



Human rights considerations in housing

Your rights
Your responsibilities

A guideline developed under *The Human Rights Code*

Introduction

The Manitoba Human Rights Commission (the “Commission”) is an independent agency of the Government of Manitoba responsible for administering *The Human Rights Code* (“*The Code*”).

The Code outlines a complaint process and mandates the Commission to educate the public and promote human rights principles. *The Code* has special status over all other laws of the Province of Manitoba.

Section 5 of *The Code* authorizes the Commission to prepare and distribute guidelines to assist in the understanding and application of *The Code*.

This guideline represents the Commission’s interpretation of the rights that apply when accessing housing and the corresponding responsibilities of housing providers. If there is any conflict between this guideline and *The Code*, *The Code* prevails.

Discrimination in housing

The Code prohibits discrimination against individuals accessing housing based on various characteristics, including their ancestry, age, family status, religious belief, sexual orientation, gender identity, physical or mental disability and social disadvantage.

The prohibition extends to the purchase and sale, lease or rental of any residential or commercial premises, real estate or property.

Discrimination means treating a person or group differently because they have, or are presumed to have, one of the characteristics listed in *The Code*, without reasonable justification for doing so. Discrimination may be based on stereotypes or assumptions and offends a person's dignity because it ignores their individual merit.

Discrimination in housing typically looks like refusing to rent or lease to a person or otherwise isolating the person or restricting their access based in part, on one of the characteristics listed in *The Code*.

For example:

- A landlord who refuses to rent to individuals with children because the landlord believes that families with children are 'too noisy' is likely discriminating on the basis of family status, without any reasonable justification for doing so.
- A condominium corporation that uses its fees to purchase an elaborate nativity scene for its front lobby but refuses to acknowledge other faith holidays it knows are observed by its unit holders may be discriminating on the basis of religious belief, without any reasonable justification for doing so.

Advertising the rental or sale of property

A property must be equally available to all members of the public for purchase or lease, including residential or commercial premises, condominiums or life-leases, unless there is reasonable justification for excluding or restricting the purchase or lease .

For example:

- A rental ad that indicates that applicants must show proof of Canadian citizenship may unreasonably exclude permanent residents or refugees and result in discriminating on the basis of ancestry, national or ethnic origin.
- A rental ad that indicates that applicants must provide three months' rent as a deposit may unreasonably exclude seniors on fixed income, women receiving spousal support or individuals on social assistance and result in discriminating on the basis of age or source of income.

The Code contains an exception that allows a person renting a room in their private residence, or renting out the other unit in a duplex they own and live in, to discriminate in their choice of tenant.

For example:

- An elderly woman who is renting out a room in her home to a student or boarder may prefer female applicants.

The application process

Housing providers should develop an application process that does not unreasonably exclude individuals or groups based on any of the characteristics listed in *The Code*, such as ancestry, national origin, disability or source of income.

Landlords and rental agents are entitled to screen applicants on the basis of qualifications or criteria, such as their ability to pay, income stability and suitability, through the use of application forms, interviews and reference checks. However they must ensure they individually assess each applicant and that their criteria are not based on assumptions or impressions about a person's ability to pay rent.

Questions about an applicant's marital or family status, ancestry or origin, religious belief or medical needs may require an applicant to disclose information that is not relevant to screening their application and may result in discrimination.

For example:

- A landlord is entitled to ask for information about the applicant's employer, position and salary to assess the ability to pay rent. Refusing tenancy solely because the applicant identifies that he is receiving disability benefits may however unreasonably exclude the applicant based on source of income, disability or social disadvantage.
- A property agent is entitled to ask for an applicant's rental history to assess reliability in paying rent. Refusing tenancy because a person cannot provide references may unreasonably exclude a refugee or immigrant, or a young person or recent widow who has always lived in their own home.

Housing providers may use a rent-to-income ratio to evaluate an applicant's ability to pay but should carefully consider the applicant's complete financial picture. The applicant should have the opportunity to list income from all sources, including non-employment income and to provide a guarantor or co-signer.

Establishing tenancy rules or standards

Housing providers are entitled to set out the basic expectations of tenancy.

Landlords, property managers and condominium boards may set guidelines, policies or rules addressing things like pets and pet care, smoking, excessive noise, subletting or a process that visitors must follow.

Rules and expectations should always be applied in a way that does not unreasonably restrict a tenant's rights based on characteristics listed in *The Code*, or result in unreasonably isolating or excluding a person or group.

For example:

- A no-pet policy will unreasonably restrict the right of tenants or visitors with disabilities who use service animals.
- A policy of requiring tenants living with more than four people per unit to pay an inflated damage deposit may unreasonably restrict tenants with disabilities or older adults who have live-in caregivers. The policy may also restrict inter-generational families that live together based on their family status, ancestry, culture or origin.

- A policy that requires low-income tenants to sign their pay cheques over to the property manager to pay rent and be issued the remaining funds to manage, may unreasonably restrict individuals based on disability, source of income or social disadvantage.
- A scent-free or no-odour policy, if applied inconsistently and to tenants whose cooking produces unfamiliar odours, may unreasonably restrict individuals based on ancestry or origin.
- A policy that restricts tenants with children to units on certain floors, including basement apartments, may unreasonably restrict individuals based on their family status.

In every case, housing providers should be cautious when strictly applying a rule, standard or policy, and assess whether or not there is sufficient flexibility in the policy to address unreasonable barriers or restrictions that raise human rights concerns.

The duty to accommodate

The duty to accommodate is the responsibility to address and remove unreasonable barriers that limit a person's access to opportunities or benefits available to others.

Housing providers have a duty to reasonably accommodate the needs of a tenant where those needs are based on a characteristic listed in *The Code*.

If a tenant or unit holder can substantiate that their need is based on a characteristic such as disability, religious belief, family status or gender identity, the housing provider must assess if or how that need can be accommodated without causing the housing provider undue hardship.

For example:

- A tenant provides the property manager with a note indicating that his son has severe allergies that are triggered by chemicals present in most carpet cleaners. The property manager should discuss options with the tenant that may include using a comparable cleaning product that does not contain the relevant chemicals or providing advance notice of carpet cleaning to the tenant.
- A tenant with Post Traumatic Stress Disorder asks for permission to have his newly trained dog added to the lease in a no-pet building. The landlord should obtain information to substantiate that the dog assists the tenant with their disability-related needs, which might include a physician's letter, certificate from a service animal trainer or other proof of training. The landlord can set clear expectations regarding excessive barking or noise and damage to the unit and may agree to designate a relief area for the animal with a receptacle for disposal of dog waste. The landlord may also agree to keep the path to the relief area free of snow.
- A condominium owner who uses a wheelchair requests that the renovation plan be modified to lower the height of the garbage chute on the main floor and include an automatic door opener to the parkade. The condominium corporation should assess the cost of the modifications and determine if it would be reasonable to include them or alter the plan in some other way to accommodate these accessibility needs.

- A transgender tenant requests that his name be changed on the computerized directory from his legal name used on the lease to his chosen name. The property manager should be able to accommodate this request without requiring additional information or needing further assessment.
- A unit holder who uses marijuana for pain management related to cancer is reported to be smoking in a no-smoking building. The landlord should ask for information to substantiate that the marijuana use is part of a prescribed treatment plan and enquire whether vapourizing or using the drug in another form would be appropriate for his treatment.

Ensuring a harassment-free living environment

Housing providers have a responsibility to ensure that tenants are protected from harassment based on a characteristic listed in *The Code*, such as their ancestry, national or ethnic origin, sex, religious belief, gender identity, sexual orientation or disability.

It is a contravention of *The Code* for a housing provider to knowingly permit or fail to take reasonable steps to terminate harassment. This responsibility applies in situations where a tenant is harassing another tenant in the same way that it would apply to employees harassing each other in a workplace.

Housing providers should ensure tenants and staff are aware of the rights and responsibilities set in *The Code* and should have a process in place that enables harassment to be reported, investigated and addressed.

For example:

- A tenant complains to the property manager that her next door neighbour has been calling her family derogatory names and they are now uncomfortable using the games room and feel humiliated and unsafe. The property manager should take the complaint seriously and investigate the situation by speaking with the neighbour and any other tenants who may have witnessed the alleged behaviour. The property manager should take reasonable steps to terminate the harassing behaviour including warning or directing the tenant, reminding all tenants of the standards expected of them and considering eviction if the situation warrants it.

Can housing providers restrict tenancy based on age or faith?

There is an exception in *The Code* for programs that are aimed at improving the opportunities and benefits for a group that has historically been disadvantaged in housing. Special Programs help groups that have been disadvantaged by discrimination to achieve equality of opportunity.

Housing providers who rely on this exception from discrimination must carefully consider whether or not their housing project or program has a clear objective of ameliorating the status of a particular group listed in *The Code* or helping them to achieve equality. The program should be designed based on benchmark data or research about that group and their ability to access housing.

For example:

- A housing developer of a seniors complex may justify their age restriction by offering services that are specific to older adults such as housekeeping and meal preparation, medical or para-health support and services, and excursions and activities or other benefits that assist older adults to live independently and with dignity.
- A condominium corporation who markets the building as a 55+ building or “adults only” building will be challenged to justify the restriction on the basis that its aim is to provide housing to a group that has historically had less access to housing. Instead, the developer should consider setting reasonable expectations around excessive noise and consider applicants of any age who choose to apply.
- A landlord that restricts tenancy to individuals of a particular faith may be challenged to justify the restriction unless they can show that individuals of that faith have been historically disadvantaged in their ability to access housing and that the building offers services specifically designed to better the position of that faith community. Instead, the landlord should consider the alternative of promoting the building among a faith community but equally considering tenants of other faiths if they choose to apply.



Need more information?

hrc@gov.mb.ca

204.945.3007

1.888.884.8681

www.manitobahumanrights.ca

This publication is available in alternate formats.
Le présent guide est également disponible en français.