



**CLEO**

Community Legal Education Ontario  
Éducation juridique communautaire Ontario

# **The Eviction Process: Rights of Tenants with Disabilities**

**Speakers:**

**Tracey Lawrence and Kim Facca,  
Community Legal Workers at Kinna-aweya Legal  
Clinic (Thunder Bay)**

**Oct 13th 2022, 12-1pm**



## What you can expect today

### **Lunch and Learn Series**

1 hour in total (presentation and Q+A)

This is legal information, not legal advice.

The information is current as of today's date Oct 13, 2022

Recording and slides will be sent out afterward.

Subtitles (closed captioning) have been enabled.

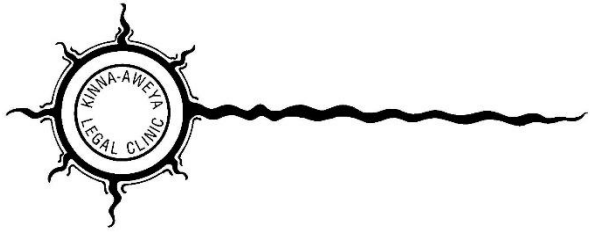


# Land Acknowledgement

CLEO's work takes place across the home and traditional territory of the Mississaugas of the Credit, the Haudenosaunee, and the Wyandot peoples, on land that many of us know as Ontario. We encourage you to take the time to understand more about the land *you* live and work on.

As we provide legal information today, we acknowledge the ongoing impact of colonization and anti-Indigenous racism, built into our laws and legal systems, resulting in devastating pain and inequality for Indigenous Peoples of every generation.

We also recognize the incredible amount of work that Indigenous Peoples contributed to the Calls to Action in the Truth and Reconciliation Commission report calling for Equity for Indigenous Peoples in the Legal System.



# THE EVICTION PROCESS

## Rights of Tenants with Disabilities

The Duty to Accommodate under the *Ontario Human Rights Code*

October 13, 2022

By Kim Facca, RSW and Tracey Lawrence, Licensed Paralegal  
Kinna-aweya Legal Clinic, Thunder Bay, Ontario

# *The Human Rights Code*

- The Landlord and Tenant Board is required to consider the *Code* in rendering its decisions.
- The *Code* takes precedence over all other laws, including the *Residential Tenancies Act (RTA)*.
- The *Code* applies to landlords, people who work for a landlord, or other tenants in the place where you live or want to live.
- The *Code* applies to residential tenancies in Ontario, including those governed by the *RTA*. The Board must ensure that it enforces the *RTA* in a manner consistent with the objectives of the *Code*.
- Equal “access to housing” means more than just providing physical access by having ramps or wider doorways. It also means receiving fair and equal treatment when you rent a place to live.

# *The Residential Tenancies Act (RTA)*

- The *Residential Tenancies Act* (RTA) is remedial legislation intended for the protection of tenants
- Relief from eviction requires a balancing of the impact of eviction on the tenant and on the landlord
- A tenancy should only be terminated where it is shown on the basis of clear and compelling evidence that it is no longer possible for the tenancy to continue and no reasonable conditions can preserve the tenancy
- In particular, a tenancy in subsidized housing should only be ended in the most compelling circumstances, as the loss to the tenant is severe.



# True or False?

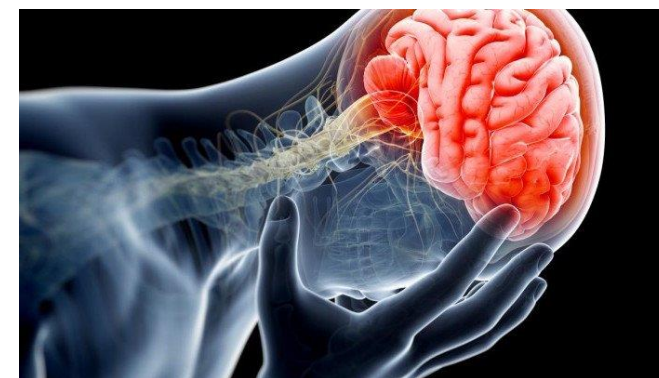
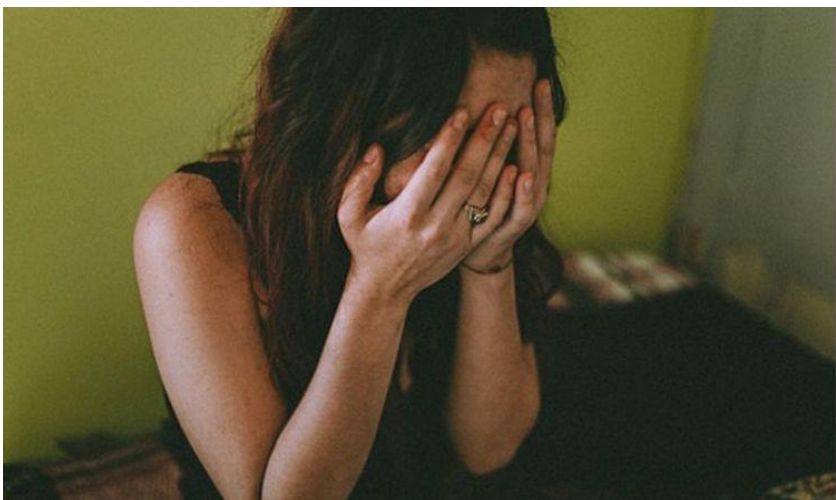
- Landlords are only required to accommodate disabilities that are visible
- A landlord doesn't have to accommodate a tenant if the tenant didn't tell their landlord that they have a disability
- Accommodation only involves meeting the disability-related needs of individuals who suffer from a physical disability
- A tenant can take legal action against their landlord for their landlord's failure to accommodate to the point of undue hardship



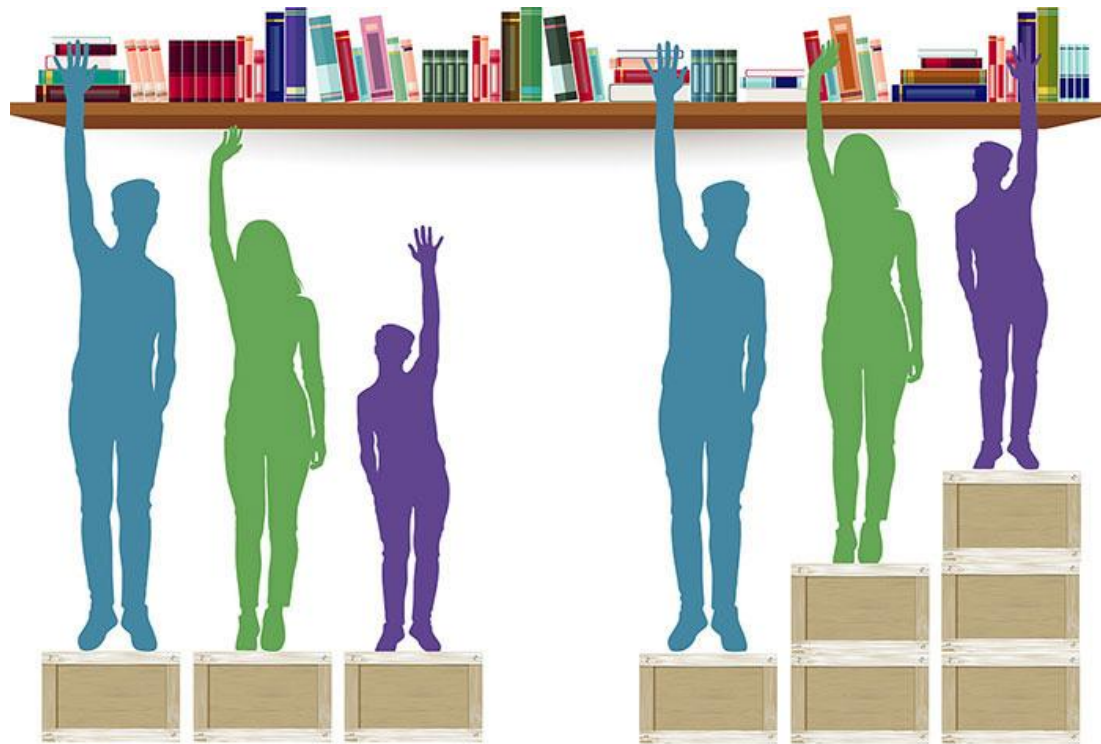
# True or False? Answers

- Landlords are only required to accommodate disabilities that are visible (F)
- A landlord doesn't have to accommodate a tenant if the tenant didn't tell their landlord that they have a disability (F)
- Accommodation only involves meeting the disability-related needs of individuals who suffer from a physical disability (F)
- A tenant can take legal action against their landlord for their landlord's failure to accommodate to the point of undue hardship (T)

# Disabilities are not always visible



# The Duty to Accommodate



# Duty to Accommodate: Procedural and Substantive Components

- The duty to accommodate is set out in the *Human Rights Code*.
- The duty to accommodate includes both procedural and substantive components
- A landlord has a duty under the law, to inquire, and respond to a tenant's request for accommodation, and must use the information obtained about the tenant's disability (i.e. the disability-related needs of the tenant) and put in place reasonable accommodations to the point of undue hardship.
- A breach of the procedural duty to accommodate is discrimination!
- The substantive duty to accommodate relates to the reasonableness of the accommodation offered or the landlord's reason(s) for not providing accommodation

# Undue Hardship

- "Undue hardship" has been very strictly defined.
- Courts and tribunals have accepted that the term "undue" used before "hardship" means that some hardship is "due".
- The only factors that can be considered regarding undue hardship are
  - **Cost**
  - **Health & Safety Concerns**
  - **Outside Sources of Funding**
- A landlord must provide concrete and objective evidence of these factors

# Principles Informing “reasonable” accommodation

- Respect for dignity (e.g. tenant in a wheelchair should not have to enter a building through the garbage storage room)
- Individualization (e.g. no one “formula”--accommodation is based on the unique needs of this particular person)
- Integration and full participation (e.g. providing a client access to a lock box for their key rather than the tenant having to call a superintendent if they lost their key)

# Notice of Termination may be discriminatory

- Where a landlord has not met its duty to accommodate prior to serving a notice to terminate a tenancy, the Notice of Termination itself is discriminatory.
- The Landlord and Tenant Board cannot give effect to the Notice to Terminate and must dismiss the application.
- The onus is on the landlord to prove that they have accommodated the disability **to the point of undue hardship**





# What can I do to help a tenant get the accommodation they need?

- Make accommodation needs known in writing (there is no requirement to disclose a diagnosis, only the restrictions arising from the condition(s))
- Answer questions or provide information about relevant restrictions or limitations (this may include medical information)
- Participate in discussions about possible accommodation solutions
- Co-operate with any expert whose assistance is required
- Consider different forms of reasonable accommodation offered even if it is not the exact accommodation the tenant requested

# After making a landlord aware of a tenant's need for accommodation, what should happen next?

- A landlord should take reasonable steps to respond, including:
  - Accepting the accommodation request in ***good faith***, unless there are legitimate reasons for acting otherwise and responding in a timely manner
  - Maintain confidentiality
- Obtaining expert opinion or advice where needed
- Taking an active role in exploring a range of reasonable options
- Keeping a record of the accommodation request and action taken

# Common Reasons for Eviction

- Rent Arrears (i.e. loss of RGI subsidy for failure to complete Annual Income Review Forms)
- Behavioural issues arising from mental health conditions (i.e. gambling)
- Substantial interference/Damage (i.e. failure to prepare a rental unit for pest control treatment, difficulties maintaining ordinary cleanliness)
- Behavioural issues arising from mental health conditions (i.e. noise, Failure to participate “x” number of hours in programming)
- Illegal act (i.e. assault another tenant)
- Impairment of safety (i.e. removing a smoke detector)

# Potential accommodation solutions

- Sound proofing a rental unit
- Transferring a tenant from one rental unit to another
- Contacting a family member, or a professional for assistance
- Assisting a tenant with referrals to supportive agencies
- Assisting a tenant with preparation of their rental unit for pest control treatment
- Providing a tenant more time to prepare their rental unit for pest control treatment
- Flexibility with rules and deadlines (e.g. just because one tenant can do it, doesn't mean this tenant can do it)

# Case Study # 1

- Mary is a 76 year old, frail woman who lives alone in her rental unit. She suffers from significant physical health challenges. She has no family and only a few friends
- She used to be quite social and visited the common room frequently, participating in social activities with other tenants, but since COVID, she fell into a state of severe depression and has isolated herself from the other tenants. She keeps to herself and rarely leaves her rental unit
- She is an extreme collector, her unit is cluttered with excess furniture and other items
- Her landlord knocked on the door and informed her that there are bed bugs in the building and gave her an instruction sheet about how to prepare her rental unit for treatment
- She has not personally witnessed bed bugs in her unit and she would like to prepare her rental unit for treatment, but the thought of it is overwhelming for her, she cannot read the instruction sheet and she simply cannot bring herself to taking a single step towards preparing her rental unit for treatment. She thinks that because she has not seen any bugs in her unit, she is exempt
- The pest control technician showed up and was unable to treat her rental unit and now her landlord has issued an N5 Termination Notice because she has Interfered with her Landlord's Reasonable Enjoyment by failing to prepare her rental unit for treatment

# Case Study # 2

- Gabriel is in receipt of Ontario Works and has lived in a RGI-subsidized bachelor apartment owned operated by a service manager
- He recently finished a residential treatment program which included a pre and post treatment program
- During his absence from his rental unit while he was in treatment, his Annual Income Review form became due. He was not aware that it was due
- He's received an N4 Notice to Terminate Your Tenancy for rent arrears from his landlord because his rent subsidy was revoked and now he is required to pay market rent, which he could not afford



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## Resources and supports:

### **CLEO's Steps to Justice**

[Discrimination in Housing](#)

### **CLEO Publications**

[Harassment against tenants](#)

### **Canadian Centre for Housing Rights (formerly CERA)**

1-800-263-1139 or visit [housingrightscanada.com](http://housingrightscanada.com)

### **Human Rights Legal Support Centre**

1-866-625-5179 or visit [www.hrlsc.on.ca](http://www.hrlsc.on.ca).



## **Resources and supports:**

**Contact your local community legal clinic**

[Find your local clinic](#) or call 1-800-668-8258

**Federation of Metro Tenants Associations**

[Know your rights + tenant hotline](#) (416-921-9494)

**Advocacy Centre for Tenants Ontario (ACTO)**

[Legal Advice - Tenant Duty Counsel](#)

**ARCH Disability Law Centre**

<https://archdisabilitylaw.ca/>





## **Calls to action: Truth and Reconciliation**

- [Truth and Reconciliation Commission of Canada: Calls to Action](#)
- [Settlers Take Action](#)

## **Education**

- [Indigenous Canada - Free Course](#)

## **Whose Land?**

Learn about where you are situated, information for land acknowledgements and learn about the treaties and agreements signed across Canada (Turtle Island).

- [Whose Land?](#)



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# Thank you for joining us!

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Steps to Justice – [Steps to Justice](#)

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