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Human Rights in Housing: Discrimination and Harassment

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Land Acknowledgement

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Black Legal Action Centre (BLAC) recognizes that our work takes place on traditional Indigenous territories across the territory now called Ontario. We acknowledge that there are 46 treaties and other agreements that cover the Province.

BLAC also acknowledges that our head office is located on the land known as Tkaronto. Tkaronto is the unceded and ancestral territories of the Anishinaabeg, the Chippewa, the Haudenosaunee confederacy, the Mississauga's of the Credit River, the Wendat and many diverse First Nations, Inuit and Metis peoples. It is covered by Treaty 13 with the Mississauga's of the Credit and the Williams Treaties signed with multiple Mississauga's and Chippewa bands, to peaceably share and care for the lands around the Great Lakes.

BLAC also acknowledges the many people of African descent who are not settlers, but whose ancestors were forcibly displaced as part of the transatlantic slave trade, brought against their will, and made to work on these lands.

We believe that advancing Indigenous sovereignty is deeply and inextricably linked to Black liberation and we will continue to mobilize and take action in solidarity with Indigenous people and communities.

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Disclaimer

This presentation material is provided for educational and informational purposes only and does not constitute legal advice. The content is intended to support legal clinic education, advocacy training, and professional development and should not be relied upon as a substitute for independent legal advice or legal representation.

While every effort has been made to ensure the accuracy and currency of the information presented, the law may change, and its application will vary depending on the specific facts and circumstances of each case. Participants are encouraged to consult applicable legislation, case law, tribunal rules, practice directions, and supervising counsel where appropriate.

Participation in this training does not create a solicitor-client relationship.

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Why Are We Here

- Discrimination and Harassment in Housing
- Protected Grounds in Human Rights Code
- Landlord and Tenant Board & Human Rights Tribunal
- Co-op Housing
- Case Law
- Case Studies

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Discrimination in Canadian Housing

- In Black-majority, high-income neighbourhoods, financialized landlords file 33.25 eviction applications per 100 units per year (2019). This is nearly **6 times** the citywide average for financialized landlords.

- Between 2016-2019, Black low-income neighbourhoods experienced an average eviction filing rate of 3.8 eviction application per 100 rent units, while the citywide average was 3.0.
- Approximately **40%** of tenants in the Toronto Community Housing Corporation (TCHC) identify as Black (2023). Following investigations by Ombudsman Toronto, it was determined that the TCHC consistently failed to protect the human rights of its tenants, often ignoring complaints regarding ethno-racial harassment and anti-Black behaviour by neighbors.
- The Canadian Centre for Housing Rights study found that newcomers in Toronto face up to **11 times** as much discrimination as non-newcomers when searching for rental housing (2022).

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Protection Against Discrimination: Legal Rights and Tribunals

Protected Grounds in the Human Rights Code

- Landlords and housing providers **must treat all applicants and tenants equally without bias based on protected personal characteristics**. Prohibited grounds of discrimination include:
  - Race, colour, and ethnic origin
  - Disability (including mental and physical limitations)
  - Sex (including gender identity, gender expression, and pregnancy)
  - Family status or martial status
  - Receipt of public assistance
  - Sexual orientation, age, creed, and citizenship
- The *Code* applies to:
  - Applying to rent a unit
  - Tenant rules and regulations
  - Repairs and maintenance
  - Using related services and facilities
  - General enjoyment of the place you rent
  - Evictions

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Examples of Discrimination in Housing

1. **Failure to Accommodate**
   a. Refusing to make reasonable modifications or adjusting building rules to accommodate a disability or religious practice.
2. **Harassment**
   a. Tenants have the right to be free from humiliating or offensive conduct that is based on one or more of the Code grounds.
   b. Harassment requires a “course of conduct,” which means that a pattern of behaviour or more than one incident is required.
3. **Direct Denial**
   a. Refusing to rent to an applicant based on one of the protected grounds.
4. **Selective Screening**
   a. Applying stricter credit or income requirements to certain applicants based on protected grounds.

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Legal Rights and Tribunals

Residential Tenancies Act

- The Residential Tenancies Act (RTA) applies to all landlords and tenants who rent residential properties in Ontario
- It protects against unlawful rent increases and evictions, provides rules for maintenance, and ensures landlords and tenants understand their legal obligations

Landlord and Tenant Board

- The Landlord and Tenant Board (LTB) is the tribunal that administers the RTA
- It resolves disputes between landlords and tenants such as rent arrears, unpaid utilities, property damage, or interference with reasonable enjoyment
- It decides eviction applications filed by landlords or non-profit housing co-operatives

Ontario Human Rights Code

- The RTA is subject to the Human Rights Code
- The LTB must interpret the RTA in a way that respects human rights, and cannot enforce any RTA provision that conflicts with the Code
- A tenant who faces discrimination or harassment based on a protected ground can file a separate application directly with the Human Rights Tribunal of Ontario (HRTO)

Ontario Human Rights Tribunal

- The HRTO is an independent body that exclusively handles claims of discrimination and harassment under the Ontario Human Rights Code. Claims must be based on one of the 17 protected grounds under the Code.
- The LTB applies the Code defensively or in the context of a tenancy dispute, while the HRTO applies the Code offensively.

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Rules for Using the LTB and the HRTO

Choose One Path

File a case with either the HRTO or the LTB. Both tribunals cannot be used for the same incident.

Limitation Period

To file discrimination or harassment claims, you must file the claim with either the LTB or HRTO within 1 year of the date the incident occurred. If there are multiple incidents relating to the same complaint, the date of the last incident is when the limitation period begins.

Process

1) Filing an application 2) Mediation and a hearing 3) Enforcing an order

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Uses of the LTB versus the HRTO

Landlord and Tenant Board	Ontario Human Rights Tribunal
1. **General Tenancy Disputes**: eviction notices, unpaid rent, damages, Tenant rights (abatement, bad faith eviction), and return of last month's rent deposits. 2. **Repairs and Maintenance**: the landlord fails to maintain or repair the unit. 3. **Interference of Enjoyment**: a landlord harasses or interferes with your daily life	1. **Refusal to Rent**: a landlord refuses to rent to you, lies about availability, or refuses an application due to your race, family status, or receipt of public assistance. 2. **Lack of Accommodation**: a landlord refuses to make necessary modifications for a disability. 3. **Discriminatory Harassment**: you are harassed by a landlord or superintendent based on protected grounds such as sexual orientation, gender identity, or religion.

Tenant Rights, the LTB, and the HRTO

Active “tenants” without tenant rights under the RTA (i.e. those living in co-ops, some charity housing etc.) who have discrimination/harassment complaints

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The HRTO should be used → those without tenant rights **cannot** use the LTB because the RTA for tenant right are sometime barred.

Active tenants with tenant rights who have discrimination/harassment complaints

↓

Either the LTB or HRTO may be used.
The LTB can address discrimination by a landlord on OHRC-protected grounds during an active tenancy.
The HRTO deals only with human rights complaints and not tenant rights issues.

Example of Individuals Without Tenant Rights: Co-op Housing

- Co-op housing operates through a system of by-laws and the mutual obligations of members. A co-op generally has an elected board responsible for decision-making about the co-op.
- Residents are members rather than tenants, limiting the jurisdiction of the LTB and the HRTO.
- **The *Code* has primacy over the by-laws of co-ops.** A co-op housing provider should conduct an individualized assessment of a co-op member's circumstances when implementing and applying by-laws.
- Where the member has needs related to a *Code* ground, the co-op housing provider must modify/waive the by-law requirement to accommodate the *Code*-related needs up to undue hardship.

Co-Ops and the LTB	Co-Ops and the HRTO
➢ The LTB does not usually accept applications from co-op members. ➢ Co-ops operate under the *Co-operative Corporations Act*, not the *RTA*. ➢ **Exception**: Co-ops can apply to the LTB to **evict** a member, but only after internal dispute resolution and membership termination procedures have been completed. ➢ Members facing eviction can raise human rights issues during this LTB process.	➢ Co-op members facing discrimination or harassment based on protected grounds can file a complaint with the HRTO. ➢ The HRTO has ruled that housing providers are responsible for addressing a poisoned environment.

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Case Law: Precedents in Housing Discrimination

Welykyi v. Rouge Valley Co-operative Homes Inc., 2016 HRTO 299

Case Summary	Outcome
➢ Between April 28, 2012 and September 15, 2012, someone wrote or posted 18 vulgar message in the Rouge Valley Co-op building directed towards applicants. ➢ The messages referred to the applicants in terms related to the prohibited grounds of disability, race, sex, gender identity, ancestry, age, and receipt of public assistance. ➢ The perpetrator was never identified, and the applicants testified that the respondent failed in its duty to deal with the issue appropriately. ➢ The applicants alleged that the respondent reprised against them for filing human rights applications and prevented them from running for positions on the Co-op Board of Directors.	➢ The Tribunal concluded that while the Co-op was not responsible for the initial harassment, it violated the *Code* by failing to take the complaints seriously. The Co-op breached its duty to provide a harassment-free environment. ➢ The Co-op was ordered to pay $3,000 to each of the 10 complainants and post notices of the decision.

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Case Study #2

- A housing co-op tried to evict Maurice because he did not complete two hours of volunteer work each month, which was required by the co-op's by-law.
- Jamal had previously provided a doctor's note stating that he was unable to perform the volunteer work for medical reasons.

The co-op has a duty to respect the rights of its occupants under the Ontario *Human Rights Code*

The co-op must accommodate the needs of an occupant with a disability to the point of undue hardship

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Resources

CHFT
CO-OPERATIVE HOUSING FEDERATION OF TORONTO

Habitat for Humanity®

Co-operative Housing Federation of Canada

Canadian Centre for Housing Rights

BLACKNORTH INITIATIVE
Strength(In) Diversity

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Questions