

Hoarding – *getting to the bottom of your legal responsibilities*

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Why does this matter?

On the one hand: If a landlord issues an N5 or an N7 to a tenant because of the impact of excessive clutter, the tenant might argue:

1. that the cluttering is a disability that requires accommodation under the Human Rights Code, and
2. that the landlord did not meet the duty

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Why does this matter?

On the other hand: To do nothing about a tenant with excessive clutter raises a host of other legal issues and liabilities including the significant risk of fire.



May 24, 2013 blog post

- *Well.... some of the wait is over. They settled for 4.85 million which has yet to be ok'd by the courts. Not too many are happy about this number. They think it's way too low. There are about 600 people involved in this and some of which will get around \$25,000 because they lost everything. Some will get very little. We realize that many suffered more than others, both financially and mentally however just because you didn't suffer the loss of everything doesn't mean you didn't suffer being hauled out of your home, days of not knowing what the hell was going on... months of feeling like a prisoner in your own home when you finally got back, etc. etc. I am hearing rumblings of people going on June 18th to protest this amount. \$25,000 when you lost absolutely everything really isn't enough either IMHO.*

Posted by iwant, <http://200wellesley.blogspot.ca/>



Overview

1. *Human Rights Code* (the Code)
2. Unit access
3. Fire safety
4. Privacy concerns
5. Pest control
6. Meeting the duty to accommodate
7. Evictions - including Landlord and Tenant Board (LTB) settlements
8. Advice
9. Resources



1. *Human Rights Code*

- Applies to you as housing providers
- Disability is a protected ground
- Duty to accommodate may be triggered in a case of excessive clutter
- *Human Rights Code* takes priority over the *Residential Tenancies Act*



Duty to accommodate

- Accommodate in a manner that most respects dignity, to the point of undue hardship
- No set formula for accommodation – each person has unique needs and it is important to consult with the person involved
- Take responsibility and show willingness to explore solutions
- Comply voluntarily under the Human Rights Code

undue hardship is a very high threshold – considering cost (including external sources of funding), health and safety



Human Rights Tribunal treatment of hoarding

- We don't know if the Human Rights Tribunal considers Compulsive Hoarding a disability within the meaning of the Human Rights Code
- Not been addressed squarely by the Tribunal
- Likely to follow DSM-V
- Some guidance provided in *Devoe v Haran*, 2012 HRTO 1507



2. Unit access



- Landlords under the *Occupiers' Liability Act* have a duty to inspect and to take steps to ensure that premises are safe
- Landlords often have a policy of inspecting annually -- a chance to see the condition of the physical assets
- Landlords have a right to enter with notice under the *Residential Tenancies Act*
- Work out an access protocol as necessary



3. Fire safety

Following 200 Wellesley fire –

Ontario Fire Marshall urged “landlords and property owners to inform local fire departments of instances of hoarding where they believe it poses a fire safety risk” so that “fire departments can help to address these instances of hoarding through the *Ontario Fire Code* and their partnerships with other community mental health and supporting agencies.”



3. Fire safety

Discussion:

- What have your experiences been with the Fire Departments you deal with?
- What do you think the right approach is?
- At what point has it worked best to approach them?



4. Privacy concerns

- A cluttered unit is a private matter
- Landlords are governed by privacy legislation
- **Cautiously** consider a policy of taking photos at all unit inspections to document the condition of all units
- **Maybe** take photos that are general in scope – that do not focus on sensitive personal possessions
- If you do this - put in necessary safeguards in place to maintain the confidentiality of the photos



4. Privacy concerns

- *Personal Information Protection and Electronic Documents Act (PIPEDA)* case law on photos in units
- Considerations:
 - Do the photos reveal interests, standard of living etc.?
 - Is the photo traceable to the individual?
 - Homes = high expectation of privacy
- Key findings:
 - Purpose must be identifiable prior to collection
 - Individual's knowledge and consent must be obtained
 - Reasonable efforts must be made to ensure individual understands purpose and use



5. Pest control

- Excessive clutter often leads to pests
- Makes pests harder to get rid of
- Pet issues
- Access issues
- Unit preparation issues



6. Meeting the duty to accommodate

- Conduct regular inspections - have a standard form
- Use the clutter image rating

www.ocfoundation.org/hoarding/cir.pdf



Clutter Image Rating

1 to 3 = NONE

4 to 6 = Minor

7 to 9 = Major

1 2 3

4 5 6

7 8 9

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7. Evictions

- Landlord's obligations for maintenance and meeting safety standards
- Landlord's duties to other tenants
- Evictions as a last resort
- Remember, *Human Rights Code* takes priority over the *Residential Tenancies Act*

7. Evictions

- What is the residential tenancies case law?
 - Depends on the members presiding – little discussion so far on the duty to accommodate
 - Eviction successful on the basis of substantial interference with reasonable enjoyment of the premises, serious impairment of safety, and illegal act
 - Likely requires evidence that tenant had a chance to correct the condition of the unit, but no substantial improvements made (look familiar?)
 - “Ordinary state of cleanliness” = compliance with fire code



7. Landlord and Tenant Board settlements

- Inspection access - number of times each year, approximate date for each – for example schedule two inspections:
 - inspecting the Unit’s filters and the fire inspection
 - a general inspection.
- Give much more notice than is required – for example 30 days
- Allow the tenant to have anyone present at inspections
- Specify who will conduct the inspections
- After, provide the tenant with a copy of the written inspection report signed by the inspector



7. Landlord and Tenant Board settlements

- Tenant agrees to fix any immediate and serious issues found at inspection, specify time period, and confirm it in writing signed off by a third party – health care provider, social worker?
- Quarterly written reports from healthcare provider or social worker
- Tenant keeps personal possessions in the Unit only
- Tenant acknowledges that if s/he does not sign or signs and later breaks the settlement → eviction



8. Advice!

- **Keep detailed notes of every single thing you do – big or small**
- Catch excessive clutter early through regular inspections
- Communicate regularly in writing and verbally with tenant about the need to declutter
- Use the clutter image rating to agree with the tenant on the condition of the unit and the goal
<http://www.ocfoundation.org/hoarding/cir.pdf>
- Have regular follow up inspections to assess against clutter image rating – make it clear you expect slow but steady progress



More Advice!

- Bring in supports – local CCAC, tenant’s emergency contacts, social agencies that provide cleanup services, etc.
- Contact the local fire department for support – as mandated by the OFM after Wellesley
- Consider a behavioral agreement at the Landlord and Tenant Board as a step before eviction
- But do not act hastily! Get your papers in order
- **Keep detailed notes of every single thing you do – big or small**



9. Resources

- Policy on Human Rights and Rental Housing – <http://www.ohrc.on.ca/en/policy-human-rights-and-rental-housing>
- Policy and Guidelines on Disability and the Duty to Accommodate <http://www.ohrc.on.ca/en/policy-and-guidelines-disability-and-duty-accommodate>
- On-line quiz on human rights – <http://www.ohrc.on.ca/en/learning/human-rights-and-duty-accommodate>
- Fire department
- Extreme clean organizations
- Lauren Blumas’ article “Buried Alive: The Human Rights Implications of Compulsive Hoarding in the Landlord-Tenant Context” <http://www.povertylaw.ca/>
- Lawyer



Questions?



Good luck!

It's a delicate balance.

