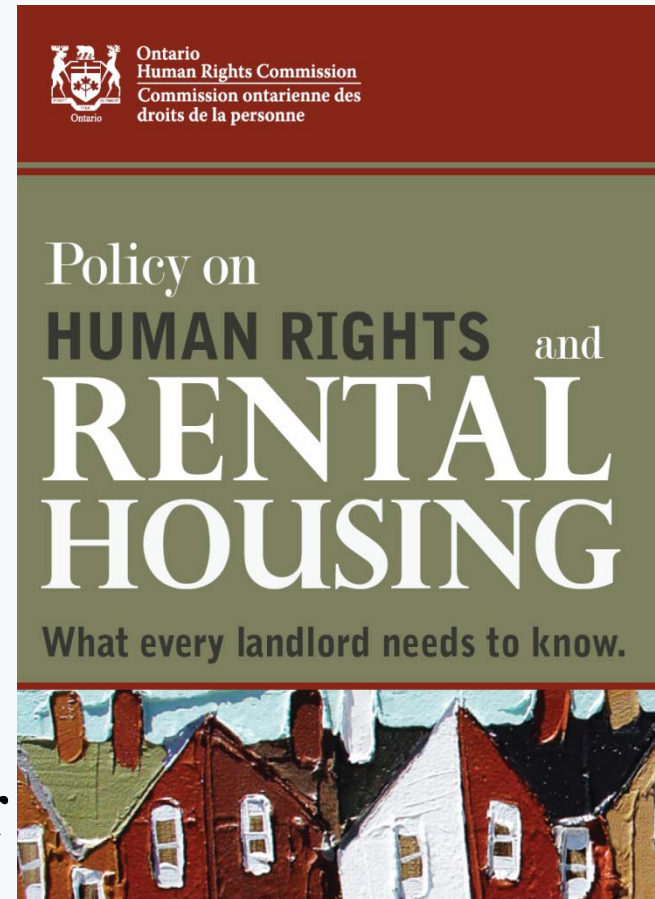
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# The Code v. Policy Guidelines

- ❑ Reading the Code, you see it is a framework only, setting out that certain types of discrimination is impermissible, that certain groups have protection under the Code, and that there are types of permissible discrimination.
  - ❑ The bread and butter rules re: discrimination in various areas (employment, housing, language, sexual orientation etc.) can be found in the Commission's Policy Guidelines.
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# Application of Policy Guideline

- ❑ The Policy Guideline for Rental Housing was introduced on October 5<sup>th</sup>, 2009 by Chief Commissioner Barbara Hall.
- ❑ The Policy Guideline is a roadmap, and it should be required reading for all senior staff in housing companies.





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# Application of Policy Guideline

- ❑ OHRC policies and guidelines set standards for how individuals, employers, housing providers, service providers and policy makers should act to comply with the *Code*. They are important because they represent the OHRC's interpretation of the *Code* (at the time of publication).
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# Application of Policy Guideline

- ❑ While they are not binding on the Ontario Human Rights Tribunal (the Tribunal) or on Courts, they are often given great deference, applied to the facts of the case before the court or tribunal, and are quoted in their decisions. You deviate from them at your peril!
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# Application of Policy Guideline

- ❑ Prior to this Policy Guideline, triers of fact used principles found in other policy statements and guidelines.
  - ❑ All Courts and Tribunal must use the Guideline and take note of any Code issues that may affect the subject matter of a claim.
  - ❑ This includes the Landlord and Tenant Board, but a tenant may also bring a claim directly to the Ontario Human Rights Commission. The Board must take the Code into account in its decisions.
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# Application of Policy Guideline at LTB

- ❑ The Landlord and Tenant Board has embraced the Guideline and summarized its own policies in one of its Interpretation Guidelines, #17.
  - ❑ The Board's guideline speaks about the Code's interaction with the *Residential Tenancies Act*, giving a layperson an understanding of the Board's obligations under the Code, and the obligations of both landlords and tenants.
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# Major Structural Changes in 2008

- ❑ The Ontario legislature overhauled the human rights system with major reforms to its design effective on June 30th, 2008.
  - ❑ The reform abolished the Commission's 'gate-keeping' function and created a new legal support centre. The new system now rests on three pillars: the Ontario Human Rights Commission, the Human Rights Tribunal of Ontario, and the Human Rights Legal Support Centre.
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# **Human Rights Code in Rental Housing**

## **Part II / Pre-Tenancy**



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# What Landlords can do Pre-Tenancy

- ❑ The eviction process will be lengthier and more difficult under the *Residential Tenancies Act* (RTA) under the new Policy Guideline.
  - ❑ There are no restrictions in the *RTA* respecting a landlord's right to accept or reject prospective tenants, but...
  - ❑ Restrictions on pre-tenancy qualifications are found in the *Ontario Human Rights Code* (HRC)
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# What the RTA says about screening

## Residential Tenancies Act 2006

### S.O. 2006, CHAPTER 17

#### Human Rights Code - Selecting prospective tenants

10. In selecting prospective tenants, landlords may use, in the manner prescribed in the regulations made under the *Human Rights Code*, income information, credit checks, credit references, rental history, guarantees, or other similar business practices as prescribed in those regulations. 2006, c. 17, s. 10.

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# What the Code says about screening

## Human Rights Code - ONTARIO REGULATION 290/98

### BUSINESS PRACTICES PERMISSIBLE TO LANDLORDS IN SELECTING PROSPECTIVE TENANTS FOR RESIDENTIAL ACCOMMODATION

- 1. (1) A landlord may request credit references and rental history information, or either of them, from a prospective tenant and may request from a prospective tenant authorization to conduct credit checks on the prospective tenant. O. Reg. 290/98, s. 1 (1).
- (2) A landlord may consider credit references, rental history information and credit checks obtained pursuant to requests under subsection (1), alone or in any combination, in order to assess the prospective tenant and the landlord may select or refuse the prospective tenant accordingly. O. Reg. 290/98, s. 1 (2).
- (3) A landlord may request income information from a prospective tenant only if the landlord also requests information listed in subsection (1). O. Reg. 290/98, s. 1 (3).
- (4) A landlord may consider income information about a prospective tenant in order to assess the prospective tenant and the landlord may select or refuse the prospective tenant accordingly only if the landlord considers the income information together with all the other information that was obtained by the landlord pursuant to requests under subsection (1). O. Reg. 290/98, s. 1 (4).
- (5) If, after requesting the information listed in subsections (1) and (3), a landlord only obtains income information about a prospective tenant, the landlord may consider the income information alone in order to assess the prospective tenant and the landlord may select or refuse the prospective tenant accordingly. O. Reg. 290/98, s. 1 (5).

# What the Code says about screening

## Human Rights Code ONTARIO REGULATION 290/98

### BUSINESS PRACTICES PERMISSIBLE TO LANDLORDS IN SELECTING PROSPECTIVE TENANTS FOR RESIDENTIAL ACCOMMODATION (Cont.)

- 2. (1) A landlord may require a prospective tenant to obtain a guarantee for the rent. O. Reg. 290/98, s. 2 (1).
- (2) A landlord may require a prospective tenant to pay a security deposit in accordance with sections 117 and 118 of the *Tenant Protection Act, 1997*. O. Reg. 290/98, s. 2 (2).
- 3. In selecting a prospective tenant, a landlord of a rental unit described in paragraph 1, 1.1, 2 or 3 of subsection 5 (1) or subsection 6 (1) of the *Tenant Protection Act, 1997* may request and use income information about a prospective tenant in order to determine a prospective tenant's eligibility for rent in an amount geared-to-income and, when requesting and using the income information for that purpose only, the landlord is not bound by subsections 1 (3) and (4). O. Reg. 290/98, s. 3; O. Reg. 646/00, s. 1.
- 4. Nothing in this Regulation authorizes a landlord to refuse accommodation to any person because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status, handicap or the receipt of public assistance. O. Reg. 290/98, s. 4; O. Reg. 31/00, s. 1.

# Prohibited Grounds of Discrimination

- It is discriminatory for a landlord to reject a prospective tenant based on any of the following grounds:
    - Race
    - Ancestry
    - Place of Origin
    - Colour
    - Ethnic Origin
    - Citizenship
    - Creed
    - Sex (i.e. Gender)
    - Sexual Orientation
    - Age
    - Marital Status
    - Family Status
    - Disability
    - Receipt of Public Assistance
  - There are exceptions set out in the HRC.
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# Exceptions

1. Where the owner of premises or his or her family live in the premises and share a bathroom or kitchen facility with the tenant or roomer.

S.21(1), HRC

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# Exceptions

2. Exception to discrimination because of sex where all the residential accommodation in a building, other than that of the owner or his or her family, is restricted to persons who are of the same sex.

S.21(2), HRC

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# Exceptions

3. The right to equal treatment is not infringed if a landlord uses income information, credit checks, credit references, rental history, guarantees or other similar business practices in the manner set out under the Code when selecting prospective tenants.

S.21(3), HRC

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# Exceptions

## 4. Accommodation of person under eighteen

- 4. (1) Every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to **occupancy of and contracting for accommodation** without discrimination because the person is less than eighteen years old.
- (2) A contract for accommodation entered into by a sixteen or seventeen year old person who has withdrawn from parental control is enforceable against

S.4(1), HRC

# Permissible Discrimination

- ❑ In general, a landlord can discriminate (that is refuse to rent) for reasons not listed in the *Human Rights Code*, including that the tenant:
  - Smokes
  - Keeps a pet (except pet required for disabled person)
  - Has left previously occupied rental units in poorer than normal condition
  - Has demanded more than normal maintenance
  - Refuses to provide suitable identification
  - Has inadequate credit references (and no guarantor)
  - Refuses to consent to a credit check



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# Practical Steps for Selecting a Tenant

## *1. Conduct a Credit Check for Tenants*

- Landlords have the right to obtain a credit check of a prospective tenant.
  - Need consent in writing.
  - For the most effective credit check, obtain:
    - full name,
    - date of birth and
    - Social Insurance Number (but cannot require)
    - Check identification such as a driver's license.
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# Practical Steps for Selecting a Tenant

## 2. *Obtain References from Tenants*

- From current and previous landlords.
    - if the tenant has been a poor tenant, the current landlord has an incentive to provide an unrealistic reference in order to be rid of the tenant.
  - Obtain information about the prospective tenant's current employment or source of income including, the telephone number, address, and length of employment.
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# Practical Steps for Selecting a Tenant

## 3. *Make Income Inquiries for Tenants*

- Landlords have the right to request information concerning the income of the tenant, but only if other factors are also considered.
- The prospective landlord must follow rules set out in the *Human Rights Code*

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# Grounds of Discrimination Explained

- Family & marital status
    - Whether married, single, widowed, divorced or separated or living with someone in a conjugal relationship outside of marriage
    - Landlords cannot only accept a person if their family status falls within a certain family composition, i.e. single, couple, adults only, etc.
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# Grounds of Discrimination Explained

## □ Disability

- The Commission has defined the term “disability, and it is very broad
- Landlords have a duty to accommodate, to the point just short of “undue hardship”
- If existing physical structures, systems or attitudes create barriers, they must be removed or special arrangements made where possible

# Grounds of Discrimination Explained

## □ Disability

### ■ Three factors can be considered for “undue hardship”

- Cost – if it is so high that it affects the survival of the business
  - Outside sources of funding (if any) – can offset some costs; could be phased in over time
  - Health and safety factors (if any) – determine whether any applicable requirements can be waived or modified
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# Grounds of Discrimination Explained

## □ Age

- Generally refers to ages of 18 years or more
  - Special provision prohibiting discrimination against 16 and 17 year old youths who have withdrawn from parental control and are living on their own
    - HRC makes tenancy agreement enforceable against them despite their young age
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# Grounds of Discrimination Explained

- Receipt of public assistance
    - Cannot deny a tenant on the basis that their only income is social assistance
    - Cannot deny on that basis even if it is extremely unlikely, though not impossible, for the prospective tenant to pay the rent
    - Must look at other factors
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# Use of Income Information

- 1998 amendments to the HRC provide:
    - Landlord may *request* income information *only if* landlord also requests:
      - Credit references
      - Rental history information
    - Landlord may *consider* income information *only if* landlord considers it along with all the other information obtained pursuant to requests for credit and rental history information
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# Use of Income Information

- If only income information is received from a prospective rent tenant, but all other information was requested, the landlord may consider the income information alone.
  - So what use can be made of the income information?
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# Use of Income information

- Position of the Ontario Human Rights Commission (from their website):
    - *Applications to Lease and Tenant Screening:*
      - “Landlords are not allowed to use minimum income or maximum rent-to-income ratios *alone* as a cut-off rule *unless there is evidence that other information was considered*, where such information is available.”
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# Use of Income information

- What does this mean?
    - To be safe, you must not have any fixed rule about:
      1. the rent-to-income ratio; or
      2. a minimum income for a given rent.
    - To be safe, other factors, such as the tenant's previous history at payment of a comparable rent, should override income concerns
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# Other Information You May Request

- ❑ Landlord may require a prospective tenant to obtain a guarantor for the rent, or a co-signer
  - ❑ Landlord may require prospective tenant to pay a deposit in accordance with the rental legislation.
  - ❑ In Ontario, that deposit is limited to a rent deposit for the last month's rent no greater than the rent for one month.
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# Practical Tips and Action Items

- ❑ Establish checklists
  - ❑ Document all checks you have made or attempted to make
  - ❑ Train your staff with respect to carrying out the rental application process
  - ❑ Keep rental applications for as long as possible whether the tenant is accepted or not (we recommend a minimum of 24 months)
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# Practical Tips and Action Items

- ❑ Do not tell prospective tenants why they were not accepted, just that they were not the successful applicant
    - You can refuse to elaborate. You are not required by law to give reasons.
    - If pressed, say it is your (or your company's) policy not to give reasons.
    - Never tell them unit already rented when it is not.
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# Attracting Tenants

- ❑ You should have a system for attracting prospective tenants.
  - ❑ Signs and classified ads may suffice.
  - ❑ But...ensure ads do not refer to prohibited issues, such as age, family size, gender.
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# **Human Rights Code in Rental Housing**

## **Part III / During The Tenancy**



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# What the Code Mandates; Discrimination

- Under the Code, everyone has the right to be free from discrimination in housing in 14 key areas called “protected grounds”:

*2. (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance.*

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# Prohibited Grounds of Discrimination

- It is discriminatory for a landlord to reject a prospective tenant based on any of the following grounds:

- |                   |                                |
|-------------------|--------------------------------|
| ■ Race            | ■ Sex (i.e. Gender)            |
| ■ Ancestry        | ■ Sexual Orientation           |
| ■ Place of Origin | ■ Age                          |
| ■ Colour          | ■ Marital Status               |
| ■ Ethnic Origin   | ■ Family Status                |
| ■ Citizenship     | ■ Disability                   |
| ■ Creed           | ■ Receipt of Public Assistance |

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# How is Discrimination Defined

- ❑ “Discrimination” is defined as differential (and negative) treatment of, or failure to accommodate, an individual on the basis of the individual’s inclusion in a protected group, including having a disability...
  - ❑ Discrimination can be direct, indirect, systemic, or constructive. Direct is easy to spot, but others are much more subtle.
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# How is Disability Defined

“Disability” means,

- ❑ (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- ❑ (b) a condition of mental impairment or a developmental disability,

# How is a Disability Defined

“Disability” means,

- ❑ (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- ❑ (d) a mental disorder, or
- ❑ (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; ("handicap")

# What the Code Mandates; Harassment

- Under the Code, everyone has the right to be free from harassment in housing in 12 key areas called “protected grounds”:

*2(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, family status, disability or the receipt of public assistance.*

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# How is Harassment Defined

- “Harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.



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# What the Code Mandates

- Section 9 of the Code provides that no person can infringe on the rights found in section 2 of the Code which include:
    - *equal treatment with respect to the occupation of accommodation without discrimination because of a “disability” ... (Section 2(1)).*
    - *freedom from harassment by the landlord, staff or by another occupant of the same building because of a “disability” ... (Section 2(2)).*
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# What the Code Mandates

- ❑ Constructive discrimination is not well understood, and happens when:

*a requirement exists which results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination, that person's rights are infringed unless the requirement...is reasonable and bona fide in the circumstances, or unless the Code specifically provides otherwise (Section 11(1)).*

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# The Requirement or Rule Must...

- ❑ Have been adopted for a purpose or goal that is rationally connected to the function being performed;
  - ❑ Have been adopted in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal, and
  - ❑ Be reasonably necessary to accomplish its purpose or goal, in the sense that it is impossible to accommodate the tenant without undue hardship.
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# Accommodation Efforts are Key

- The landlord need show that they have tried to accommodate the need of the individual:

*The Tribunal will not consider a requirement “reasonable and bona fide” in the circumstances unless the needs of the group of which a person is a member cannot be accommodated without undue hardship... considering the cost, outside sources of funding, if any, and health and safety requirements (Section 11(2)).*

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# Must Attempt to Accommodate Needs

- It is not the inability of the individual to perform a requirement that infringes on the right of the individual:

*A right of a person is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending to the exercise of the right by reason of disability. (Section 17(1)).*

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# Must Attempt to Accommodate Needs

- ❑ Before an individual is found incapable, the landlord must first attempt accommodation:

*this person shall not be found incapable of such performance unless the needs of this person cannot be accommodated without undue hardship... considering the cost, outside sources of funding, if any, and health and safety requirements (Section 17(2)).*

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# How Not to Discriminate...

- ❑ Sections 11 and 17 of the Code operate to create an obligation to accommodate a tenant with a disability or who is a member of a Code protected group.
  - ❑ Therefore, to evict a tenant with a disability or who is a member of a protected group for a reason related to the disability or group, you must first attempt accommodation.
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# And What if you Don't Accommodate

- ❑ Before ordering the eviction of a tenant with a disability, *for reasons related to the disability or membership in a protected group*, the Board has an obligation to consider what efforts, if any, a landlord has made to accommodate a tenant (*Walmer Developments v. Wolch*, 2003).
  - ❑ This obligation exists both with respect to the LTB's finding of facts, and the Member's exercise of discretion in regards to eviction.
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# The Code Mandates Accommodation..

- ❑ With dignity and tenant involvement.
  - ❑ Individualized solutions, not one size fits all.
  - ❑ With the full integration and participation of the parties.
  - ❑ Up to the point of undue hardship.
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# Where is the Undue Hardship Point

- ❑ Costs must be so substantial that they would alter the essential nature of the enterprise, or...so significant they would substantially affect its viability.
- ❑ The landlord must consider outside sources of funding, government grants, phasing in the changes, using funds from other parts of the organization etc.
- ❑ The landlord must consider health and safety risks to staff as well.

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# Responsibilities on Both Parties

- ❑ The accommodation process is a shared responsibility. There must be full involvement by all parties.
  - ❑ The parties must share information.
  - ❑ Exchange accommodation ideas to find one that works and is reasonable. The tenant cannot just demand a certain solution.
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# Requirements of the Tenant

- ❑ They must advise landlords of needs requiring accommodation, preferably in writing.
  - ❑ They must provide information as needed, answering reasonable questions, and participate in discussions.
  - ❑ They must cooperate in managing the accommodation process.
  - ❑ They must follow medical/professional advice to improve condition or the situation.
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# Requirements of the Landlord

- ❑ Presume good faith on the tenant's part.
  - ❑ Accommodate to the point of undue hardship.
  - ❑ Respond in a timely manner.
  - ❑ Keep a record of the request and action taken.
  - ❑ Respect tenant's right to privacy.
  - ❑ Pay all costs of providing the accommodation.
  - ❑ Ensure other tenants respect tenant's rights.
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# Use Community Supports

□ Use community supports to assist tenant.

- case managers, support workers....
- treatment providers
- health care professionals
- legal counsel
- family members

□ Be mindful of PIPEDA.

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# Use Community Support Services

- ❑ The tenant and the support team must participate in achieving desired behaviour.
  - ❑ Obtain commitments for intervention in crisis.
  - ❑ Obtain contact information for supports.
  - ❑ Obtain consent from tenant re: disclosure.
  - ❑ Obtain undertaking from the tenant to commit to regular contact with community or health care professional.
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# Practical Considerations

- ❑ Try to get the required consents at the start of tenancy if the disability is obvious.
  - ❑ Consider accommodation before eviction.
  - ❑ Voluntary compliance may avoid complaints and save time and expense in failed eviction attempts.
  - ❑ Put everything in writing, document all your efforts.
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# At a Hearing it Helps to Know.....

- ❑ In order to succeed in defending your eviction claim, a tenant must:
  1. Establish the existence of disability or membership in protected group.
  2. Prove discrimination: i.e. differential and negative treatment.
    - The tenant must be able to show that there is a connection between the behavior, & the tenant's disability or membership in group.

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# At a Hearing it Helps to Know.....

- ❑ Where discrimination is established, the landlord has the onus of showing that the discrimination was justifiable.
  - ❑ pursuant to section 17(2) and 11(2) of Code, the burden rests with the landlord to establish that it has accommodated the tenant and/or cannot accommodate the tenant's disability short of undue hardship.
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# At a Hearing it Helps to Bring.....

- ❑ Evidence to prove accommodation efforts, if any, were made.
- ❑ Evidence required to prove undue hardship must be objective, real, direct, and, in the case of cost, quantifiable - Includes:
  - Financial statements and budgets.
  - Scientific data & info. resulting from empirical studies.
  - Expert opinion.

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# Practical Day to Day Tips

- ❑ Answer new-tenant questions with care. Use checklists and uniform procedures. Be certain you are not being set up for a lawsuit.
  - ❑ Review your internal policies and forms to ensure compliance and reasonableness.
  - ❑ Ask yourself if each potentially discriminating policy has a legitimate policy objective.
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# Practical Day to Day Tips

- ❑ Communicate and consider carefully reasons for refusal of a request.
- ❑ Accommodate disabilities for in-situ tenants, and keep track of all communications.
- ❑ Remember that responsibility under the Code travels up the chain of command to all levels of management and ownership.

# Human Rights Code in Rental Housing



February 2010

# Questions

## Links:

Ontario Human Rights Commission

<http://www.ohrc.on.ca/en/issues/housing>

Rental Housing Policy

<http://www.ohrc.on.ca/en/resources/Policies/housing/pdf>

# Evaluation

<http://www.surveymonkey.com/s/8P9JC5W>



# Closing

