NEW BRUNSWICK HUMAN RIGHTS COMMISSION

FAQs on Housing

Disclosure: *These answers do not constitute legal advice. If an answer conflicts with the* Human Rights Act *or case law/jurisprudence on housing rights, the latter shall prevail. Please direct any questions regarding these FAQs to Commission staff.*

1) What is housing discrimination under the *Human Rights Act*?

Discrimination in housing includes disadvantage or differential treatment of individuals protected under the *Act* in the renting, sale or purchase of property; evicting them from a house or property because they identify with a protected ground like race, national origin, family status, age, social condition, gender identity or expression, etc.; and harassing or otherwise disadvantaging them in the enjoyment of property, because they belong to a group protected by the New Brunswick *Human Rights Act*.

Owners and sellers of property are also prohibited from including terms or conditions in a lease or sale agreement that restrict or inconvenience persons in the use or enjoyment of property based on or due to a protected ground under the *Act*. Terms or conditions of tenancy include, among other factors, rental rates, building maintenance, harassment or demeaning conduct, and access to facilities in housing units.

2) Can my landlord charge me higher rent because I use a wheelchair?

No, a landlord cannot charge higher rent from a tenant because they have a disability, or because they have a protected characteristic related to one of the 16 prohibited grounds of discrimination under the *Act*.

3) Can my landlord restrict my children from the building's facilities?

No, unless there is a real and documented safety issue. Family status and age are protected grounds/characteristics under the *Act*, and a landlord cannot restrict a tenant's access to facilities that are normally available to other tenants (laundry, parking, recreation, etc.) based on their family status, or any of the 16 prohibited grounds under the *Act*. However, they may have an age limit for safety reasons for children to be unattended in laundry rooms, pools, exercise rooms, etc.

4) I am person of colour and have noticed my landlord skips my unit for maintenance, but routinely checks in on other units. Could this be discrimination?

A landlord cannot treat individuals differentially, including in terms of maintenance, due to a prohibited ground. Landlords are obligated to provide necessary repairs and maintenance to rental units and buildings irrespective of a tenant's personal characteristics.

If tenants are denied repairs or maintenance to their units, buildings, or facilities or if these repairs are provided unequally compared to other tenants due to one of the prohibited grounds under the *Act,* landlords may be liable for *prima facie* discriminatory treatment.

5) Can a landlord advertise apartments as being "for adults only"?

It depends on the reasoning for the "adults only" classification. Displaying or publishing ads or signs on their property or in the media, including social media, that are potentially discriminatory to an individual or group based on one of the 16 protected characteristics/prohibited grounds under the Act could be a violation of the Act unless the landlord can establish *a bona fide* requirement for the age restriction for its tenants.

For example, a housing owner who advertises a preference for tenants without children could be found to have violated the *Act,* because the advertisement would infringe the rights of parents with children under the ground of family status. Such ads could also be considered discriminatory based on age, as they have the effect of excluding youth and children. However, if this landlord is able to establish a *bona fide* requirement (as determined by the Commission) that all tenants must be of a certain age, for example all over the age of 60, then the advertisement may not be considered a violation of the *Act.*

6) Can a landlord who has a "no pets" policy refuse to rent to me because I rely on a service animal?

It depends. A landlord cannot refuse to rent to someone with a service animal just because they have a service animal, as reliance on a service animal for a mental or physical disability is protected in the *Act.* Under human rights law, service animals are not the same as pets, and rules related to pets in rental units cannot generally be applied to service animals. Please consult the Commission's Accommodating people with service animals guideline or its plain language version. However, if the landlord is unable to accommodate the service animal due to undue hardship and/or if the tenant does not maintain control of the service animal and/or the service animal causes damage to the rental property, the landlord's duty to accommodate may be impacted.

7) Can a landlord charge me a "pet fee" for my service animal/emotional support animal?

No, landlords cannot apply a "pet fee" for service animals or emotional support animals, as these animals are not classified as "pets" under human rights law. Service animals and/or emotional support animals provide support to people with physical or mental disability, which is protected by the *Act*. However, a tenant is responsible for the costs associated with any damage or mess caused by their service animal to the landlord's property.

Please consult the Commission's Accommodating people with service animals guideline or its plain language version for more information.

8) Can a landlord to refuse to rent to me because I am on social assistance?

It depends. A landlord cannot deny rental units based on a source of income (for example, social assistance). Individuals on social assistance may be protected under the ground of social condition in the *Act*, which prohibits discrimination based on a person's source of income, level of education or occupation.

However, landlords may use other reasonable criteria to review applications of potential tenants, like rental history or credit scores, or requiring guarantors or co-signers for a lease. If one's rental history or credit score is poor, then a landlord could deny to rent to the applicant, regardless of their source of income, including social assistance.

9) I requested an accommodation from my landlord, but they came back and proposed something different than what I wanted. Is this discrimination?

Under human rights law, individuals are entitled to reasonable accommodations rather than perfect ones. This means that you must accept an accommodation that reasonably meets your needs, even if it is not your preferred option.

10) I was scheduled to view an apartment but, after I told the landlord that my pronouns are they/them, the landlord cancelled the viewing. Could this be discrimination?

If a landlord cancels or makes excuses to delay a rental unit viewing *after* learning of an applicant's protected characteristic (like gender identity or expression; sexual orientation, race, national origin, or any other grounds protected by the *Act*), this behaviour could potentially be considered discriminatory under the Act.

If you believe you experienced discrimination in housing due to a protected ground, you can file a complaint with the Commission. Please consult the Commission's "Filing a Complaint" page to learn more about the complaint process.

11) At my apartment viewing, the landlord asked me a lot of questions about my sexuality and who would be living with me. Could this be discrimination?

Invasive questions about the nature of a tenant's relationships, or who they associate with, or their gender identity or expression, sexual orientation, or other personal characteristics protected under the *Act*, may be indicative of potential discriminatory conduct. Such inquiries may violate the privacy and dignity of persons and could be used as evidence of discrimination if the matter becomes the subject of a human rights complaint.

12) On the rental application form, there was a question about my race. Could this be discrimination?

Questions in rental application forms related to a ground of discrimination recognized in the *Act* (race, age, marital status, or sexual orientation, for example) could be *prima facie* discriminatory under the *Act*, **if** they are used to exclude protected persons from availing rental opportunities equally with others. A landlord would need to provide an explanation as to why an applicant's race was relevant to the application for tenancy.

13) A tenant has requested an accommodation to have a service animal in their unit. However, another tenant on the same floor has notified that they suffer from animal allergies. As a landlord, how should I address this request?

To justify denying an accommodation request, you must reach the point of undue hardship. Examples of undue hardship include extremely high cost of accommodation, or serious health and safety risks to other tenants or the public. In the present scenario, you have the legal duty to explore all possible options and take all necessary steps to accommodate the request, while balancing and safeguarding the conflicting accommodation needs of both tenants.

For example, you could consider moving the two tenants to opposite ends of the hallway or to different floors. You could also install customized air purifiers to reduce the transmission of allergens in the building.

14) One of my tenants uses a wheelchair and has requested the installation of an elevator in the building. I can't afford to install an elevator. Under the circumstances, can I refuse the request?

To deny an accommodation request, you must reach the point of undue hardship. Examples of undue hardship include, among others, extremely high cost of accommodation and serious health and safety risks to other tenants or the public. As a housing provider, you have a legal duty to accommodate all reasonable requests, unless providing the accommodation would cause undue hardship.

For this request, you could explore the option of moving the tenant to a ground floor unit so they can access their unit without any barriers.

15) I'm a landlord and want to advertise new units in the building. Am I allowed to express a preference for a certain kind of tenant?

It depends. Expressing preference for certain types of tenants by using phrases like "suitable for" or "geared toward" may violate the *Act* if they exclude certain groups or discourage them from applying to rent the advertised property.

Some examples of discriminatory advertising notices or rental signage include:

- **"Suitable for working professionals" or "Geared to young professionals":** This wording would exclude or discourage the following kind of tenants:
    - Persons who may be unable to work due to a disability;
    - Persons who are unemployed or receiving social assistance;
    - New Canadians who may not yet have jobs;
    - Students who are under-employed or work part-time;
    - Older persons who are retired, under-employed, or employed part-time; and
    - Persons who identify with the ground of social condition i.e. those disadvantaged because of their income, education, or job type (e.g. minimum wage earners, domestic workers, etc.)

- **"Suitable for a single person or married couple":** This wording would exclude or discourage the following kind of tenants:
    - Families with children based on the ground of family status;
    - Common law couples if they are not treated by the landlord as "married";
    - Seniors based on the ground of age.

- **"Adults only building" or "Adult lifestyle premises":** This wording would exclude or discourage the following kind of tenants:
    - Families with children;
    - Other marginalized groups like persons with disabilities, sexual minorities, and those with social condition status.

- **"Quiet building" or "Not soundproof":** This wording would exclude or discourage families with children under the ground of family status.

16) I am a university student and I applied to rent a unit. The landlord denied my application because I am not a "working professional". Could this be discrimination?

Potentially. If a housing provider excludes students from a rental property, this may be considered discrimination based on social condition. The ground of social condition protects against discrimination related to your occupation, source of income, or level of education. This protection could potentially apply to students, depending on the circumstances.

Please consult the Commission's Guideline on Social Condition to learn more.

17) I'm a landlord and I want to make sure my tenants can pay their rent. Am I allowed to impose a minimum income requirement or apply a rent-to-income ratio to assess a tenant's ability to pay rent?

Under the *Act* and according to human rights jurisprudence, minimum income requirements are discriminatory because they disadvantage groups like newcomers to Canada, young adults, and those who identify with the ground of social condition.

Similarly, rent-to-income ratios (ex: requiring that the rent amount should not be more than 30-35% of the tenant's monthly income) may discriminate against young persons, low-income individuals and families, and other vulnerable groups protected under the *Act.*

Landlord may use other reasonable criteria to review applications of potential tenants, like rental history or credit scores, or requiring guarantors or co-signers for a lease.

18) I'm a landlord and a tenant is accusing me of discrimination even though I have no intention to discriminate against them? What do I do?

It is not a defense that you did not intend to discriminate against a tenant. A rule, practice, or behaviour that seems neutral and is equally applied to all tenants can have discriminatory effects. Human rights law focuses on the effects of discriminatory conduct on a complainant, and it does not consider whether parties had an intention to discriminate. It is also not a defense that you were unaware of your duty to accommodate the reasonable requests of your tenants as a housing provider.

19) I'm a landlord and a tenant is filing a human rights complaint against me because they claim one of my employees discriminated against them. How is that my problem?

Property owners are liable for acts of discrimination committed by their agents, representatives, or employees in the course of their work duties. Landlords and property owners cannot evade liability by pleading that they were unaware of the discriminatory practices of their employees, agents, building managers or supervisors.

20) As a landlord, what are some things I can do to ensure human rights are respected in my building?

To pre-empt incidents of discrimination, housing providers should adopt the following best practices, corresponding with basic human rights principles of equality, dignity, respect, and inclusion:

- Landlords and housing providers should devise anti-discrimination and anti-harassment policies. These policies should be made available to all concerned parties and displayed in prominent places on housing premises.
- Landlords must take all complaints of mistreatment, discrimination, or lack of accommodation very seriously and take swift action to address them.
- Housing providers have a duty to accommodate the needs of tenants with disabilities or other protected characteristics to the point of undue hardship. Developing and adopting an accommodation policy can help ensure housing providers follow an appropriate process for implementing reasonable accommodations.

21) Under human rights law, what are the responsibilities of tenants in rental situations?

Tenants also have responsibilities under the *Act* which include the following:

- Paying the rent on time and abiding by rental rules and regulations;
- Not causing damage to the unit or property and keeping the rental unit in reasonably clean condition;
- Respecting the health and safety (e.g. fire) regulations of the building and ensuring that no health and safety risks are posed to other tenants or the environment;
- Refraining from noisy or disruptive behaviour and respecting the dignity and rights of other tenants, building staff, etc.;
- Communicating any needs for specific accommodation and cooperating fully in the accommodation process.

If tenants breach their responsibilities, especially if their actions pose health and safety risks to other tenants, to the environment or the public, the landlord's duty to accommodate may reach the point of undue hardship, especially if the landlord has already made proactive attempts at accommodating the needs of the tenants.

22) As a landlord, what are the situations where it would be justifiable to not fulfill certain accommodation requests from my tenants?

There are some situations in which a landlord or housing provider would be justified if they are unable to fulfill certain accommodation requests of their tenants. These include:

- **A BFR claim:** If the action or decision of a landlord or housing provider is made for a legitimate or *bona fide* requirement (BFR), it would not be discriminatory if it has differential consequences for a tenant.
    - What constitutes a BFR is context-bound and is assessed on a case-by-case basis.
    - Typically, a refusal to accommodate would be justified as a BFR if the cost of accommodation would be too high, or if the accommodation would pose serious health and safety risks to tenants, housing staff, or members of the public.
    - Concrete evidence should be presented to support or justify a BFR. Subjective or unquantifiable assessments of potential expenses or health and safety risks are not enough to prove that a measure qualifies as a BFR.

- **Special programs:** It is not discriminatory if certain persons or groups are excluded from availing rental housing, if the exclusion is the result of a special program.
    - Special programs are specific measures designed to give preference in housing, employment or services to one or more protected groups.
    - For example, a housing provider may design a special program that reserves a housing unit in an apartment complex for single mothers, based on research that single mothers face difficulty in the rental market where the building is located.
        - Although this special program would exclude other groups from renting this unit, it would not be discriminatory against these groups in the given context.
    - Non-discriminatory special programs in housing may likewise be designed for persons with disabilities, seniors, university students with families, and so on.
    - It is imperative that special programs comply with all human rights principles and not discriminate internally against the groups they are designed to protect.
        - For example, if the above-mentioned special program for single mothers begins to give undue preference to white women over racialized women, it would potentially violate the *Act.*

- **Exception in sublets:** If property owners rent a portion of their home – either a room or a self-contained unit – they must still abide by all human rights obligations. However, in such situations of sublet, depending on each specific case, a slight exception may be permitted.
    - If an owner or tenant sublets a room or portion in a unit with shared bathroom or kitchen, the owner or tenant would have the right to prefer certain types of occupants because of the intimate nature of the shared living space.
        - For example, a single woman (a widow or single mother) who lives alone and rents a room in her home, with a shared bathroom or kitchen, would not discriminate against other groups if she prefers to rent only to women tenants.
        - Such a preference, however, should not be internally discriminatory based on any of the protected grounds. For example, it would still be discriminatory if the landlady denies a racialized woman applicant because of her race.
        - In such shared rental accommodation, parties must still adhere to all human rights obligations, and they will be liable for any discriminatory treatment during tenancy.

- **Legitimate rental inquiries:** Equal treatment in rental occupancy is not infringed if a landlord requires income information, rental history, credit checks, or other guarantees from prospective tenants.
    - However, such inquiries should not violate the dignity and privacy of tenants or be used to prefer certain tenants and exclude protected groups, when all groups meet the required preconditions.

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