

CANADIAN

VOLUME 15 / NUMBER 4 / SEPTEMBER/OCTOBER 2018

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THE LANDLORD'S GUIDE TO PIPEDA

Changes to the Personal Information Protection and Electronic Documents Act

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 01, 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. PIPEDA 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 only ask for the limited information needed for what a reasonable person would consider appropriate to the circumstances
- Provide an individual with access to the personal information the holder has obtained and allow them to challenge its accuracy


- Only use a tenant's personal information 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 your rental housing operation. To test your knowledge and level of preparedness, take this Landlord-Tenant Privacy test:

1. **Do you need a tenant's SIN number for most things?**
Answer: No.
2. **Do you need permission to capture a tenant's face on a surveillance camera?**
Answer: Yes, but that permission can be implied.
3. **Do you need written permission to do a credit check?**
Answer: Yes.
4. **What minimum information is needed to do a credit check?**
Answer: At minimum, a full name, address and date of birth.
5. **Is it against the law to demand a tenant's SIN number?**
Answer: No law currently prevents landlords from asking for a SIN for purposes of identification.
6. **Can you deny a tenancy applicant because they didn't give you their SIN number?**
Answer: No
7. **Can you use the SIN as a general tenant identifier, in your accounting system for example?**
Answer: No.
8. **Can a landlord ask for a driver's license, tax information, or pay stubs?**
Answer: Privacy law doesn't prevent such requests but any information obtained must be fully protected.
9. **Can you look into a tenant's background by checking their social media postings or calling another landlord?**
Answer: Informal checks are still considered a collection of personal information—therefore, permission is required and privacy laws do apply.
10. **Can you put a tenant's name on a 'bad tenant' list?**
Answer: Not to an unregulated or 'ad hoc' list.
11. **Can you verbally disclose bad tenant behaviour to other landlords—for example, during a phone reference check?**
Answer: No. Despite bad behaviour or poor payment history a landlord doesn't have the right to 'shame' a bad tenant by disclosing such information, which can be construed as 'vigilante' actions. Formal, regulated mechanisms such as credit agencies may be notified in appropriate circumstances.
12. **Can you take pictures of a tenant's apartment and contents if you suspect a tenancy agreement breach?**
Answer: Yes, however strict rules apply.
13. **Can you set up surveillance cameras in your building that capture tenant faces?**
Answer: Yes, but strict rules apply here, too.
14. **Can a tenant ask what information you hold about them?**
Answer: Yes.
15. **Can other tenants collect information on a tenant?**
Answer: Generally, no.
16. **How long can you retain a tenant's information?**
Answer: There is no prescribed period, but not indefinitely.
17. **Is there a prescribed process for personal information destruction?**
Answer: No, but it must be done appropriately.
18. **Can you disclose personal information to pursue a debt?**
Answer: Strict rules apply.
19. **Can police agencies demand tenant information from you?**
Answer: Strict rules apply here too and specific documentation is required.
20. **Can police agencies demand the landlord allow them entry to a tenant's unit?**
Answer: Maybe, if police declare it an emergency. Otherwise, a warrant is usually required or 24-hours' notice to tenant. Strict rules apply.

Now, be honest with yourself: how well did you score? More importantly, do you have all of the above risk exposures covered in your Rental Application form and Standard Lease appendix B clauses? 

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