

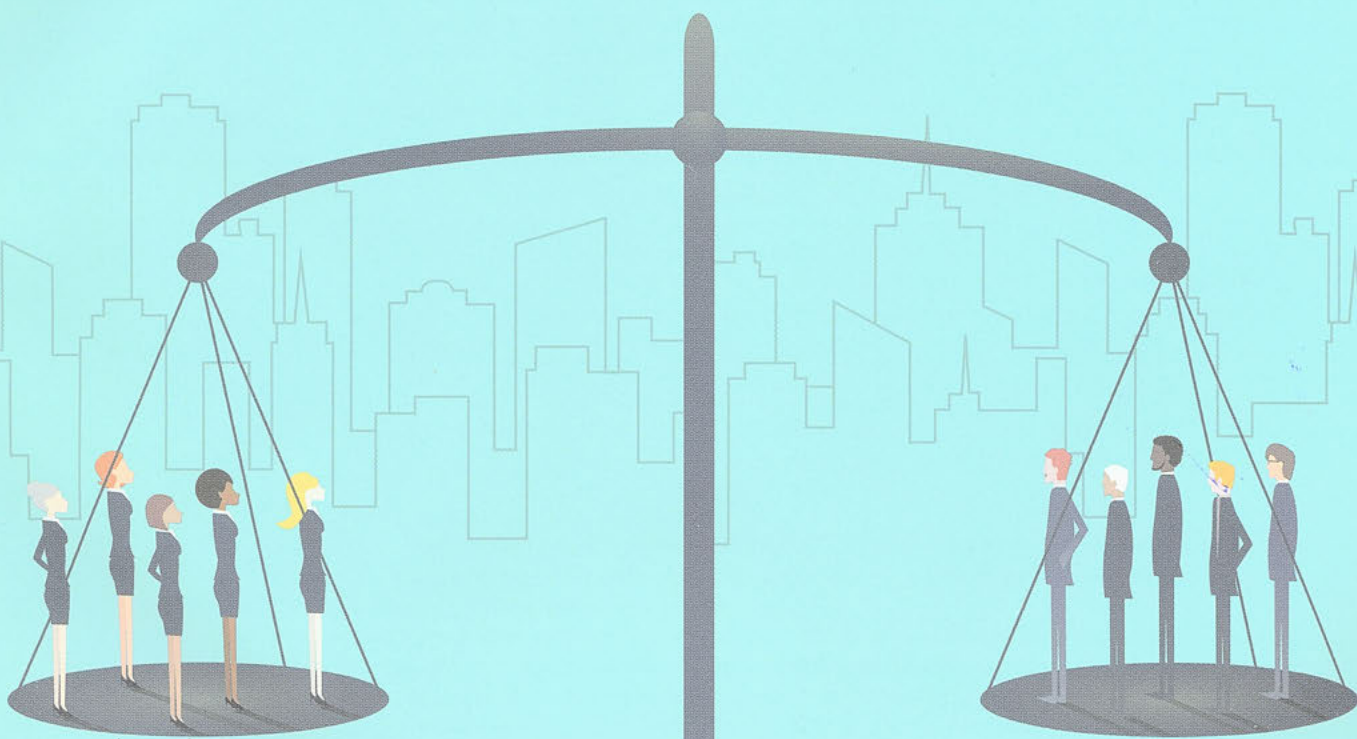
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PIPEDA COMPLICATES BACKGROUND CHECKS

Amendments to privacy law took force in November

BY CHRIS SEEPE

All private businesses across Canada, from small residential landlords to large multifamily portfolio owners, will be impacted by the latest changes to the *Personal Information Protection and Electronic Documents Act* (PIPEDA) beginning November 1, 2018. PIPEDA is Canada's federal private sector privacy law that sets out the ground rules for how businesses must handle personal information in the course of their commercial activity, and it was significantly amended when *The Digital Privacy Act* received Royal Assent in June 2015.

Under PIPEDA, all landlords must:

- Obtain a tenant's consent to collect, use or disclose a person's personal information;

- Identify the reasons for collecting the personal information (before collection) and ask only for the limited information needed for what a reasonable person would consider appropriate to the circumstances;
- Provide individuals with access to the personal information the holder has obtained and allow them to challenge its accuracy; and
- Use a tenant's personal information only for the purposes for which it was collected.

As of November 1, 2018, PIPEDA will include a mandatory requirement for organizations to give written notice to affected individuals and to the Commissioner about privacy breaches, while maintaining records for 24 months about each breach. All businesses — including landlords of every size — must ensure that personal

information is protected by the appropriate safeguards. These might include: locking filing cabinets; restricting office access; employing alarm systems; strengthening technical tools (i.e. passwords, encryption, firewalls); and boosting organizational controls (i.e. security clearances, staff training, agreements, etc.).

In short, there's a lot to know about PIPEDA and how, beginning November 1, it will affect all rental housing operations. The following Q&A covers some key points.

Q: Do landlords require a tenant's SIN number for most things?

A: No.

Q: Do landlords need permission to capture a tenant's face on a surveillance camera?

A: Yes, but that permission can be implied.

Q: Do landlords need written permission to do a credit check?

A: Yes.

Q: What minimum information is needed to do a credit check?

A: At minimum, a full name, address and date of birth.

Q: Is it against the law to demand a tenant's SIN number?

A: No law currently prevents landlords from asking for a SIN for purposes of identification.

Q: Can landlords deny a tenancy applicant if he/she will not disclose a SIN number?

A: No

Q: Can landlords use the SIN as a general tenant identifier — in the accounting system for example?

A: No.

Q: Can a landlord ask for a driver's license, tax information, pay stubs?

A: Privacy law doesn't prevent such requests, but any information obtained must be fully protected.

Q: Can a landlord look into a tenant's background by checking his/her social media postings or calling another landlord?

A: Informal checks are still considered a collection of personal information; therefore, permission is required and privacy laws do apply.

Q: Can a tenant's name be placed on a "bad tenant" list?

A: Not to an unregulated or ad hoc list.

Q: Can a landlord verbally disclose bad tenant behaviour to other landlords — for example, during a phone reference check?

A: No. Despite bad behaviour or poor payment history a landlord doesn't have the right to disclose such information, which can be construed as "vigilante" actions. Formal, regulated mechanisms such as credit agencies may be notified in appropriate circumstances.

Q: Can landlords take pictures of a tenant's apartment and contents if they suspect a tenancy agreement breach?

A: Yes, however strict rules apply.

Q: Can landlords set up surveillance cameras in their buildings that capture tenants' faces?

A: Yes, but strict rules apply here, too.

Q: Can tenants ask what information is held about them?

A: Yes.

Q: Can other tenants collect information on a tenant?

A: Generally, no.

Q: How long can a tenant's information be retained?

A: There is no prescribed period, but not indefinitely.

Q: Is there a prescribed process for personal information destruction?

A: No, but it must be done appropriately.

Q: Can landlords disclose tenants' personal information to pursue a debt?

A: Strict rules apply.

Q: Can police agencies demand tenant information be provided to them?

A: Strict rules apply here too and specific documentation is required.

Q: Can police agencies demand the landlord allow them entry to a tenant's unit?

A: Maybe, if police declare it an emergency. Otherwise, a warrant is usually required or 24-hours' notice to the tenant. Strict rules apply.

Beginning November 1, 2018, landlords should have all of these risk exposures covered in their rental application forms and Standard Lease appendix B clauses. ■

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