

Overcoming Barriers: Your Right to Housing

**A Reference Guide on Human Rights in
Housing**



Centre for Equality Rights in Accommodation
Centre pour les droits à l'égalité au logement

Call CERA: 416.944.0087 or 1.800.263.1139

DISCLAIMER

The information contained in this booklet is for informational and educational purposes only and is not legal advice. If you require legal advice you should contact a lawyer or a Community Legal Clinic. It should also be noted that Ontario Human Rights Tribunal decisions are not binding upon persons who are not party to them. Nevertheless, they must be regarded as having significant persuasive authority.

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The *Human Rights Code*

Why does the *Human Rights Code* exist?

The purpose of the *Human Rights Code* (*Code*) is:

... to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination ... [and to create] ... a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and is able to contribute fully to the development and well-being of the community and the province.

The *Code* says that every person in Ontario has the right to freedom from discrimination in the following areas: employment, services (such as education or healthcare), membership in trade unions and vocational associations, in contracts and in the occupancy of accommodation (housing). This booklet will focus only on housing.



How important is the *Code*?

Code Primacy

The *Code* is the most important law in Ontario. It overrides all other laws in the province, unless the other legislation says explicitly that this is not the case.



Who is protected by the Code?

Prohibited grounds of discrimination

The Code says that you have the right to be free from discrimination based on your:

- Race
- Ancestry
- Place of Origin
- Colour
- Ethnic Origin
- Citizenship
- Creed (Religion)
- Sex
- Sexual Orientation
- Disability
- Age (16 years and over in housing)
- Marital Status
- Family Status
- Receipt of Public Assistance (e.g.: if you are on welfare)



What is discrimination?

Direct discrimination

Discrimination occurs when rules, policies, or practices impose burdens or obligations and/or withhold benefits from individuals who are identified by one of the prohibited grounds of the Code. Discrimination does not have to be intentional. Discrimination can be direct (e.g.: “I will not rent to you if you are on welfare”) or it can be “constructive”.

Constructive discrimination

“Constructive” or “adverse effect” discrimination is much more subtle than direct discrimination, but it is equally illegal. It happens when a

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seemingly neutral rule, policy or practice has a negative effect on a group that is identified by a prohibited ground in the *Code*.

For example, a rule by a landlord that denies housing to those who will be paying more than 30% of their income on rent is a neutral rule that applies to all prospective tenants. However, the rule will have a more negative effect on persons in receipt of social assistance because it is unlikely that a person on social assistance will spend less than 30% of their income on rent. There is an “adverse effect” on persons identified by the prohibited ground in the *Code* - Receipt of Public Assistance.

Housing and the Code

Housing discrimination

The spirit of the *Code* is fairness and equality of opportunity. In the sections about housing, the *Code* helps to ensure that all people in Ontario have equal opportunity to access accommodation, and equal opportunity to enjoy the benefits that come along with that housing. Section 2(1) of the *Code* says:

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, same-sex partnership status, family status, disability or the receipt of public assistance.

A housing provider cannot treat a person unfairly or refuse to rent to them because of a prohibited ground of discrimination.

What types of housing are covered by the Code?

The Code applies to self-contained dwellings, including private market units, public housing (subsidized) units, condominiums, and cooperative housing units. If you share a bathroom or a kitchen with your landlord or the landlord's family, the Code does not apply.

Harassment

What does the Code say about harassment?

Section 2(2) of the Code states:

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.

Harassment is *a course of comment or conduct*, based on a prohibited ground of discrimination, that is known or ought to be known to be unwelcome. Harassment usually involves ongoing unwelcome and humiliating behaviour. One single incident of unwelcome behaviour may not qualify as harassment under the Code, unless a poisoned environment has been created by the incident.

Who is responsible for stopping harassment?

It is illegal for a landlord, agent of the landlord or another occupant of the building to harass a resident on the basis of any of the prohibited grounds of discrimination. If one resident is subjecting another resident to discriminatory harassment, it is the landlord's responsibility to take reasonable steps to ensure that the harassment stops. If he/she does not take steps to stop the harassment, he/she could be subject to a human rights complaint.



Reprisal

What is reprisal?

Reprisal is a retaliatory act. Someone commits reprisal when they try to take revenge or get even with the person who made a human rights complaint against them. Reprisal alone can form the basis of a complaint.

What does the Code say about reprisal?

Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal.

It is a violation of the *Code* for someone to retaliate or threaten to retaliate against you because you claimed or enforced your human rights. If a resident files a human rights complaint against a landlord, the landlord should not take actions to "get even". Negative behaviour toward a complainant could make the landlord liable for an additional human rights complaint.

You also have the right not to infringe upon the rights of others. For example, a rental agent who is ordered by a landlord to refuse applicants who have children has a right to ignore the request. If the landlord attempts to discipline the rental agent, the agent may file a human rights complaint against the landlord.



What are my rights? Examples

The following sections provide some limited examples of the types of discrimination that you may experience.

Racism

There was a flood on the floor above you. Both you and your neighbour have damaged walls because of it. Your neighbour's apartment is repaired within a few days without her having to make any formal request. You ask the landlord when your apartment will be repaired and he tells you that you must file a maintenance request. You do so and still nothing happens. When you complain, the landlord comments that "you people" are so difficult and demanding. You are black and your neighbour is white.

➔ You have the same rights as your neighbour. It is illegal for a landlord to treat you differently because of your race (for example, to make it more difficult for you to have repairs completed in your unit.).

Disability

Due to a worsening disability, you will soon need to rely on a wheelchair. You tell your landlord that you will need a ramp in order to access your apartment. Your landlord tells you that he does not have the money to install a ramp and that you should just move.

➔ Landlords have a duty to change structures or practices in order to ensure that persons with disabilities are able to enjoy equal benefit of and equal access to housing.

References, Credit Checks and Job Tenure

You recently immigrated to Canada and you apply for an apartment. The landlord reviews your application and says that she won't rent to you if you cannot provide Canadian landlord or credit references or show a long full-time employment history.

➔ If you are a young person, a newcomer to Canada or a caregiver returning to the workforce, landlords should not refuse to rent to you because you have no previous Canadian landlord references or credit history. An absence of credit and landlord references is not the same as bad credit and bad landlord references. A landlord's demand that you show a long full-time employment history may also be discriminatory.

Minimum Income Criteria

You apply for a one-bedroom unit and the landlord says, "Sorry, I don't rent to anyone making less than \$30,000 a year".

➔ A landlord should not refuse to rent to you simply because she does not feel that your income is high enough.

Religion

You are Muslim and you wear traditional clothing. You call about an apartment and it is available. When you show up to look at it, the landlord says it is rented, but the "For Rent" ad continues to run in the newspaper.

➔ It is illegal to deny someone an apartment because of their religion — or for any other prohibited ground.

Apartment Transfers

You and your spouse have been renting a one-bedroom apartment for two years. You become pregnant and want to transfer to a larger unit in the building, but the landlord says that a transfer would be an administrative hassle and refuses.

➔ If you need to transfer to another apartment because of changes in your family size or because of a disability, your landlord should accommodate your needs where possible and in a timely fashion.

Harassment

You are a single woman and the man next door keeps bothering you and making rude remarks. You ask him to stop but he doesn't. You complain to the landlord who says it's not his problem.

➔ The man next door is breaking the law by harassing you and it's the landlord's duty to do something about it. A tenant has the right to live free from harassment. Sometimes tenants are bothered or harassed by a landlord, a superintendent, or other tenants— it might be racial insults, rude remarks about a disability, constant complaints about reasonable children's noise or a man bothering a woman.

Family Size

You are a single mother with three kids. You want to rent a two-bedroom apartment that you can afford, but the landlord says that an adult and three children are not allowed to live in a two-bedroom apartment. He tells you that you must rent a bigger apartment.

➔ A landlord should not refuse to rent your family an apartment because the apartment is "too small" unless, by renting to you, the

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landlord would be breaking a municipal overcrowding or health and safety by-law.

Family Structure

You are a two-parent family with two children - one girl and one boy. You finally find an affordable two-bedroom apartment, but the landlord says, "I'm sorry. It's the building's policy that children of the opposite sex cannot share a bedroom."

➔ Any policy, whether in public subsidized or private housing, that dictates how your family should or may live is contrary to human rights law unless your family's living arrangements would break a municipal health and safety or overcrowding by-law.

Youth

You are 17 and have just left home. You find a suitable bachelor apartment to rent, but the landlord says that he only rents to people who are eighteen or older. Or, you are a refugee who is 16 or 17 and you are refused an apartment because you are "too young".

➔ 16 or 17 year olds who are living away from their parents cannot be refused an apartment because of their age. A lease signed by a 16 or 17 year old is legally binding.

Sexual Orientation and Gender Identity

You are a lesbian and you and your partner go to see an apartment. The landlord asks you if you have boyfriends that will visit. You say no and explain that you are partners. The landlord tells you that he runs a "family building" and will not rent to you.

➔ It is illegal for a landlord to refuse to rent to you because you are in a same-sex relationship or because you are gay or lesbian. As well, even though “gender identity” is not specifically mentioned in the Code, transsexual and transgendered persons are also protected.

Racial Harassment

You are black and live with your two teenage sons in co-op housing. You are the only black family in the small building. Although your children are extremely well behaved, the other residents of the co-op are constantly accosting you about their “bad” behaviour. It seems that anything your sons do is bothersome to the other tenants. After months of harassment, you get angry with a co-op board member and tell her that she and the other residents should leave you and your sons alone. A few weeks later you receive an eviction notice, which alleges that you threatened another resident of the building with violence.

➔ It is illegal for a landlord or other residents in a building to harass you because of your race. You have the right to be free from discrimination and harassment. **Note:** Racial harassment is quite common. In CERA’s experience, racial harassment, like racial discrimination, is very difficult to prove because it is often subtle – though unrelenting in nature. It usually shows itself as comments related to being difficult, loud, intimidating, etc. It is rarely direct (though this happens too), but rather associated with stereotypical attitudes and assumptions about racialized persons and their “expected” behaviour. In CERA’s experience, tenants dealing with racial harassment are often afraid to confront the harasser for fear of “legitimizing” the stereotypical assumptions related to being difficult or being accused of using the “race card” for special treatment.

 **Ontario's human rights system****What has changed?**

On June 30 2008, there were important changes to Ontario's human rights system. Previously, all human rights complaints were made to the Ontario Human Rights Commission. As of June 30, 2008, all complaints (now called applications) are made directly to the Human Rights Tribunal of Ontario under the *Human Rights Code Amendment Act, S.O. 2006, c.30*. The next section will describe the process that you must follow if you want to file a human rights application.

Parts of the new system

In the new system, there are three independent parts:

1) The Ontario Human Rights Commission (Commission).

The Commission is responsible for promoting and advancing human rights in Ontario through education, research, analysis and policy. The Commission does not handle individual complaints. It may deal with systemic discrimination and conduct public inquiries.

2) The Human Rights Tribunal of Ontario (Tribunal)

The Tribunal is where you file an application (claim of discrimination) and where a judge will hear your case.

3) The Human Rights Legal Support Centre (HRLSC).

The Human Rights Legal Support Centre is a publicly funded body that provides free independent legal and support services for Ontario residents facing discrimination. The HRLSC is there to help you file your human rights application.

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Timeline—one year

The limitation period for filing a human rights application is one year. This means that you have one year from the date of the last incident of discrimination to file your application with the Tribunal. If you miss this deadline, your application may be dismissed.

How to file an application

The process

To make a claim with the Tribunal, you must complete a formal application. Applications are available from the Tribunal. You may also be able to resolve your case through the Tribunal's mediation process.

To get an application form, you can contact the Tribunal directly at: 1-866-598-0322 or TTY: 1-866-607-1240. Application forms are also available on the Tribunal website at: www.hrto.ca.

The HRLSC may also be able to provide assistance. You can contact the HRLSC at 1-866-625-5179 or TTY: 1-866-612-8627. You can also go to the HRLSC website at www.hrlsc.on.ca.

If you are facing housing discrimination, CERA can assist with accessing and completing the necessary application and forms. Call CERA at 416.944.0087 or 1.800.263.1139. CERA's services are free.

Where to send your Application

Once your application is complete, you can send it to the Tribunal by mail, email or fax.

Call CERA: 416.944.0087 or 1.800.263.1139

Mail: Registrar—Human Rights Tribunal of Ontario
655 Bay St. 14th Floor
Toronto, ON M7A 2A3

Email: HRTO.Registrar@ontario.ca

Fax: (416) 326-2199 or (Toll Free): 1-866-355-6099.

Unless there is a valid reason to dismiss your application, such as you missed the filing deadline, you will be given an opportunity to have a hearing before a judge.

Other things you should know

Application of the Commission's Policies

The Commission's Policy Papers are important documents that advance the interpretation and understanding of human rights. They are available at www.ohrc.on.ca. Although the Commission is no longer handling individual complaints, you can request at your hearing that the judge apply Commission policy to your case. If you make the request, the judge must consider the policy.

As well, you can ask the Commission to intervene (become directly involved) in your case. Although instances of Commission involvement in individual cases may be rare in the new system, it may get involved if your case has the potential to impact a large number of people in the province.

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How CERA can help you

The Centre for Equality Rights in Accommodation (CERA) was established in 1987 and is a non-profit legal organization that assists people who face discrimination when they are trying to find or keep housing. CERA is an independent non-governmental organization. If necessary, CERA files human rights applications with the Human Rights Tribunal of Ontario on behalf of tenants and prospective tenants facing discrimination. CERA's services are free.

If you are facing discrimination in housing, CALL CERA!

Toll Free: 1-800-263-1139, Extension 22

In Toronto: 416-944-0087, Extension 22

A CERA staff person or volunteer will contact you within 24 hours to provide assistance. If you want us to, CERA will try to negotiate with your future or current landlord to make sure the discrimination stops. If it does not, we may assist you with filing a human rights application (complaint). Your call and anything you tell CERA is completely confidential.

CERA also offers training on human rights in housing. If you, your fellow tenants or your organization is interested in a training session or education materials, please call us.



About CERA

The general objectives of CERA are to:

- Promote knowledge and enforcement of human rights in housing among disadvantaged groups and individuals;
- Provide educational materials and programs in housing and human rights to groups whose human rights may have been violated, to landlords, to service providers and to the public at large;
- To provide representation to disadvantaged groups and individuals who believe their human rights have been infringed;
- To encourage and facilitate effective public education and enforcement of human rights by provincial, national and international commissions, agencies, organizations and institutions and by governments;
- To engage in research into human rights in housing as they affect disadvantaged groups.

To carry out these objectives, CERA has established several programs:

Public Education and Outreach Program

To foster an environment where human rights in housing are respected, CERA conducts extensive public education through workshops and the production and dissemination of education materials. In addition, CERA is regularly requested to provide reports or submissions to government committees, panels, courts and special commissions. CERA provides education and training on human rights, housing and poverty for a variety of audiences: tenant groups, shelters, housing help centres, anti-poverty organizations, universities, lawyers and judges.

Early Intervention—Eviction Prevention Program

Since 1999, CERA has been operating a groundbreaking eviction prevention program, providing timely assistance to tenants across Toronto.

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CERA works with over 100 tenant households every month to provide information on tenant rights and the eviction process (under the *Residential Tenancies Act*) and links them to emergency resources, financial and otherwise, that can help them keep their housing. CERA also conducts public education workshops on tenant rights under the *Residential Tenancies Act*.

If you are facing eviction and need timely information about your rights, call CERA at 416-944-0087, Ext 27 or 1-800-263-1139, Ext 27.

Economic and Social Rights (ESR)

Social and Economic rights are a category of fundamental human rights that guarantee social and economic security and dignity. In addition to using provincial human rights legislation to forward housing equality, CERA works on a national and international level to promote ESR, such as the right to housing and an adequate standard of living. Specifically, we work to promote interpretations of Canada's Charter of Rights and Freedoms that protect the rights of poor people and are consistent with international human rights principles and Canada's international human rights obligations.

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And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province

-Preamble, Human Rights Code



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