



Toronto
Community
Housing

TCHC Human Rights, Harassment and Fair Access Policy Tenant Complaint Procedure related to Human Rights

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Human Rights, Discrimination, Harassment and Fair Access Policy

TCHC will not tolerate, ignore, or condone any form of discrimination, harassment or barrier to services. All employees, contractors, agents, tenants, Board Directors, volunteers and appointees who serve on committees established by TCHC are bound by this policy in their dealings with TCHC. They have a duty to actively promote and support human rights, to remove barriers to equality and to refrain from harassment and discrimination. TCHC is committed to promoting a climate of understanding and mutual respect where each member of TCHC community is able to derive benefits and to participate fully to the development and well being of the community.

Purpose of Human Rights Complaints Procedure for Tenants

- This complaints procedure explains how a tenant can make a complaint related to a Human Rights issue.
- This procedure also explains what TCHC will do to try to resolve a complaint. TCHC believes that the main purpose of resolving complaints is not to punish people for their actions but to achieve respectful relations, though in some circumstances, a warning to cease certain conduct might be appropriate or it might be necessary for TCHC to terminate its relationship with that individual or cease a particular practice. This complaint procedure implements TCHC's internal *Human Rights, Harassment and Fair Access Policy* meets its legal obligations related to the following:
 - *Ontario Human Rights Code*
 - *Residential Tenancies Act*
 - *Social Housing Reform Act*

Scope of Complaints Procedure

This policy and supporting procedures covers all TCHC employees including full or part-time, permanent or non-permanent, management or non-management staff. All employees, contractors, agents, tenants, Board Directors, volunteers and appointees who serve on committees established by TCHC are bound by this policy in their dealings with TCHC.

Anyone who is a direct tenant of TCHC, or who is an occupant of a unit leased by a supportive housing provider from TCHC may rely on this procedure for both formal (written) and informal (written or verbal) complaints. A complaint that is processed through this procedure is an “internal” complaint as it will be investigated and resolved by TCHC management or external consultants hired by TCHC. ¹

Definition of Terms

- **agent:** a person who is authorized by another to act for him or her; one authorized to transact business for his or her principal; TCHC employees who regularly have contact with tenants may be considered agents of TCHC in certain circumstances
- **accessible format:** various formats to effect communication e.g. large print, Braille, audio and video tape recording
- **allegations:** this refers to the actions of a person or the adverse effects of a policy that forms the basis of a complaint; they are called “allegations” because they have not been proved
- **complainant:** the person(s) or group making a complaint
- **contractor:** contractor includes independent consultants, persons who have entered a business agreement with the Toronto Community Housing Corporation to supply goods or perform work, including professional services, and includes employees of the contractors who work on site at TCHC to perform a contract; agencies that have entered into an agreement with TCHC to provide services to tenants and/or occupants are also included in the term “contractor”
- **discrimination:** any practice or behaviour, whether intentional or not, that has a negative effect on an individual or group based on a prohibited ground e.g. disability, sex, race, and sexual orientation. A decision to deny a benefit that relies on any of these grounds, unrelated to a person's abilities, is prohibited. Discrimination may arise as a result of differential treatment or it may result from the unequal effect of applying general rules to everyone. In either case, if the effect of the behaviour or practice on the individual is to

¹ Other avenues for an “external” complaint may also available through the Ontario Human Rights Commission and the Ontario Rental Housing Tribunal.

deny or limit access to housing accommodation, goods, services, facilities, employment, or contracts available to others, it is discrimination.

- **duty to accommodate:** whenever applying a general rule has an adverse effect on an individual because of he or she belongs to a group that is identifiable by a prohibited ground, TCHC has a duty to accommodate the individual. TCHC must re-examine the general rule to minimize or eliminate the adverse impact. In some instances, different approaches or an accommodation may be required to achieve equal access to goods, services and opportunities within TCHC. Accommodation could be an adjustment of TCHC rules to eliminate unequal effects, short of causing undue hardship to TCHC.
- **employee:** unionized or non-unionized, permanent or non-permanent, management or non-management staff who receive pay for working with TCHC
- **external complaint:** a complaint filed with a body outside TCHC e.g. Ontario Human Rights Commission, Ontario Rental Housing Tribunal
- **ground:** the basis for a decision or action. In TCHC's policy, prohibited grounds of discrimination include race, ancestry, place of origin, colour, ethnic origin, citizenship, creed or religion, sex, sexual orientation, same-sex partnership status, gender identity, age (over 16), marital status, family status, receipt of public assistance, record of offences, political affiliation, disability or English-language proficiency.
- **harassment:** any comment or conduct that a person knows or ought to know would be unwelcome. Harassment may result from one incident or a series of incidents. Examples of harassment include offensive and embarrassing comments, derogatory remarks, threats, inappropriate jokes, innuendoes and teasing; insulting gestures; practical jokes that result in embarrassment; electronic or physical display of pin-ups, pornography, demeaning or sexually explicit materials; actions that invade privacy; spreading rumours that damage a person's reputation; threats to disclose that someone is gay or lesbian; physical or verbal attacks on people who are gay or lesbian; refusing to work with person(s) or a group of persons because of their race, sexual orientation etc; condescending or patronizing behaviour; abuse of authority; unwelcome touching; physical assault or sexual assault.
- **internal complaint:** a complaint that is processed using this procedure for resolution by TCHC management or external consultants hired by TCHC
- **investigator:** may be a neutral TCHC manager or external consultant who is appointed or hired to investigate a complaint
- **mediator:** may be a TCHC manager or other trained TCHC staff who acts as a neutral facilitator, or he or she may be an outside consultant who is appointed to facilitate discussion and problem-solving between a complainant and a respondent
- **occupant:** : a member of a household who live in a unit that is leased by a supportive housing provider from TCHC
- **party or parties:** may refer to the complainant and/or the respondent or both

- **representative:** a complainant or respondent can ask someone to be a personal advocate or advisor to help them go through the complaints process
- **resources:** refers to TCHC staff (e.g. Health Promotion Officers, Community Health Managers, Operations Supervisors and Operating Unit Managers), translators/ interpreters and community agencies that provide services to tenants
- **respondent:** person(s) or group against whom the complaint is made; the respondent may be another tenant, a guest, a contractor, an employee of TCHC; if the complaint is about a policy or practice in TCHC, the respondent may be a manager of a building managed on behalf of TCHC
- **retaliate:** take action or initiate a proceeding against a person who has made or supported a complaint; cast accusation back upon a person
- **systemic discrimination:** refers to discrimination that may occur when a policy or practice has a disproportionate negative effect on a particular group of persons who are identified by a prohibited ground. These policies and practices may appear neutral but in fact, may result in barriers and reduced access to opportunities for members of different racial, cultural or other groups identified by a prohibited ground of discrimination
- **tenant:** includes all individuals in a household who are included in a signed tenancy agreement with TCHC; also includes an applicant who has applied to live in a unit that is managed by or on behalf of TCHC
- **work unit:** Operating Units and other discrete teams of employees at the corporate and service offices of TCHC who report directly to a manager who in turn reports to a Vice President
- **workplace:** all locations where business or social activities of TCHC are conducted, including off site locations (e.g. employee's home is "workplace related" if unwelcome phone calls or visits are made by a tenant or co-worker).

How the Complaints Procedure Works

This procedure requires the full co-operation of the complainant and the respondent to be truly effective. It is an "internal" complaint procedure and is entirely voluntary.

TCHC requires that managers and external consultants carry out the steps below in a timely manner.

Step 1. Identify the Problem

Complaint about individuals

The complainant should:

- Describe in detail the actions or behaviour of the person(s) who is the source of the problem. If there were several incidents, the complainant should describe each one separately.²
- The complainant should identify to the Operating Unit Manager, verbally or in writing:
 - when the action took place
 - where it happened
 - who the complainant believes caused the problem
 - the details of what happened – the speech or behaviour that the complainant believes is discrimination, harassment or unfair treatment
 - any witnesses
- If the complainant wants the complaint to be handled informally through facilitated discussion, the complaint can be made verbally or in writing.
- If the complainant wants the complaint to be formally investigated by TCHC, he or she should prepare, sign and date a *written* complaint.

If the complaint relates directly to the conduct of the Operating Unit Manager, the complaint should be filed with the Office of the Chief Executive Officer of TCHC

Complaint about a TCHC policy or practice

If the complaint is about a practice or policy of TCHC, the complainant should:

- identify the policy or practice that she or he believes is causing discrimination.
- Identify how the policy affected the complainant personally.
- prepare, sign and date a *written* complaint
- give the written complaint to his or her Operating Unit Manager (OUM).

If the complainant requires assistance to write the complaint, the OUM will facilitate the process of putting the complaint in writing.

² Incidents that have been investigated and dealt with through other TCHC complaints procedure cannot be submitted for the purpose of an appeal of the earlier result.

Step 2. Gather the evidence

- Complainants should get the names of witnesses and gather as much evidence as possible to support their complaint about another person's actions. For example, they should collect any physical evidence such as documents, voice mail messages, or other relevant items.
- If the complaint relates to TCHC practice or policy, the complainant should attach any related documents to the complaint. For example, if the person did not get a benefit or a service, the person should attach:
 - copies of notices or advertisements about a service or benefit being available
 - their application for the service or benefit
 - if there is no notice or advertisement, identify or explain which TCHC policy/practice they believe caused the adverse effects
 - the date of any meetings with staff about the service or benefit
 - names of staff
 - any notes from meetings or phone conversations
 - a letter of rejection or refusal
 - the details of the adverse effect(s) of a policy or practice based on a prohibited ground of discrimination
 - any information given to the complainant by TCHC staff about how to appeal the rejection or refusal.

Step 3. Attempt resolution informally between affected individuals

- As a general rule, TCHC urges individuals to first try to resolve their complaints among themselves. They can talk to or write to the person who has caused the problem or they can talk to the Operating Unit Manager to get ideas on how to resolve the problem.
- Complainants and respondents can ask for help in resolving the complaint informally. There is a list of people they can ask for help (see Resources in the definition section).
- The information that is gathered at Steps 1 and 2 above should be shared so that all participants have a good understanding of the issues to assist in brainstorming about solutions. If a solution is reached at this stage, with the assistance of an Operating Unit Manager or other resource, the matter can be closed.

Step 4. Filing a formal complaint against an individual or a TCHC policy/practice

- A formal complaint requires the same details as outlined in Step 1 above except that the complaint must be in writing, signed and dated.
- If a complaint is being treated formally, a copy of the written complaint will be given to the respondent.
- The respondent will have the chance to respond to the allegations in the complaint. Any complainant who files a formal complaint must be prepared to have his or her name disclosed to the respondent. Only in rare cases, it may be appropriate to not disclose the name of the complainant to the respondent.

Step 5: Mediation

- If a written complaint has been filed and the complainant and respondent are both willing to try to resolve the matter through a mediator, TCHC will facilitate the selection of a mediator to assist the parties. Parties agree on the choice of the mediator. The mediator may be a TCHC staff member or an external person. If the parties cannot agree, a mediator will not be used and the matter will proceed to investigation.
- As in Step 3, the parties should share information with each other and the mediator to facilitate a frank discussion of the issues between them. With all parties' agreement to mediation, a mediator may be able to assist with resolving the problem through discussion and avoid going through a formal investigation
- If mediation is successful, an agreement should be put in writing and should be signed by the parties. The agreement will provide a clear record of the terms each party has agreed to . Each party will be given a signed copy of the agreement that is to be treated as confidential between the parties involved.
- All discussions during the mediation process are to remain strictly confidential.
- Settlement discussions are “without prejudice.” This means that if a settlement is not reached, each party can take a different position in any future investigations.

- If the complaint proceeds to investigation, neither party is allowed to talk to the investigator about the content of the discussions at mediation.

Step 6: Investigation of a formal complaint

If a complaint has not been resolved either informally (Step 3) or with the help of a mediator (Step 4), TCHC may carry out a formal investigation.³

- The investigator will be chosen by TCHC and will be a neutral person with no prior involvement with the parties or the dispute.
- Investigation involves interview(s) of the parties and their witnesses and a comprehensive and impartial review of all the relevant information to determine if there has been discrimination or harassment.
- The investigator may speak directly to TCHC employees, examine relevant documents, and enter any work location that is relevant to the complaint provided notice is given to TCHC management. The investigator can review confidential TCHC documents and enter areas that are normally restricted to investigate the complaint. TCHC employees cannot unreasonably withhold permission for these actions.

The investigator requires full the co-operation of tenants and staff who are parties or witnesses for a thorough investigation.

Steps in the investigation include:

- meeting(s) with the complainant at the beginning of the investigation to establish the scope of the complaint and review details that support the allegations in the complaint
- meeting(s) with the respondent to provide him or her with the details of the complaint and a summary of all the supporting facts
- getting information from the respondent for a full response to the allegations
- informing the complainant of any counter-allegations made by the respondent to give the complainant a chance to respond to these new allegations

³ The Toronto Community Housing Corporation may refuse to investigate or may stop an investigation in the following situations: if there is an adequate remedy already existing; if the harm complained of is slight, or the complaint has been made to annoy the respondent or has not been made in good faith; confidential information about the complaint has been divulged by one of the parties and serious harm has resulted from the breach of confidence.

- providing opportunities for each party to answer to allegations and counter-allegations that arise during the investigation

At the conclusion of the investigation, the investigator will prepare a written report to the Operating Unit Manager that includes evidence, findings, reasoning (analysis), recommendations or a plan of action. The investigator will protect or conceal the identities of witnesses to the greatest extent possible in the body of his or her report. If a complaint is upheld, TCHC management makes the decision on the restorative action to be taken.

Step 7: Decision

- In the event that a complaint is found to have grounds, the investigator will make *recommendations* on restorative action to the Operating Unit Manager. In most instances, the local Operating Unit Manager will make the decision about restorative actions based on the investigator's recommendations with input from the Human Rights and Equity Unit when requested by the manager
- A recommendation that may have corporate-wide impact must be referred to senior management
- If the complaint involves the Operating Unit Manager as a respondent, or if the Operating Unit Manager has not resolved the investigation in a timely manner, the Chief Executive Officer or delegate will make the decision on restorative action.
- TCHC's decision is *final*. No further appeal is possible within TCHC. Parties may decide to pursue external recourse. If a party believes that this dispute resolution process has not been followed⁴, he or she may discuss the matter with the manager who was responsible for conducting the investigation or overseeing the work of an external investigator. If the party is still not satisfied, he or she can pursue other recourse, if any, outside of TCHC.

⁴ Important flaws in the process may include unexplained lengthy delay, failure to interview an important witness, bias or conflict of interest etc.

Step 8: Remedies and Restorative Actions

If a complaint of harassment or discrimination is proven, TCHC can take action to correct the problem. Based on the findings and recommendations of an investigator, TCHC may:

- change a policy or practice
- compensate a complainant to put them in the position he or she would have achieved if there had been no discrimination or harassment
- initiate training programs or refresher training
- direct individuals to obtain counseling
- initiate discipline of employees or legal action against a tenant, agent or contractor where necessary

MISCELLANEOUS MATTERS

Confidentiality & Non-disclosure

- Everyone involved in a complaint must keep the allegations confidential. This permits the parties an opportunity to be frank and open so that a positive resolution can be facilitated.
- Every attempt will be made to fully disclose all relevant documents and information to all the parties. Frank disclosure is only possible if all parties keep the matter confidential. There are limits however, if the information relates to health, personnel or other personal information that deserves privacy protection and/or falls under privacy protection legislation.

Any breach in confidentiality will be treated seriously by TCHC.

Who can Complain & Anonymity

- Only individuals who are directly affected by the alleged discrimination, harassment or unfair treatment can file a complaint. If the person who is directly affected is cognitively impaired, his or her legal substitute decision-maker may file a complaint on his or her behalf.

- Witnesses cannot file complaints for someone else. However, they may be able to file their own complaints regarding a “poisonous” environment if the actions or behaviours they witnessed are extreme and/or persistent.
- Any member of TCHC’s community who is covered by this policy can file a complaint of systemic discrimination to challenge a TCHC policy or practice.
- TCHC will not process a complaint unless the identity of the complainant(s) is known. In rare cases, it may be appropriate to not reveal the identity of the complainant to the respondent where personal safety may be compromised.

Resources & Representatives

The Human Rights and Equity Unit of TCHC is available to assist unit managers on matters of Human Rights within the TCHC but will not necessarily be involved in the resolution of every complaint under the policy.

Tenants can get advice and help if they have a complaint and want to do something about it from the Operating Unit Manager, a Health Promotion Officer, Community Health Manager or other staff who work closely with tenants, a trusted tenant, or any other advocate they choose e.g. Legal Aid Clinic. The respondent can also request help from these resource persons to prepare a response to the complaint.

Any of the above TCHC staff will:

- advise the complainant or respondent on TCHC policies and procedures
- assist with the writing of the complaint or the response (the same person cannot help both parties to the dispute)
- provide an interpreter or translated materials or use accessible format (e.g. large print) to facilitate communication
- Both complainants and respondents have the right to have an advisor or representative of their choice. This person can come with them to meetings and generally give them support and advice. The advisor or representative should not have a conflict of interest and must keep the information about the complaint confidential.

Time Limit for Complaints

- A person has 12 months to file an *internal* complaint under this policy after the alleged discrimination, harassment or unfair treatment took place. TCHC may make exceptions to this deadline if there are special circumstances.

Time lapses beyond 12 months generally make it more difficult to conduct a thorough and fair investigation for all parties involved. Often witnesses are no longer available, documentation may be unavailable and recall of details of the incident may be limited.

- The time limit to file an *external* complaint with the Human Rights Commission is also 12 months after the alleged incident took place. TCHC cannot guarantee that it will resolve an internal complaint before the expiry of this time limit. A complainant who submits a complaint to TCHC for investigation and decision-making can still complain to the Ontario Human Rights Commission or the Ontario Rental Housing Tribunal provided that the complainant acts within the deadlines established by those bodies.

Disclosure of investigation recommendations & final decision

At the end of an investigation into a formal complaint, the investigator will provide a written report of his or her findings, conclusions and recommendations to the Manager of Human Rights and Equity and the Operating Unit Manager. The Operating Unit Manager or the delegate of the Chief Executive Officer will communicate TCHC's final decision to the parties in writing and will also be responsible for providing a written summary of the investigator's recommendations.

Timing of completion of complaint resolution process

Formal complaints should be resolved within 90 days, except for cases that have been referred to an agency outside TCHC for mediation or investigation. Informal complaints should generally be resolved within 30 days after the issue is raised with an Operating Unit Manager.

From time to time, there may be delays because of situations outside the control of the responsible Manager (e.g. witnesses' unavailability) In this case, the Manager will write to the

parties to explain the reasons for the delay. The Manager will also estimate how much time will be needed to resolve the complaint.

Participation & Accommodation

All TCHC staff who are involved with processing a complaint must make sure all parties can participate fully. For example, they may need to meet in the evenings or weekends or at a location that is wheelchair accessible. Or, they may need to arrange for an interpreter or translated materials or make documents available in accessible formats.

No Retaliation

TCHC's *Human Rights, Harassment and Fair Access Policy* prohibits any punitive action against individuals who pursue their rights under this policy. This protects individuals who:

- make a complaint that he or she reasonably and honestly believed to be true
- take part as a witness in an investigation
- are associated with either the complainant, the respondent or a witness during the complaints procedure

TCHC may take corrective measures against any tenant, employee, agent or contractor who retaliates against a complainant. A counter-claim by a respondent may or may not be treated as retaliation.