

Building inclusive housing communities

When constructing new buildings or undertaking renovations, be careful not to create barriers for potential tenants with disabilities. Integrating accommodation into construction is more cost effective than adding modifications or removing barriers later on. It is also your best protection against a human rights complaint down the road.

For more information on the duty to accommodate, see the Policy Guidelines put out by the Ontario Human Rights Commission: <http://www.ohrc.on.ca/english/publications/disability-policy.shtml>

If you have questions about the duty to accommodate, call CERA!

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Centre for

Equality

Rights in

Accommodation



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

Ontario's Human Rights Code, Disability and the Duty to Accommodate: A Guide for Landlords



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

Ontario's Human Rights Code (the Code)

The *Code* is one of the most important pieces of legislation in Ontario. The *Code* overrides all other pieces of legislation in the province, unless the contrary is explicitly stated.

In its provisions concerning housing, the *Code* says that **every person has a right to equal treatment without discrimination because of disability**. This means that people with disabilities must have equal opportunity to access housing, and equal opportunity to enjoy the benefits that come along with that housing.

A landlord can be the subject of a complaint to the **Human Rights Tribunal of Ontario** for violating the *Code*.

How does the Code define a disability?

The definition of disability in the *Code* is broad. It includes:

- **Physical disabilities**, including intermittent conditions
- **Mental disabilities** including developmental disabilities, mental disorders, and learning disabilities
- **Environmental sensitivities**
- **Invisible disabilities** such as chronic pain or fatigue.

What is discrimination?

Discrimination occurs when a person is treated in a way that imposes a burden or withholds a benefit because of her disability. Rules, policies, or practices which have an unfair effect on a person because of her disability constitute discrimination, whether or not the landlord intends to discriminate.

The duty to accommodate

Landlords have a **duty to accommodate** the needs of persons with disabilities to the point of **undue hardship**. This means that the landlord may have to add or modify structures, rules, policies or practices so that they meet the needs of residents with disabilities. The best way of accommodating a disability will depend on what the needs of the person with the disability are. Some examples of accommodation include:

- Installing a light-radiating fire alarm for a deaf tenant
- Using non-toxic paint in the apartment of a tenant with chemical sensitivities
- Installing doors that open automatically for tenants with mobility impairments

The **Ontario Human Rights Commission** has been clear that changes to rules, policies, practices or structures should:

- Be done within a reasonable time-frame
- Respect for the individual's confidentiality
- Be done in consultation with the individual effected.

CERA: CENTRE FOR EQUALITY RIGHTS IN ACCOMMODATION

Accommodating an individual's disability is a process that must be carried out in line with the following values set out by the Commission:

1) Accommodation must be done in the manner that most respects the dignity of the individual.

Jason cannot access the stairs at the front of his apartment in his wheelchair. His property manager says he can enter through the garbage room where there are no stairs. This does not respect Jason's dignity.

2) Accommodation must meet the individual needs of the person effected.

Ming gets severe asthma attacks and nosebleeds from the cleaning products used in his building. His landlord tells him she will not switch products because other tenants do not have these sensitivities. This does not meet Ming's individual needs.

3) Accommodation must be done in a way that promotes integration and full participation in the community.

Craig's tenant Sarah can't access the front steps of her building with her walker. Craig suggests she move to another building that has a ramp, but Sarah wishes to stay with her friends in her community. Craig recognizes that Sarah should have access to ALL buildings and constructs a ramp at her current building.

Responsibilities of the individual requiring accommodation

If person with a disability requires accommodation, it is her responsibility to let the landlord know.

The individual may also need to provide evidence as to why accommodation is required, but this does not require a disclosure of the type of disability she has. A letter from a health practitioner stating the type of accommodation required constitutes sufficient evidence of the need for accommodation.

What is undue hardship?

The duty of a landlord to accommodate a person's disability extends to the point of "undue hardship". To prove undue hardship, the landlord would need to show that accommodating the needs of the individual with the disability would:

- Be so costly that it would threaten the viability of the business, and no outside sources of funding are available
- Pose unreasonable health or safety risks

Business inconvenience, third party preference, and alternate contracts do not constitute undue hardship.

Proving undue hardship

It is up to the landlord to **prove that undue hardship exists**. Evidence might include financial statements and budgets, scientific data, and expert opinion. A claim of undue hardship will not be accepted unless a landlord has made a sincere effort to reduce the hardship that accommodating a disability might cause.

Landlords are not alone in finding ways to accommodate the needs of a person with a disability. The following resources can help:

- Ontario Renovates: This program can provide financial assistance for disability-related modifications to homes and apartments. Check your municipality for details.
- The March of Dimes Canada can provide financial assistance to individuals who need modifications in their apartments. It also provides fee-for-service accessible design consulting: www.marchofdimes.ca.
- For information on less toxic cleaning and homecare products, visit CERA's website: www.equalityrights.org/cera/?page_id=674
- For CMHC certified indoor air quality inspectors for tenants with mould or air quality sensitivities, call 1-800-668-2642.

Accommodating the needs of a person with a disability is nearly always possible!

Here are some examples of solutions other landlords have arrived at with their tenants to create inclusive housing:

Keisha is the property manager of a building with 950 units. One of her tenants recently survived a car accident, but is now paralyzed from the waist down and requires a wheelchair. There is a set of steep stairs at the front entrance to the building, and the superintendent believes it would be impossible to build a ramp there due to the particularly sharp incline. In response to the tenant's request for accommodation, Keisha contacts an accessibility consultant who suggests a type of lift that works well in situations like this.

Luis is the owner of a low-rise building with 40 units. He has received complaints that Matt, a tenant who suffers from Tourette's Syndrome, has been interfering with other tenants' sleep by shouting loudly at night. They have asked Luis to evict Matt. Luis speaks with Matt and learns that Matt cannot control these outbursts. Together, they discuss ways to soundproof Matt's apartment using carpeting.

Joan rents out three apartments in her home. Her tenant, Fatima, has submitted a doctor's note stating that her allergies are severely effected by the smoke that drifts into her unit from other smoking tenants. Joan doesn't know what she should do about this since the other tenants have a right to smoke in their unit, so she asks Fatima to help her find a solution. Fatima supplies a list of air quality consultants who provide Joan with information about effective ventilation and air purification systems. Joan agrees to install the required ventilation and purification systems.

Michael requires a walker for support, but the elevator door closes too quickly for him to safely enter and exit using the walker. He worries that his walker may be crushed by the elevator door and writes a letter to Ross, his property manager, to express his concern. In response, Ross speaks to the elevator company the building works with and learns that a laser can be installed to sense a person's presence in the elevator doorway and prevent the doors from closing until it is safe. Ross requests that the company install this system for Michael's safety.