

INFORMATION SHEET

The *Alberta Human Rights Act* (the *Act*) protects Albertans from discrimination in certain areas based on specific personal characteristics (also known as protected grounds). Tenancy is an area where people are protected from discrimination regardless of race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation. Everyone has a right to treatment free of discrimination when renting in Alberta.

Tip: For a detailed discussion of protected grounds in the area of tenancy, see the Commission's website page: www.albertahumanrights.ab.ca/other/tenancy/what_to_know/pages/info_protected_grounds.aspx

Also see the Commission's information sheet *Protected areas and grounds under the Alberta Human Rights Act*.

How does the Act protect Albertans from discrimination in tenancies?

Section 5 of the *Act* prohibits discrimination in both residential and commercial tenancy on the basis of 15 protected grounds. It covers rental commercial units and self-contained dwelling units (such as a rental apartment, house or townhouse). The following types of tenancy discrimination are covered by the *Act*:

- Denying a potential tenant the right to occupancy of an advertised unit based on a protected ground.
For example: A landlord refuses to rent to a prospective tenant because of the tenant's race.
- Discriminating against a tenant or potential tenant regarding a tenancy term or condition based on a protected ground.
For example: A landlord discovers that a tenant has a mental disability and starts treating the tenant poorly. The landlord makes derogatory comments about his disability and spreads rumours about him.

What is discrimination?

Discrimination is treating a person differently based on protected grounds under the *Act*. As explained by the Supreme Court of Canada in *Andrews v. Law Society of British Columbia*,¹ discrimination imposes burdens, obligations or disadvantages on individuals or limits their access to benefits or opportunities. A policy or practice resulting in negative treatment based on any of the protected grounds is discriminatory even if it appears to treat everyone equally (*Ont. Human Rights Comm. v. Simpsons-Sears*).²

¹ *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143, 1989 CanLII 2 (SCC).

² *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 SCR 536, 1985 CanLII 18 (SCC).

Age as a protected ground

Under the *Act*, age is a ground that is protected from discrimination. The *Act* defines age as **18 years of age or older**, which means that individuals 18 and older are protected from age discrimination. It is a contravention of the *Act* to discriminate against individuals based on their age (18 or older) in the protected areas listed above, with specified exceptions in the areas of services and tenancy.

Are people under 18 protected from discrimination?

People under 18 are protected from discrimination based on all of the protected grounds except for age. This means that they can make a discrimination complaint based on grounds such as race and gender, but not based on their age.

On January 1, 2018, age became a protected ground in the area of tenancy. This means that landlords or other service providers such as property managers cannot discriminate against people 18 years old or older when they are applying to rent or renting. However, the *Act* allows for age restrictions in seniors-only housing, which is housing for people who are 55 years old or older.

For example: A seniors-only housing complex has a minimum age restriction of 65 and up, meaning that the complex will allow only tenants aged 65 and older to live there. All of the units in the complex are reserved for one or more people, at least one of whom is aged 65 and older. This age restriction would be permitted under the *Act* and would not be considered discriminatory.

Section 5(2) of the *Act* also allows for condominium units, co-operative units and mobile home sites to continue with minimum age restrictions that were in existence before

January 1, 2018. However, these types of housing must convert to all-ages housing or to seniors-only housing by January 1, 2033.

Tip: Condominium units (whether owner occupied or rented out) with minimum age restrictions that were in existence before January 1, 2018 are still allowed (with a 15-year transition period). For more information, refer to the Commission's information sheet *Human Rights in Condominiums*.

Under the *Alberta Human Rights Act Human Rights (Minimum Age for Occupancy) Regulation*, a person who does not meet the minimum age to occupy a unit or site may live with an occupant who does meet the minimum age if:

- They provide home-based personal or health care services to an occupant of the unit or site;
For example: a tenant's live-in caregiver.
- They are a minor related to an occupant by blood, adoption or marriage, or by virtue of an adult interdependent partnership to an occupant, they are also allowed to reside in seniors-only housing, where due to an unforeseen event, the occupant becomes the primary caregiver to the minor after occupancy has commenced;
For example: a tenant's 16-year old grandchild who is now under their primary care.
- They are the surviving spouse or adult interdependent partner of a deceased former occupant of the unit or site who lived with the occupant at the time of death.
For example: a tenant who meets the minimum age restriction dies, leaving their younger spouse. The younger spouse would not meet the minimum age restriction but under the legislation could stay in the unit.

Any other individual whose occupancy is reasonable and appropriate in the circumstances may be permitted to live in the unit or site.

Section 5(5) of the *Act* also allows for “grandfathering” of existing occupants if a landlord adopts a “seniors only” minimum age restriction. This means that people under that minimum age restriction who occupied the premises before the change can continue to live there.

What information can a landlord require from prospective tenants?

When assessing prospective tenants, landlords usually ask for certain information such as rental history and references. While this is usually permissible, courts and human rights tribunals in Canada have found that not renting to tenants based on information about their personal characteristics could amount to discrimination.

Source of income

Landlords can ask prospective tenants for information on the amount of income they make but cannot refuse to rent to someone because of their source of income. For example, a landlord cannot refuse to rent to someone just because they are receiving income supports, rental subsidies, AISH (Assured Income for the Severely Handicapped) or other disability benefits if they otherwise qualify for the rental property.

Rental history

A landlord may ask about a prospective tenant’s rental history but should be cautious about refusing people because they have no rental history. For example, certain people such as recent immigrants to Canada may not have a rental history in Canada.

Rent-to-income ratios

Some landlords have applied formulas, called rent-to-income ratios, to determine whether a tenant can afford a rental property. In these cases, a landlord will refuse to rent to people

who would have to spend more than a particular percentage, usually 20 to 35 percent, of their income on rent. Courts have found that rent-to-income ratios unfairly disqualify groups based on race, gender, marital status, family status, place of origin, and source of income. These decisions have found that a rent-to-income ratio is not a reliable predictor that a person is likely to fail to pay their rent.

Credit checks and references

Landlords can ask for credit history and previous landlord references to determine if a person is a desirable tenant but cannot use this information in a discriminatory way. For example, a landlord who asks for credit information only from a particular ethnic group is using information in a discriminatory way. It is also important to note that new immigrants may not have previous Canadian landlord references.

Personal information

A landlord should not ask questions that can be used to discriminate against prospective tenants based on their personal characteristics, for example:

- Do you have children? Are you planning on having children?
- Where are you from?
- Are you single? Are you married? Are you divorced?
- Do you go to church?

Tip: If a landlord asks a person for information that can be used to discriminate against them, the person can tell the landlord that they do not feel comfortable answering the question or that the question is inappropriate. The person can also give the landlord information showing that they can be a good tenant who can pay rent on time. If a person believes that they have been discriminated against when finding a place to rent, they may contact the Alberta Human Rights Commission.

Discrimination in residential tenancy

Discrimination in tenancy can occur when a person is looking for a place to rent. In *Fitzhenry v. Schemenauer*,³ a disabled person with a guide dog tried renting the upper floor of a home. When the person called the landlord about renting the property, the landlord told him that dogs were not allowed and that he could not visit the property. The Alberta Human Rights Panel found that the landlord discriminated against the person on the ground of his physical disability.

In *Cunanan v. Boolean Development Ltd.*,⁴ a single mother with three teenage sons viewed a three-bedroom apartment and filled out a rental application. The landlord refused to rent to the prospective tenant because he had an “unwritten” policy of renting three-bedroom units only to couples with two children. The Ontario Human Rights Tribunal found that there had been discrimination against the single mother based on family status, and the landlord had not provided a reasonable justification for the refusal.

Discrimination in tenancy can also occur when a person is already renting a place. For example, in *409205 Alberta Ltd. v. Alberta (Human Rights & Citizenship Commission)*,⁵ a tenant received various types of income support and a housing subsidy. To support the tenant’s housing subsidy, the landlord agreed to apply annually for the subsidy and to keep the rent reasonable. During his tenancy, the landlord agreed that the tenant could have one cat. When the tenant acquired more cats, the landlord complained about problems with the cats in the hallway and tried to evict the tenant for alleged property damage done by his cats. After the eviction attempt was unsuccessful, the landlord increased the tenant’s

rent and did not renew the tenant’s housing subsidy. The Court of Queen’s Bench of Alberta affirmed the Alberta Human Rights Panel’s finding that the alleged damage done by the tenant’s cats was unsubstantiated and that the landlord discriminated against the tenant based on source of income by raising rent and not renewing the subsidy agreement.

Other examples of discrimination in residential tenancy include:

- Making derogatory comments about a potential tenant’s ancestry and refusing to rent to her based on stereotypes of her family/marital status.
- Verbally and physically harassing tenants because of their sexual orientation.
- Ending a tenancy without making inquiries about a tenant’s hearing loss and reliance on a service dog.
- Ending a tenancy without reasonably accommodating a tenant’s mental disability.
- Refusing to rent to families with children.

Discrimination in commercial tenancy

Discrimination in tenancy can occur when a tenant is looking for a commercial space to rent or is already renting a commercial space. Some examples of discrimination in commercial tenancy include:

- Renting to people of a particular race to the exclusion of others.
- Sexually harassing a tenant.
- Refusing to renegotiate a lease renewal because of a tenant’s race.

Duty to accommodate in tenancy

The duty to accommodate applies to tenancy situations. Accommodation means making changes to certain rules, standards, policies, and

³ *Fitzhenry v. Schemenauer*, 2008 AHRC 8 (CanLII).

⁴ *Cunanan v. Boolean Development Ltd.*, 2003 HRTO 17 (CanLII).

⁵ *409205 Alberta Ltd. v. Alberta (Human Rights & Citizenship Commission)*, 2002 ABQB 681 (CanLII).

physical environments to ensure that they don't have a negative effect on a person because of the person's mental or physical disability, religion, gender identity or any other protected ground.⁶

In accommodating a tenant, the landlord may need to make adjustments or provide alternative arrangements to ensure that there is no negative effect on tenants based on protected grounds. The landlord's accommodation of a tenant's needs to the point of undue hardship will be considered. Undue hardship occurs if accommodation would create onerous conditions for a landlord, for example, intolerable financial costs or serious disruption to business. Factors that may be considered in determining undue hardship include:⁷

- financial cost
- safety
- disruption
- significant interference with the rights of others (for example, other tenants)

Tenants who require accommodation based on a protected ground should let the landlord know of their needs.⁸ This gives the landlord the opportunity to make any changes necessary to accommodate the individual requesting the accommodation.

For example: In *Dixon v. 930187 Ontario*,⁹ a tenant moved into an apartment unit and had issues with access to the building. The building did not have a ramp or electronic door opener. The building had an elevator but it was unreliable and broke down often. The tenant was unable to enter or leave the building without assistance because he couldn't operate the

doors from his wheelchair. The tenant made the landlord aware of the need for modifications to the doors of the building and requested to move to a unit on the ground floor of the building but the landlord did not make any changes, nor accommodate his request. To accommodate the tenant, the Ontario Human Rights Tribunal held that the landlord should:

- Offer the next available unit on the ground floor to the tenant.
- Request quotations for modifications to the building.
- Find out whether any permits for zoning changes would be needed.
- Take steps to ensure that the front doors and entryway of the apartment building are accessible to people in wheelchairs. For example, this could include:
 - Providing a ramp or appropriate grading so that the step is not a barrier; or
 - Installing electronic door opening devices on both doors.

Some other examples of accommodation in tenancy include:

- Asking for further information with respect to a tenant's service dog and disability-related needs upon learning that the dog assisted the tenant with hearing loss.
- Contacting a tenant's family members to intervene when the tenant's schizophrenic conduct disturbs or potentially disturbs the reasonable enjoyment of other tenants.
- Not prohibiting a tenant from cooking ethnic foods characteristic of her ancestry in her unit.

Tip: For more information on how to determine if accommodation is necessary and what a landlord needs to do to accommodate a tenant, see the Commission's human rights guide *Duty to Accommodate*, or contact the Commission.

⁶ *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 SCR 868, 1999 CanLII 646 (SCC).

⁷ *Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ)*, [2008] 2 SCR 561, 2008 SCC 43 (CanLII).

⁸ *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 SCR 970, 1992 CanLII 81 (SCC).

⁹ *Dixon v. 930187 Ontario*, 2010 HRTO 256 (CanLII).

Can discrimination be justified in tenancy?

Section 11 of the *Act* recognizes that, in some circumstances, there is a reasonable and justifiable defence to discrimination. A landlord may argue that there is a reasonable and justifiable defence to discrimination under section 11 of the *Act*. However, the landlord must be able to provide reasons for its argument that the contravention was reasonable and justifiable.

A landlord may also argue that their conduct was justified based on section 11. This defence cannot be successfully established unless the landlord has attempted to reasonably accommodate to the point of undue hardship. It's important to consider that the undue hardship standard is a very high standard, and as a result, in most situations, landlords will be required to provide some accommodation.

How to resolve a human rights complaint

Individuals who believe that a landlord has discriminated against them may first try to resolve the issue on their own. In some cases, the landlord may not be aware that they have done anything discriminatory. A landlord may stop the discrimination and correct any inequity they may have caused if they know about the problem or concern. Before making a complaint to the Alberta Human Rights Commission, both tenants and landlords can try to resolve a human rights matter using the following tips.

Dispute resolution tips for tenants

Try talking to the landlord and explaining the situation. It is important to notify the landlord of the cause of the discrimination. You may find that writing a letter to the landlord can help to clarify your thoughts. You can explain:

- what happened
- when it happened
- who you are complaining about
- how it made you feel
- what you would like to happen to fix the situation

Use non-accusatory language and assume your landlord wants to help with the situation. This will show your landlord that you are prepared to work out the issue together. You may also offer to get some information from the Commission so that you can work together to resolve the issue.

Dispute resolution tips for landlords

Tenants who come to you with a complaint may be considering making a human rights complaint to the Commission. By listening with an open mind to their complaint before they go to the Commission, you may prevent further legal action. As the landlord, you should:

- Try to get the entire story from the tenant. The more details you understand about the situation, the more likely you will be able to find a creative and mutually satisfying solution.
- Be respectful in discussing concerns with the tenant.
- Remember that you have a legal duty to accommodate a tenant's needs to the point of undue hardship. Review the Commission's human rights guide *Duty to accommodate*. This will help you decide what is required and how to resolve requests for accommodation.

Making a human rights complaint

When a tenant believes they have been discriminated against, they can make a complaint to the Alberta Human Rights Commission within one year of the alleged incident of discrimination. When a landlord or tenant is unsure if a dispute involves a human rights issue, they should contact the Commission.

Important note on age-related complaints

The Commission can only accept age-related complaints in the area of goods, services, accommodation and facilities if the incidents occurred on or after **January 1, 2018**. Where there are multiple alleged incidents of discrimination that occurred before and after December 31, 2017, only the incidents that took place after December 31, 2017 will be covered under the Act.

Tip: In Alberta, the *Residential Tenancies Act* applies to most rental situations. There are different dispute resolution options available for landlords and tenants dealing with a tenancy law issue, for example, an eviction or security deposits. For more information, refer to the resources on tenancy law at the end of this publication.

Related resources

For more information on human rights law and the complaint process, refer to the following Alberta Human Rights Commission resources (available on www.albertahumanrights.ab.ca):

- *Protected areas and grounds under the Alberta Human Rights Act* information sheet
- *Duty to accommodate* human rights guide
- *Defences to human rights complaints* human rights guide
- *Notice of Changes to Alberta's Human Rights Legislation* (January 2018)
- *The human rights complaint process* information sheet
- *Information for complainants* information sheet
- *Information for respondents* information sheet
- albertahumanrights.ab.ca/services/pages/condos.aspx webpage

For general information and resources on tenancy law in Alberta:

- Service Alberta's Consumer Contact Centre www.servicealberta.ca/file-a-complaint.cfm
- Residential Tenancy Dispute Resolution Service www.servicealberta.ca/landlord-tenant-disputes.cfm
- Centre for Public Legal Education Alberta's Laws for Landlords and Tenants in Alberta www.landlordandtenant.org 

Contact us

The Alberta Human Rights Commission is an independent commission of the Government of Alberta. Our mandate is to foster equality and reduce discrimination. We provide public information and education programs, and help Albertans resolve human rights complaints.

Hours of operation: 8:15 a.m. to 4:30 p.m.

Monday to Friday (holidays excluded)

Northern Regional Office (Edmonton)

800 – 10405 Jasper Avenue NW
Edmonton, Alberta T5J 4R7
780-427-7661 Confidential Inquiry Line
780-427-6013 Fax

Southern Regional Office (Calgary)

200 J.J. Bowlen Building
620 – 7 Avenue SW
Calgary, Alberta T2P 0Y8
403-297-6571 Confidential Inquiry Line
403-297-6567 Fax

To call toll-free within Alberta, dial 310-0000 and then enter the area code and phone number.

Email: humanrights@gov.ab.ca

Website: albertahumanrights.ab.ca

Please note: The Commission must receive your completed complaint form or letter within one year after the alleged contravention of the *Alberta Human Rights Act*. The one-year period starts the day after the date on which the alleged contravention of the *Act* occurred. For help calculating the one-year period, contact the Commission.

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The Commission will make this publication available in accessible formats upon request for people with disabilities who do not read conventional print.