

# Submission to the Ontario Human Rights Commission's Consultation on Mental Health

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Federation of Rental Housing Providers of Ontario

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## About FRPO

Since 1985, the Federation of Rental-housing Providers of Ontario (FRPO) has served as the voice of Ontario's rental housing industry, and now is the largest association in Ontario representing those who own, manage, build and finance residential rental properties. Our membership includes a diverse group of owners and managers, from those with one small building or a few units, up to the largest property management firms and institutional owners and managers, with more than 800 members in every area of Ontario, and with over 250,000 homes.

Our organization is a strong supporter of human rights compliance and regularly provides education to landlords about their responsibilities under the Human Rights Code. FRPO together with its members oppose discrimination in all its forms. In fact, our industry houses a disproportionately high number of visible minorities, recent immigrants, people with disabilities and households with low incomes, providing a valuable service to these households. We support inclusiveness and fair treatment for all.

## Raising public awareness and addressing discrimination

*What can the OHRC do to raise public awareness about human rights issues in rental housing, employment and services for people with mental health and addiction disabilities?*

We welcome any efforts the Ontario Human Rights Commission (the Commission), wishes to make to increase awareness. Greater awareness of rights and responsibilities will benefit all participants in the rental marketplace. We would be happy to work with the Commission in communicating human rights policies, responsibilities and obligations to members of our industry.

Over the recent past, we believe there has been substantial progress in strengthening protections against discrimination based on human rights grounds, especially in the area of access to rental housing. As pointed out by the Commission, rights complaints in the area of rental housing are very low, forming less than 4% of total complaints to the Commission. Continued public education and awareness will help to reduce the incidence of discrimination even further.

In 2008, FRPO launched an industry-developed Certified Rental Building (CRB) Program, a rigorous quality assurance program with 38 different standards of practice that eligible rental housing buildings in Ontario must comply with before they are awarded the CRB designation. One of these standards is adherence and compliance by landlords and property management staff with the Ontario Human Rights Code. A CRB designated buildings must have policies in place to ensure compliance with the code, and these policies must be communicated to tenants. To-date there are over 1,400 apartment buildings with over 95,000 rental suites enrolled in FRPO's CRB program throughout Ontario.

We welcome additional efforts to raise awareness provided they are genuinely intended to help avoid instances of discrimination. The most effective solution to reduce instances of discrimination is to provide relevant education and information directly to owners, managers and others who are suppliers of rental housing. While FRPO continually makes efforts to inform our member housing providers of their legislative rights and responsibilities, there may be providers who require additional direction on how the Human Rights Code impacts their business.

**Some measures the Commission may want to consider include:**

- **Specific information provided by the Commission, for example on the Commission's website, and available at Landlord Tenant Board offices, that is particularly directed to landlords and residential property managers**
- **A simplified booklet or fact sheet of Code requirements for housing providers and landlords**
- **Education seminars for housing providers and other industry professionals (FRPO would be willing to co-host these seminars across Ontario)**
- **Providing representatives from the Commission to meet with organizations to address what specific actions housing providers can take to ensure compliance with accommodation policies, privacy laws and other human rights guidelines. Rental housing is a unique business, and information from the Commission does not specifically address the distinct challenge landlords face with respect to balancing the rights of tenants and employees with mental disabilities and those of other residents.**
- **An anonymous telephone service for housing providers who have inquiries about their obligations under the Code, where housing providers can make specific inquiries about specific situations that related to Code protection, without fear of reprisal by the Commission**

## **Discrimination and Employment**

*What information do employers need about how to meet their obligations under the Human Rights Code relating to hiring, evaluating, disciplining or terminating the employment and accommodating the needs of employees with mental health disabilities and/or addictions? What steps can be taken to eliminate discrimination in the workplace?*

Issues related to an employee's mental health is a complex one and many employers, including rental housing providers, approach it with caution. Housing providers are faced with dual responsibilities to protect the human rights of both their employees and their housing tenants. Staff in rental housing properties have ongoing and close interaction with a wide variety of tenants. Unlike other businesses and places of work, tenants as customers are virtually always

present, as the rental property is their home, not simply a business or service that they occasionally frequent.

Mental illness is not always disabling. The term covers a wide range of conditions. Some mental illnesses will produce no noticeable effect on the employee's work, while others can be unmanageable<sup>1</sup>. Some consequences can include diminished performance, absenteeism and difficulty interacting with other staff and tenants.

Further, identifying mental health issues in employment situations is very challenging. Mental health information about an individual is considered private and personal. Rental housing providers are generally not entitled to detailed health information about their employees. This makes it difficult to assess their needs or to adequately and proactively respond to the duty to accommodate employees with mental health illnesses.

Many rental housing providers may fear reprisals or discrimination complaints if they approach employees about performance related issues that are a consequence of disability-related challenges. In order for accommodative solutions to work between employers and employees with mental illnesses, cooperative solutions, including discussions initiated by employers, must be supported by the Commission.

**FRPO recommends the Commission consider the following policies and measures:**

- **Increased education and awareness for employers on identifying and responding to mental health issues**
- **Increased access to supports and services for employers to ensure employees with mental illnesses can overcome any barriers created by their disabilities**
- **Employees with mental health disabilities must submit timely and reasonable requests for accommodation from employers**
- **Employees with mental health disabilities must co-operate with the employer to find the appropriate accommodation**
- **Employees with mental health disabilities must be required to share information with employers about the nature of their illness and the limitations that it causes, and allow the employer time to reach accommodation solutions**
- **Rental housing providers must be permitted to conduct criminal background checks of all employees in an equitable manner to ensure the safety and security of tenants**

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<sup>1</sup> Janice B. Payne and Trevor E. Fenton, 2005. *Accommodating Mental Illness in the Workplace: Principles and Practice*: Nelligan O'Brien Payne LLP: September 28-29, 2005.

## Discrimination and rental housing

*What information do private housing providers need to protect the rights of people with mental health disabilities and addictions in tenant selection, during tenancy, and during evictions? What are best practices in the duty to accommodate people with mental health disabilities and addictions in rental housing?*

FRPO commends the Ontario Human Rights Commission for considering the perspectives of residential landlords and property managers during its mental health consultations. FRPO also commented extensively on issues related to disability human rights during the Commission's consultations for its 2008 report, *Right at home: Report on the consultation on human rights and rental housing in Ontario*.

Rental housing providers are often on the front lines of serving those with mental health illnesses. Tenants with mental illnesses are invariably integrated within housing communities, and live alongside other renter households, who also have a broad range of human rights and rights to reasonable enjoyment of their homes that landlords are legally bound to uphold. It is an understatement to suggest that rental housing providers are often faced with conflicting and intersecting responsibilities regarding the rights of tenants.

In its *Right at Home* report, the Commission recognized that many landlords and housing providers in Ontario take their human rights responsibilities seriously. However, the recent concern over mental health rights exists partly because mental health disabilities are not always as apparent or obvious as physical health disabilities. The issues are often much more complex, and the solutions to accommodate tenants who are mentally ill are just as elusive.

The main mental health issues FRPO's consultation feedback will focus on include:

- Information housing providers need
- Tenant Selection Rules under the Human Rights Code
- Accommodation Responsibilities of Landlords
- Stereotyping and the Planning Process (NIMBYism)

### Information

Tenants with disability issues share in the responsibility for making accommodation work. Tenants must take an active role in the process, and provide landlords with all necessary medical and personal information that informs the landlord of any special need specifically required because of their disability. This information must be provided to the landlord in a timely manner, and housing providers in turn must be afforded with a reasonable amount of time to explore and implement solutions.

FRPO has previously noted the lack of coordinated access to community supports and services that may be available to assist landlords in providing the best possible solution and

accommodation to tenants with mental health issues. Most residential property managers have little or no expertise in addressing mental health issues, and would greatly benefit from information that provides access to government or third-party programs or services within their communities that serve the needs of mentally ill tenants. For example, the Ministry of Community and Social Services, and other appropriate organizations such as the Centre for Addiction and Mental Health, could take a proactive approach in providing all private and public sector landlords with contact information of local support services for those with special needs. This would expedite the efforts of landlords to find the best accommodation solutions for tenants with mental health issues.

### **Tenant Selection Rules**

The rules around what a landlord is permitted to do in the screening of tenant applications is contained in Ontario Regulation 290/98 under the Human Rights code. Approved by the province over a decade ago, the Regulation outlines a strict and rigorous set of requirements for landlords to ensure all rental applicants are treated fairly. As currently written, the Regulation provides the highest protection against discrimination against all those specifically protected by the Human Rights Code, including the mentally disabled.

FRPO has emphasized to the Commission that the process of selecting prospective tenants is an important aspect of business life for a residential landlord. Often a landlord or leasing agent will not even be aware of the existence of a mental disability for prospective tenants. It is typically only when a tenant with mental health issues has possession of a unit that housing providers and other tenants are alerted to the impact of a disability.

It should be noted that landlords have no ability to terminate business relationships with tenants, except in unusual circumstances. Landlords need the basic ability to assess reasonable information from applicants in order to ensure a high quality of housing is provided to existing tenants. The current interpretation of Regulation 290/98 is fair, reasonable and protects the rights of prospective all tenants, and lets landlords conduct a reasonable assessment through a legitimate business practice. This is important because once a tenant takes possession of a rental unit, they are granted lifetime tenure under Ontario law. FRPO recommends retaining the current framework that allows for landlords to assess prospective tenants based on income information, credit information and references.

### **Accommodating Tenants with Mental Disabilities**

This is an area where landlords require more help and protection against potentially unlimited requirements to accommodate the disabled or those with special needs. Worst of all, residential tenancies law in Ontario has created a conflict between the statutory duty to protect other tenants' reasonable enjoyment of their rental unit, and human rights code requirements to accommodate potentially disruptive behaviour.

One example where these circumstances may arise is where a tenant with a mental illness symptom may behave in a manner that negatively impacts neighbouring tenants (noise, hoarding, violence, etc...). The landlord here must handle the complaints from neighbouring tenants, but is also required to “accommodate” the special needs of the tenant with the hearing disability.

The current approach by the Commission to issues of "accommodation to the point of undue hardship" of the landlord presents significant risk to the rental housing sector. The costs of accommodation can be exorbitant, and there is often little outside assistance from the government. This effectively makes landlords unfunded providers of mental health care, an area we have little expertise or resources to devote.

FRPO has recommended that reasonable and adequate guidelines and standards be set for assessing and implementing accommodation as a response to discrimination under the Code. We also recommend that where special accommodation of special needs tenants is required, the costs should be offset by public funding or government grants.

### **Stereotyping and NIMBYism Affecting Special Needs Housing Supply**

Often the best solution is housing that is fully integrated with special needs supports and services that address the needs of those with certain mental disabilities. However, the planning process in Ontario has fostered a discriminatory Not-In-My-Backyard (NIMBY) attitude by the public and elected officials against special needs housing.

In many cases, community and public opposition to special needs housing creates political barriers that are thrown in the way of affordable or supportive housing developments due to negative public attitudes towards special needs groups.

Housing for those with special needs must often be located in established neighbourhoods with close proximity to support services – as a result there are limited available sites for such housing. Local opposition to new supportive housing discriminates against those with special needs, while efforts to fight NIMBY opposition through the legal process costs significant money and delays the building of supportive housing.

While provincial and federal governments are allocating funding and resources towards these much needed accommodations, too often funds for special needs housing are wasted on legal battles to win local planning approvals. Without clear direction from the provincial government to prevent discrimination at the municipal level, the local planning process will continue to discourage the development of special needs housing.

### **FRPO recommends the Commission consider the following policies and measures:**

- **The Commission should express its support for the current Human Rights Code regulation that defines how a landlord can select prospective tenants**

- **The Commission should set reasonable and adequate guidelines and for how rental housing providers assess and implement accommodation solutions when they receive timely requests from tenants with special needs**
- **The Commission should fulfill its role as an advocate by encouraging the provincial government to provide public funding or government grants to offset the costs housing providers face when implementing accommodation needs of tenants with mental health disabilities**
- **The provincial government must do more to prevent discrimination at the municipal level and in the local planning process that discourages the development of special needs housing**

### **A Constructive Approach Needed**

Human rights and mental illness issues are far-reaching, and also effect places of employment, access to services, and include the general need for total acceptance and tolerance in all aspects of society. While any tenant with a mental disability must have the right to be free from discrimination in rental housing, there must also be greater recognition and support for landlords who also find it hard to address the needs of people with mental health disabilities and addictions.

The rights of other tenants, and the obligation of landlords to provide the right to reasonable enjoyment of housing to other tenants, creates conflicting responsibilities for landlords. Residential landlords are also employers, and the unique service provided by landlords (housing) creates situations that involve heightened sensitivity and complexity regarding employees with mental health disabilities. FRPO is hopeful that the Human Rights Commission will pursue constructive solutions to these issues.