

THE MANITOBA
HUMAN RIGHTS
COMMISSION



LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA

You Can Support Human Rights in Rental Housing

Your rights Your obligations

Guidelines on rental housing under
The Human Rights Code (Manitoba)
for tenants (renters), landlords, rental
agencies and management companies

Introduction

This guideline is the Manitoba Human Rights Commission's interpretation of the provisions of *The Human Rights Code* ("*The Code*") with respect to rental housing.

It has information for tenants (renters), landlords, caretakers, rental agencies, and building or property management companies about rights and responsibilities under *The Code*.

This guide is subject to the specific language of *The Human Rights Code*, and to interpretations by adjudicators and the courts.

What is *The Human Rights Code*?

The Code is the provincial human rights law that protects individuals and groups in Manitoba from discrimination. It is administered by the Manitoba Human Rights Commission.

The Human Rights Code sets out a process for filing a human rights complaint. There is no charge for filing a human rights complaint or for seeking advice about a human rights concern.

The Code has special status over all other laws of the Province of Manitoba. This means, for example, that it is not enough if a landlord meets the requirements of legislation such as *The Buildings and Mobile Homes Act* or *The Residential Tenancies Act*, if the result still unreasonably discriminates against a tenant who uses a wheelchair based on that tenant's disability. (For further information, please see the discussion on reasonable accommodation later in these guidelines.)

What does *The Human Rights Code* say about discrimination in rental housing?

The Code prohibits discrimination in the rental of residential or commercial premises. This means that a property owner or agent cannot discriminate against tenants (or their guests) based on protected characteristics, such as ancestry. For example, it is illegal to have a term in a rental lease or agreement that requires tenants of a particular ancestry to pay a higher damage deposit.

It is also illegal for a landlord, rental agent, or a tenant who sublets, to refuse applicants for tenancy on the basis of a protected characteristic, such as source of income. For example, it is contrary to *The Code* to refuse to rent or sublet an apartment to someone because their source of income is social allowance.

Discrimination under *The Code* includes failing to reasonably accommodate special needs that are based on protected characteristics, such as disability. Harassment based on a protected characteristic, such as sex, is also prohibited.

The Code also prohibits discrimination in the provision of services, such as the services provided in the management of an apartment building. It prohibits discrimination in employment, including the employment of caretakers. Discrimination in advertisements is prohibited, including signs or ads about apartments for rent.

What are the rights of a person applying to rent an apartment?

Under *The Code*, applicants for tenancy have the right to have their application for tenancy considered without unreasonable discrimination.

What are the rights of tenants (renters)?

Tenants have the right to live in rental accommodation without being subjected to unreasonable discrimination, including harassment. Tenants also have the right to reasonable accommodation of special needs which are based on protected characteristics under *The Code*, such as disability.

What are the protected grounds under *The Code*?

The Code prohibits discrimination based on the following characteristics:

- ancestry, including race and colour;
- nationality;
- ethnic origin;
- religion;
- age;
- sex, including pregnancy and gender identity;
- gender-determined characteristics;
- sexual orientation;
- marital or family status;
- source of income;
- political belief; and
- physical or mental disability.

In addition to these listed characteristics, *The Code* prohibits discrimination that is based on other group stereotypes, rather than on individual merit. For example, the Manitoba Human Rights Commission accepts complaints on the basis of criminal record or disadvantaged social condition.

Who is legally responsible for discrimination?

The Code does not only place responsibility for a discriminatory act on the person whose conduct is discriminatory. Landlords or agents can be responsible for the actions of their employees.

Landlords and agents are encouraged to inform their employees about the requirements of *The Human Rights Code* and to ensure that their obligations under *The Code* are being met. (See also the sample policy on “Protection from Discrimination and Harassment” at the end of these Guidelines.)

What if there is no intention to discriminate?

It is possible to discriminate without intending to violate the law. Systemic discrimination is a form of discrimination that is often not intended, and takes place when a policy or practice that seems neutral has a greater negative effect on some people based on their protected characteristic. For example, it is not contrary to *The Code* to specify in a lease that no pets are allowed. However, if caretakers and rental agents apply this rule to tenants or their visitors who rely on animal assistants, such as guide dogs, the result may be discrimination based on disability.

What is prohibited harassment in rental housing under *The Code*?

It is illegal for anyone responsible for a rental property to harass a tenant, a guest, or an employee, on the basis of any of the protected characteristics under *The Code*, including ancestry, national origin, sex (including pregnancy and gender identity), sexual orientation, religion and disability.

It is also contrary to *The Code* for anyone responsible for rental housing to knowingly permit or fail to take reasonable steps to terminate harassment of one participant by another participant - such as harassment of one tenant by another tenant. (Please also see the sample policies on Discrimination and Harassment at the end of these guidelines.)

What must a landlord do to reasonably accommodate special needs of a tenant that are based on a protected characteristic?

Reasonable accommodation under *The Code* requires that landlords or their agents respond to requests from tenants for accommodation of special needs based on protected grounds, such as disability, by:

- engaging in an adequate process to determine whether reasonable accommodation can be made; and
- providing sufficient effort and measures (to the point of “undue hardship”) towards meeting the obligation to accommodate.

Reasonable accommodation often involves a simple change to how something is done that takes into account a special need a person or group has that is based on a protected characteristic. An example is a landlord installing a flashing smoke detector in the apartment of a tenant who is deaf.

Where a landlord relies on undue hardship as the reason for not providing an accommodation, a mere belief that accommodation would create a hardship is not enough. The landlord must be able to show adequate evidence of the hardship, such as unreasonable cost. (For further information, please see the Manitoba Human Rights Commission guidelines “Reasonable Accommodation: You can remove barriers to equality of opportunity and participation”.)

What are some other examples of reasonable accommodation in rental housing?

The following are examples of reasonable accommodation in rental housing of a tenant's special needs that are based on protected characteristics.

- A pregnant tenant sees a notice in her apartment building's elevator that the common hallway will be painted the next week. She tells her landlord that she is concerned about the health and safety risk posed by the paint fumes. The landlord agrees to paint the hall at another time when the tenant will be away.

- A landlord begins to renovate the front entrance and lobby of an apartment building. A tenant who uses a wheelchair learns that no provision has been made to install a power-assisted door opener, and speaks to the landlord. The landlord determines that an automatic door opener could be installed. For cost and design reasons, however, he selects a different automatic door opener than that suggested by the tenant, which still provides reasonable accommodation.

- A tenant who is blind requests that her landlord provide a safe relief area for her guide dog. The landlord consults with the tenant on a suitable location, and designates an area at the back of the building as the relief area for the service dog. The relief area is accessible, free of traffic, and in a safe location. It has a safe noise level, an absorbent surface and a receptacle for disposal of dog waste. The landlord asks the caretaker to keep the short path to the relief area shoveled, and follows up two weeks later to make sure that the accommodation is working.

What about a person renting a room in his or her home?

The Code allows a person who is living in their home and renting out a part of that home to discriminate in the choice of a tenant. For example, a person who is renting out a vacant room in the house where they live may have a preference for a tenant of the same sex as they are. A person who rents out part of a home that they own but do not live in, or who owns a duplex but does not live in one of the apartments, is prohibited from discriminating and does not fall under this narrow exception.

What about subletting an apartment?

The Code prohibits discrimination in the subletting of rental accommodation. Neither the landlord nor the tenant who is subletting can discriminate when subletting an apartment.

What can a landlord consider when selecting a tenant?

Landlords can protect their rental property by selecting suitable tenants, and refusing undesirable tenants, based on non-discriminatory criteria. Landlords and rental agents may screen applicants on the basis of relevant qualifications through the use of application forms, interviews and reference checks.

Landlords and rental agents can obtain all the information about an applicant that is relevant to his or her qualifications as a tenant, as long as the information is not used for discriminatory purposes. For example, a landlord may inquire about an applicant's source and amount of income to evaluate the applicant's ability to pay the rent. A landlord cannot, however, refuse to rent to someone merely because his or her income is derived in whole or in part from welfare or pension.

When owners establish qualifications or requirements for tenancy, they should take care that the requirements are necessary to ensure the selection of a qualified tenant. A qualified tenant is a person who can provide a landlord or rental agent with:

- **Reasonable evidence of an ability to pay the rent.**
The landlord or rental agent can ask for information about an applicant's income, and other factors that help determine the adequacy and stability of income. Landlords and rental agents are required to make an individual assessment of an applicant's ability to pay the rent, and not to make assumptions about ability to pay based on, for example, the applicant's source of income being social assistance or pension.
- **Reasonable indication that the person will be a responsible tenant.**
Owners and their agents can ask for the applicant's past rental history to determine whether the applicant will pay the rent on time, avoid damaging the premises, and provide notice if moving.

What about getting enough information to assess an applicant's qualifications for tenancy?

It is important that landlords and rental agents make reasonable efforts to obtain the information necessary to assess a prospective tenant's application, and do not ask for more detailed information than an applicant could reasonably be expected to provide.

As mentioned earlier in these guidelines, when an applicant does not have a rental history, it may be reasonable for a landlord or rental agent to request character references, a guarantor, or to otherwise assess the likelihood that the tenancy agreement will be honoured, depending on the circumstances.

Can a landlord rely on a rent-to-income ratio when selecting a tenant?

Rent-to-income ratios may unreasonably discriminate against persons based on disadvantaged social condition, family status, or other ground. Where a standard, rule or policy that a landlord is using may have a discriminatory effect, the landlord is required to rely on another approach, such as a more individually sensitive standard or assessment.

Can a landlord limit the number of occupants for a rental unit?

It is a contravention of *The Human Rights Code* for a landlord or rental agent to have a general policy or standard which sets out a maximum number of persons that can occupy a given rental accommodation, unless there is reasonable cause for such a standard or policy.

Standards, such as the Canadian National Occupancy Standard of the Canada Mortgage and Housing Corporation, provide guidance as to the ideal number of bedrooms a home should have to provide a couple or family with freedom from overcrowding. The strict application of such standards to limit the number of occupants for an apartment can, however, lead to unreasonable discrimination on the basis of family status or other protected characteristic. (For further information, please see Manitoba Human Rights Commission policy "Rental of Premises: Limitation on the Number of Occupants for a Dwelling.")

Can a landlord require direct payment of rent from Social Services?

A landlord or rental agent cannot require a tenant whose source of income is social allowance to agree to have the rent paid directly to the landlord or rental agent, unless there is reasonable cause for this term or condition of occupancy.

One example of reasonable cause for direct payment of rent from Social Services may be where the tenancy record of the applicant shows a poor record of paying rent on time. (For further information, please see Manitoba Human Rights Commission policy “Rental of Premises: Direct Payment of Rent from Social Services”.)

Can a landlord require that an applicant for tenancy provide a guarantor or co-signer?

It is a contravention of *The Human Rights Code* for a landlord or rental agent to have a general policy or standard that all applicants for tenancy must provide a guarantor or co-signer. Such a requirement may unreasonably discriminate against persons or groups on the basis of disadvantaged social condition, ancestry, national origin or other protected ground.

Some applicants for tenancy may not have a rental history. Aboriginal applicants for tenancy who have previously resided in their First Nation communities, new immigrants, persons returning to community living after a period of hospitalization for a psychiatric disability, and young people seeking their first apartments cannot be denied an apartment simply because they have not rented previously, or do not have a recent rental history. The owner or agent might, for example, obtain the information necessary to make a decision on offering rental accommodation by requesting character references that include information relevant to the applicant's likelihood of honouring the tenancy agreement.

If an applicant for tenancy does not have a rental history and cannot supply any references, then an alternative may be to request that the applicant provide a guarantor to co-sign the lease with the applicant. It is, however, discriminatory to request that all persons who belong to a particular group provide guarantors. For example, a policy that requires all recipients of social assistance to provide a guarantor is prohibited under the law.

What if an applicant for tenancy does not have a rental or credit history, or access to a guarantor or co-signer?

The duty to reasonably accommodate special needs which are based on protected characteristics under *The Human Rights Code* extends to the rental of premises. There may be circumstances, such as applications for tenancy from recently arrived refugees to Canada, where applicants cannot provide rental or credit histories. They may also not have access to guarantors or references that can speak from long-term knowledge of the applicants.

Reasonable accommodation of special needs based on an applicant's national origin might require that the landlord or rental agent assess the applicant's likelihood of honouring the tenancy agreement in other ways, which do not strictly rely on usual practices of checking rental and credit history, or requesting the provision of a guarantor or references with long-term knowledge of the applicant.

What about “55+” or “adults only” target marketing of rental housing?

There is no specific exception in *The Code* for “55+” or “adults only” buildings. The general *Human Rights Code* provisions will apply. This means that discrimination in housing based on age is prohibited, unless the discrimination is with *bona fide* and reasonable cause or meets the requirements for a “Special Program” under *The Code*. (There is further information on Special Programs later in these guidelines, or please refer to the Manitoba Human Rights Commission Policy “Special Programs”.)

Can landlords restrict families with children?

It is contrary to *The Human Rights Code* for a landlord or rental agency to restrict families with children to certain floors or apartments within a building, such as basement apartments.

Landlords wanting to ensure a quiet environment can include clauses in the rental agreement that address unreasonable noise from tenants, but must not adopt standards which unreasonably discriminate based on age (children) or family status (families with children). Reasonable noise from children must not be the basis for any detrimental treatment of tenants.

What about “For Rent” signs and ads?

Discriminatory signs and statements, such as those contained in newspaper ads or “For Rent” signs, are prohibited by *The Code*. An example of a discriminatory ad for an apartment is one that states “No welfare recipients”.

Newspapers may refuse to print an ad if it is in violation of the law. If a newspaper or other media organization publishes a discriminatory ad, it may also be subject to a human rights complaint.

What are “Special Programs” in rental housing?

An example of a Special Program in housing is a building designed for seniors that has supportive features, such as level entrances, elevators, physical and recreational facilities, and transportation to medical facilities and shopping.

Special Programs assist individuals or groups to overcome the disadvantage which discrimination creates, and are permitted under *The Human Rights Code*. Special Programs help groups that have been disadvantaged by discrimination to achieve equality of opportunity. (For further information, please see Manitoba Human Rights Commission policy “Special Programs”.)

What about threats or harm to someone who complains about discrimination?

The Human Rights Code protects the right of a person or group to file a complaint alleging discrimination. It is illegal to threaten to cause, or to cause, a detriment or harm or loss of benefit to someone because they have filed a complaint, or are participating in a proceeding under *The Code*. A person or group so threatened or harmed may file a “reprisal complaint” under *The Human Rights Code*.

Sample policy

ABC Rental Agencies Ltd.: Protection from Discrimination and Harassment Policy

ABC Rental Agencies Ltd. is committed to providing for the rental, and other lawful occupancy, of its apartments, free of unreasonable discrimination, including harassment. This is in keeping with its obligations under *The Human Rights Code*.

Tenants have the right to lease, and lawful occupants to occupy, rental apartments (and their guests, to visit) without being treated differently, to their disadvantage and without reasonable cause, on the basis of a characteristic protected under *The Human Rights Code*. They also have the right not to be harassed based on a protected characteristic.

Characteristics protected under *The Human Rights Code* are ancestry (including colour and perceived race), nationality, ethnic origin, religion, age, sex (including pregnancy and gender identity), gender-determined characteristics, sexual orientation, marital or family status, source of income, political belief, and physical or mental disability.

Tenants also have the right to reasonable accommodation of special needs that are based on protected characteristics under *The Human Rights Code*, such as disability.

Procedure

Tenants who believe that they have been discriminated against in their application for, or occupation of, rental housing with ABC Rental Agencies Ltd. are asked to please report the problem to *[insert name, phone number and address of designated staff person.]*

Tenants, who require reasonable accommodation of a special need that is based on a protected characteristic under *The Human Rights Code*, are asked to please make their request to *[insert name, phone number and address of designated staff person]*. Tenants may be required to provide reasonable information in support of their accommodation request.

Staff will take a tenant's complaint or request for reasonable accommodation seriously, and will get back to the tenant in a timely manner, after looking into the matter.

If a tenant believes that a staff is failing to take appropriate action with respect to a complaint of discrimination, a report of discriminatory harassment, or a request for reasonable accommodation, the tenant is asked to please contact *[ABC property management designated contact, address and phone number]*.

For further information, you may also wish to contact the Manitoba Human Rights Commission, at 945-3007 (Winnipeg), or 1-888-884-8681 (toll-free).

Checklist for landlords considering an application for tenancy:

- All information requested on the application for tenancy form is necessary to determine whether an applicant is qualified.

Applicants are not discriminated against on the basis of ancestry (including race), family status, source of income, or any other protected ground under *The Human Rights Code*.

Applicants are given alternate ways of providing sufficient information about their qualifications as a tenant. For example, the application form asks applicants who do not have a rental history to provide contact information for references who can speak to their reliability.

An applicant's ability to pay the rent is assessed on an individual basis, not on the basis of a rent-to-income ratio.

Applicants are not unreasonably refused based on a standard that sets out a given number of occupants for an apartment.

Applicants are not asked to provide a guarantor or a co-signer, without reasonable cause.

Applicants with children are not restricted to certain apartments or floors within a building.

Ads and "For Rent" signs are free of discriminatory statements.

Requests for reasonable accommodation of special needs based on protected characteristics, such as disability, are properly considered, and accommodation is provided to the point of undue hardship.

Applicants and tenants are not subjected to harassment; harassment is not knowingly permitted and all reasonable steps are taken to terminate harassment.

Who can I call for more information?

For further information, contact the Manitoba Human Rights Commission office in your area. Please also ask about our seminars on reasonable accommodation and other human rights topics.

Our offices locations are:

Winnipeg: 700 -175 Hargrave Street
Winnipeg, MB R3C 3R8
Phone: (204) 945-3007
Fax: 204-945-1292

Brandon: Rm 341 - 340 Ninth Street
Brandon, MB R7A 6C2
Phone: (204) 726-6261
Fax: 204-726-6035

The Pas: 2nd Floor - Otineka Mall
P.O. Box 2550
The Pas, MB R9A 1M4
Phone: (204) 627-8270
Fax: 204-623-5404

TOLL FREE: 1-888-884-8681
TTY: 1-888-897-2811

If there is any conflict between these guidelines and *The Human Rights Code*, *The Human Rights Code* prevails.

www.manitoba.ca/hrc

*Le présent guide est également disponible en français
September 2009*