

THE LEASE AND PROTECTION OF PERSONAL INFORMATION

PRINCIPLES AND GUIDELINES TO OBSERVE

As spring approaches, people start looking for a new dwelling or a new tenant in anticipation of July 1, the traditional “moving day” in Québec.

This search will result in the execution of a binding contract between the tenant and the landlord: the lease. Before the parties sign, the landlord will obtain information. Essentially, this is personal information. The Commission d'accès à l'information wants to clarify the principles and guidelines that people should observe in these situations.

TWO BASIC PRINCIPLES

- **RESPECT FOR PRIVACY**

The Commission d'accès à l'information reminds the public that privacy must be respected in obtaining the requested information.

In Québec, this fundamental right is governed, in particular, by the *Act respecting the protection of personal information in the private sector*. This Act determines the rules for collection, retention, use and communication of personal information¹.

- **THE NECESSARY CHARACTER OF THE INFORMATION COLLECTED**

In general, the Commission considers that a landlord may collect personal information, on certain conditions, **before the parties enter into the lease**. In this regard, the courts have already recognized a landlord's right to ascertain the payment habits of persons who wish to rent his dwellings.

The Commission also reminds the public that section 5 of the *Act respecting the protection of personal information in the private sector* states that any person collecting personal information may collect only the information necessary for the object of the file.

The word “necessary” is used in the Act to indicate the indispensable nature of an action. The landlord thus must ensure that he only collects indispensable information in his dealings with potential tenants.

GUIDELINES TO OBSERVE

¹ If the landlord is a public body (e.g., low-rent housing), the *Act respecting access to documents held by public bodies and the protection of personal information* applies in this situation. In this case, it is also necessary to account for the criteria of eligibility for programs.

What information may a landlord collect from a potential tenant? What information is he not allowed to require? To inform the public adequately, the Commission proposes a number of guidelines for collection of tenants' personal information.

PERSONAL INFORMATION THAT MAY BE REQUESTED

- **PERSONAL INFORMATION TO ESTABLISH THE IDENTITY OF THE FUTURE TENANT**

The landlord may collect information that identifies a person, that is, the last name, given name and full address.

- **PERSONAL INFORMATION TO VERIFY THE FUTURE TENANT'S CONDUCT**

The landlord may collect, with the future tenant's consent, information allowing him to verify his conduct in how he discharges his responsibilities as tenant.

The landlord, with the appropriate consent, may thus obtain the contact information of a current or previous landlord.

To prove his conduct, the lease applicant may also provide the landlord with a document from a previous landlord attesting to compliance with his obligations.

- **PERSONAL INFORMATION TO ESTABLISH THE FUTURE TENANT'S PAYMENT HABITS**

The landlord, with the future tenant's consent, may collect information regarding his payment habits.

The landlord, with the appropriate consent, may obtain the contact information of a current or previous landlord.

To establish his payment habits, the lease applicant may also provide the landlord with:

- an attestation by his financial institution that he honours his obligations;
- an attestation by a previous landlord that he honours his obligations;
- any other document attesting that he honours his obligations from a body or a goods or services enterprise that requirements payments spread over time;
- the relevant excerpts from his credit record.

PERSONAL INFORMATION WHICH CANNOT BE REQUIRED

- **SOCIAL INSURANCE NUMBER**

The social insurance number is issued by the federal government, essentially for employment and taxation purposes. This number has little meaning in itself. However, the Commission discourages collection of this identifier because it is the key to several government databases. Use of the Social Insurance Number therefore represents a serious risk of infringement of privacy.

- **DRIVER'S LICENCE**

It must be remembered that section 61 of the *Québec Highway Safety Code* specifies that the holder of a licence cannot be required to produce his licence except when so required by a peace officer or the Société d'assurance automobile du Québec.

The holder of a driver's licence may use this document to allow validation of the information he has provided, including his last name, given name, address and date of birth. However, this validation does not allow collection of the licence number.

- **HEALTH INSURANCE CARD AND ITS NUMBER**

Section 9.0.0.1 of the *Québec Health Insurance Act* specifies that no person may be required to produce a health insurance card or a health eligibility card except for purposes relating to the dispensing of services or the provision of goods or resources in the field of health or social services.

The holder may use this document to allow validation of his last name, given name and date of birth. However, this validation does not allow collection of the health insurance card number.

CREDIT CHECK

To establish a future tenant's payment habits, a landlord has the possibility of resorting to the services of a personal information agent (commonly known as a "credit bureau"). He must obtain the tenant's consent in advance. Once the consent is obtained, the check may be performed with a minimal amount of personal information. Thus, the last name, given name, current and previous addresses and date of birth of the potential tenant allow a personal record to be found very efficiently in the personal information agents' databases.

Persons such as students or newcomers to Québec who do not have any history as a tenant or who have no credit history are not relieved of the obligation to prove their good payment habits.

In this case, it is the responsibility of the parties to determine the documents or means that will allow them to evaluate the future tenant's ability to pay, while complying with the various legislation in force.

THE COMMISSION'S ROLE

An interested person who considers that he has been compelled to provide unnecessary personal information may file a complaint with the Commission. Depending on the circumstances, the Commission may then provide the parties with the information required, conduct an inquiry, recommend or order any measure to assure the protection of personal information, or institute penal proceedings.

It is important to specify that the Commission does not have the power to order a person to pay damages or compensation. The Commission's interventions generally lead to the adoption of practices more respectful of the law.

The Commission d'accès à l'information can be reached at the following addresses and numbers:

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WARNING

This document contains information allowing tenants and landlords to have a better understanding of the issues related to the collection of personal information during the negotiation of a lease and to reach an agreement more peacefully.

The Commission reserves its jurisdiction for any question of protection of personal information that might be submitted to it within the context of the power to inquire or to examine a disagreement contemplated in the *Act respecting the protection of personal information in the private sector*.

For general information, visit the Services Québec office nearest you.

This fact sheet is available on the Commission's web site.

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