

Personal Information Protection Act Privacy & Landlord - Tenant Matters Frequently Asked Questions



Personal Information Protection Act (PIPA)

Privacy & Landlord - Tenant Matters Frequently Asked Questions

Are landlords in Alberta bound by privacy law?

- Yes. The Personal Information Protection Act (PIPA) applies not only to corporations, but also to individuals who are acting in a commercial capacity - section 1(i).
- Regardless of whether a person owns one condominium unit or several apartment blocks, PIPA applies to owners renting their property.
- PIPA also applies to condominium associations or boards and property management companies.

Are tenants in Alberta also governed by PIPA in the same way?

- No, residential tenants are not bound by privacy law. PIPA only applies to how organizations (landlords, condo boards, management companies) collect, use and disclose personal information of private citizens.

What is personal information?

- PIPA defines personal information as “information about an identifiable individual” - section 1(j) of PIPA.
- This can mean any number of things such as a name, date of birth, phone number, address, height, weight, eye color, SIN, driver’s license number, banking information, income, photograph etc.

What are a landlord’s responsibilities according to PIPA?

- PIPA governs how landlords collect, use and disclose personal information of their tenants and prospective tenants.
- Generally, this means obtaining a tenant’s consent and having a reasonable purpose for the collection, use and disclosure of personal information – sections 7, 11, 16 & 19.
- Landlords must notify tenants of their purpose for the collection.
- A landlord is also obligated to protect tenant information in his or her custody by adopting safeguards to prevent unauthorized access, loss, destruction, copying or modification – section 34.
- A landlord must respond to tenants’ requests for access to their personal information – section 26.

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- Landlords are also required to familiarize themselves with PIPA and adopt policies and procedures to ensure their compliance to it – sections 5 & 6.

TIP: In this guide, you will often see the word REASONABLE used.

“Reasonableness” is an important principle of PIPA and is defined as “what a reasonable person would consider appropriate in the circumstances” (section 2). Err on the side of caution and respect for individuals’ privacy rights.

CONSENT

When does a landlord need to obtain a tenant’s consent?

- A landlord needs a tenant’s consent to collect, use or disclose tenants’ personal information – section 7. Although there are circumstances where consent is not required, there is nothing to prevent a landlord from notifying a tenant as a courtesy.
- Once landlords collect personal information, they can only use it for the original purpose expressed to their tenants. If landlords want to use or disclose the information for a new, unstated purpose, they will require a new consent.
- There are a few instances where consent is not required, as will be discussed in this document.
- Consent to collect, use or disclose personal information should always be obtained directly from the individual and not from another source unless the individual consents to collection from that source. Does a landlord always have to ask for written or express consent from a tenant?
- Not always. PIPA also recognizes verbal, and implied consent as acceptable forms of consent – section 8(1) and 8(2).
- Implied consent refers to information that is volunteered by the tenant.
- PIPA also recognizes opt-out consent where landlords provide notice of their intention to collect, use, or disclose a tenant’s personal information - section 8(3). Notice must indicate the purpose of the activity, and give tenants an opportunity to decline or object. Consent is deemed if the tenant does not respond to the notice within a reasonable amount of time.
- Landlords should consider the sensitivity of the personal information in question when determining the form of consent to obtain.

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- There are also very particular instances where the landlord has discretion not to obtain a tenant's consent to collect, use, or disclose the tenant's personal information. For example, if another law – such as the Residential Tenancies Act - requires the collection, or in response to a warrant or subpoena, or for a law enforcement investigation. See below for more details.

Best Practice:

A landlord decides to issue parking passes to tenants and needs their vehicle plate numbers for this purpose. The landlord asks interested tenants in a posted notice to contact her by phone, email, or in person if they want a pass enabling them to park in specific areas. The landlord collects the vehicle plate numbers from those tenants who contact her and express their interest in a pass. Can a tenant refuse to give consent to a landlord to collect, use or disclose personal information?

- A tenant may refuse to provide information or give consent to a landlord when the information is not reasonably required to manage tenancy. For example, a landlord would not need to know a tenant's educational background to manage tenancy. Therefore, the tenant may refuse to provide it. Collection of personal information should never be for its own sake. Landlords must always have a reasonable business purpose that they express to tenants.
- There is certain information that is necessary and reasonable for a landlord to rent property to a tenant, and failing to provide that information could affect a tenant's eligibility to rent property.
- A landlord cannot, as a condition of renting or providing any service to a tenant, ask for consent to collect, use or disclose personal information beyond what is necessary to provide tenancy or any service – section 7(2).

Can a tenant withdraw consent already given for a landlord to collect, use or disclose personal information?

- Yes. At any time by giving notice to a landlord, a tenant may withdraw or vary consent – section 9(1).
- The landlord must explain to a tenant the consequences of withdrawing or varying consent, unless it would be reasonably obvious – section 9(2),(3). This may include not offering tenancy to an applicant.
- The landlord must then cease to collect, use or disclose the personal information or abide by the variation of consent– section 9(4).

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- Withdrawal or variance of consent must not affect a legal obligation – section 9(5).

Collecting Personal Information.

What personal information can landlords request from tenancy applicants?

- A landlord may request only the information necessary to make a decision about whether or not to rent property to the tenancy applicant – section 11.
- Sometimes this includes reasonable proof that a tenant is capable of paying rent, or references from another landlord. A landlord would also need information in order to contact the tenant to give his or her decision about the application.
- A landlord can request more detailed information beyond this, but the tenant may refuse if it is not reasonable for the rental transaction. The landlord must also be prepared to provide an explanation as to why the information is required at this stage – section 13.
- Personal information that is not required until the application has been accepted should be collected after the acceptance.

What personal information can landlords request from tenants?

- It may be reasonable for a landlord to request more detailed information once an individual becomes a tenant. For example, a landlord may need a record of tenant vehicle plate numbers to ensure that unauthorized vehicles are not parked in tenants' stalls.
- Personal information requested by a landlord must always be reasonably connected to tenancy. A health card number, for example, is not connected to tenancy and would therefore not be reasonably required.
- Again, a landlord must have a reasonable purpose for requesting personal information, and has to articulate it to the tenant – sections 11 & 13. In the event that a tenant is still concerned about the type of information being requested, he or she can ask the landlord why it is required. If the tenant is still concerned about disclosing it, an alternative form of satisfying the landlord's need should be considered.
- A landlord must provide tenants with clear contact information so that if any questions arise, tenants can reach the landlord to address these questions – section 13(1)(b).

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TIP: Landlords should examine each application question asked to ensure that there is a legitimate business purpose for collecting that information. It is advisable to make some questions optional if they are not critical for legal or business purposes. If information isn't needed, don't collect it. Remember that in the event that information might be required later, it can be collected at the time it is actually necessary. A landlord should preface a rental application with verbal or written statements about why personal information is being collected, especially when the purpose for collecting a particular piece of information is not obvious. Landlords who demonstrate respect for tenant privacy are not only taking their statutory duties seriously, they are also fostering goodwill with tenants. The landlord has redress through the Residential Tenancies Act, so that excessive collection of information should not be viewed as the solution for protection from fraud and property damage.

Can a landlord ask for personal information about tenant's references or emergency contacts?

- Yes. A landlord who wishes to have an emergency contact number if something happens to the tenant, or wishes to contact other landlords for a reference may collect the information with consent.
- The personal information exchanged between landlords about prospective/past tenants must be confined to rental and payment history as opposed to unrelated information.
- If a tenant refuses to provide references, and this affects the landlord's ability to make a decision about granting tenancy, it would be reasonable to decline to process the application further. If you don't need it, don't collect it!

Can a landlord ask for a tenant's pay-slip or T4?

- If a landlord has legitimate concerns about a tenant's ability to make regular payment of rent, then it may be reasonable for him or her to request proof of financial capacity from the tenant.
- A tenant should be able to provide any one of any number of documents that would confirm income, such as a letter from the tenant's employer.
- Tenants may consider removing information from the form that the landlord does not require, such as their SIN. (Social Insurance Number)
- In cases where subsidized-housing rent payments are based on income, it is not unreasonable for a landlord to request detailed proof of income and expenses.

Can a landlord ask for a tenant's Social Insurance Number (SIN)?

- The SIN is a unique identification number created by federal law for administering particular national laws and programs.
- The Information & Privacy Commissioner recommends that individuals avoid disclosing it except when required by law.

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- The landlord must have a legitimate purpose for requesting the SIN and explain that purpose to the tenant – sections 11 & 13.
- The only reasonable purpose may be to conduct a credit check on the tenant, in which case a SIN is not essential. The tenant's full name and date of birth will also produce a credit report. As such, providing a SIN should be optional to the tenant.
- The tenant should be aware of the possibility that a person with the same name and date of birth may yield more than one credit report.

Best Practice:

A landlord who has long struggled with non-paying tenants decides to ask all tenancy applicants for consent to obtain credit reports for all new tenants. He asks for a SIN for this purpose. He explains his purpose for collecting this information. While some applicants do not object, one applicant states that he does not give out his SIN to anyone except where required by law. The landlord and applicant agree that the tenant will give his date of birth and middle name to the landlord to order the credit report. The landlord advises the applicant that more than one person with the same name and date of birth could still appear on the credit report. The applicant states that if this does occur, he will obtain the credit report himself and provide it to the landlord.

Can a landlord request a credit report on an applicant/tenant?

- A landlord must have a reasonable purpose for doing so and communicate that to the tenant – sections 11 & 13.
- If the landlord has concerns about non-payment of rent and therefore must verify an applicant's credit history, this may be reasonable.
- Before ordering the credit report, however, landlords are required to obtain tenants' consent to do so according to both the Fair Trading Act and PIPA.

Can a landlord request to see a tenant's identification (ID)?

- Yes. Typically, a landlord's purpose for requesting to examine identification is simply to verify a tenant's identity when entering into a lease agreement.
- Given that a landlord must be able to properly identify a tenant in the event that damage is caused to the property, an emergency occurs, or the lease is not honoured by the tenant, it may be reasonable to authenticate a tenant's identity.

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Can a landlord ask for tenants' driver's licence number or photocopy it?

- The OIPC has not yet rendered a formal finding about whether driver's licence numbers are reasonably required for tenancy. Once a finding is made, this information will be updated.
- A landlord must have a reasonable purpose that he or she can express to a tenant as to why this would be required. Not every landlord will have this need.
- Landlords should consider whether the information is critical to tenancy and exactly how it would serve their purpose.
- It is not reasonable to collect the information simply as a means to gain advantage over a tenant. If you're not sure why someone needs your personal information, ASK! Can a landlord or tenant require banking information from the other?
- No. There is no conceivable purpose for a landlord to demand this type of sensitive personal information from a tenant.
- A landlord must be able to collect rent money and may do so in numerous ways without a bank account number: cash, a personal cheques, money order, or internet deposit or even a credit card. While a personal cheques already displays banking information required to honour the cheques, the landlord could not use it for any other purpose beyond cashing it.

Can a landlord ask to see a copy of a tenant's contents insurance?

- A landlord must have a purpose for requesting this information and explain it to the tenant – sections 11 & 13.
- If, for example, the landlord must satisfy his or her own insurance company that the tenants have contents insurance, then it may be reasonable to offer some proof.

Can a landlord demand a tenant's credit card number?

- A landlord cannot demand a tenant's credit card information as a condition of renting a property.
- Obviously if the parties agree to process rent payments by credit card, tenants would need to supply his or her credit card number.

Can a landlord demand a tenant's criminal record?

- No. A landlord cannot, as a condition of renting or providing any service to a tenant, ask for consent to collect personal information. beyond what is necessary to provide tenancy or that service – section 7(2).

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Can a landlord ask for a tenant's roommate's personal information, who is not on the lease?

- Although only the tenant(s) on the lease might be responsible for payment of rent and damages, it is not unreasonable for a landlord to document the names of people living on his or her property.

Can a landlord install video equipment in a lobby or other public areas?

- Yes, but only for reasonable purposes such as real security concerns.
- There must be adequate notice to tenants and visitors that the premises are monitored by video surveillance for security purposes- section 8(3).
- The video should not be used or disclosed for other purposes – section 8(4).
- The video should be set up to strategically capture security breaches.
- The landlord should also only keep the video footage for the minimum amount of time required, and ensure that unauthorized parties cannot access it.

Best Practice:

A landlord experiences a number of thefts and attempted break-ins. The landlord decides to install security cameras in strategic, public locations around the building. He obtains a video system which records over itself every 7 days so he doesn't have to worry about storing the footage. The video recorder is stored in a locked cabinet for which only he and his property manager have a key. The video is only examined if a crime or similar incident is suspected. It is only disclosed to police. The landlord distributes a notice to his tenants outlining the upcoming installation of equipment and all of the above information. He then posts signs around the building explaining there is video surveillance for security reasons and concerns may be brought to the manager's attention.

Using Personal Information.

How can a landlord use the personal information collected about tenants?

- A landlord may only use tenants' personal information for the purposes it was initially required and described to the tenant – sections 16, 8

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- If the landlord wants to use the information for another purpose, he or she must seek the consent of the tenant. The new purpose must still be reasonable.
- There are certain circumstances under which the landlord would not need consent, such as – section 17: if it is clearly in the interests of the tenant and timely consent cannot be obtained); if another statute or regulation requires it; for a legal proceeding, in an emergency, or to collect a debt (see below).
- Even in the above cases, the way in which the tenant’s personal information is used must still be reasonable. Can a landlord use a tenant’s personal information to collect unpaid rent?
- Yes. Once a tenant’s account is in arrears, PIPA permits the landlord’s use of personal information without consent for the purposes of collecting a debt – section 17(j).
- The landlord must still use the information only to the extent that is reasonable. Case: A landlord wants to put the names of tenants on the lobby mailboxes and buzzer panel. He asks tenants for their consent since this represents use and disclosure of names for a new purpose. In future, he decides he will put a checkbox on his leases for new tenants to indicate their desire to have their names posted in this way. The landlord simply prints “occupant” for those who have opted-out.

Disclosing Personal Information.

Use personal information the way you said that you would, and for no other reasons... unless you have consent.

Who can a landlord disclose tenants’ personal information to?

- Generally, landlords require tenants’ consent to disclose their personal information.
- PIPA specifies certain instances where consent is not required to disclose personal information, such as – section 20: where it’s clearly in the interests of the tenant (and timely consent cannot be obtained); disclosure is required by another Alberta or federal law; disclosure is to a public body who must lawfully collect it; in response to a court order, warrant or subpoena; for law enforcement purposes; in an emergency; to next of kin in the event of death, and where disclosure is necessary for the landlord to collect a debt owed to him or her by the tenant.

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- Even in these circumstances, the disclosure must be limited to what is necessary (i.e. disclose only the information necessary for the stated purpose).
- The landlord must always be satisfied that the disclosure is lawful and that the person requesting the information has a reasonable need for it.
- A landlord must record instances where disclosure has occurred.
- Tenants have a right to ask who their information has been disclosed to.

Can a landlord disclose a tenant's personal information to a collection agency?

- No. A landlord must have a tenant's consent to disclose information to a collection agency collecting a debt on behalf of another organization – section 20(i).
- Even with consent, a landlord should ensure that only information necessary to the debt collection is disclosed.

Can a landlord disclose one tenant's personal information to another tenant without consent?

- No. Generally PIPA requires that landlords obtain the consent of their tenants before disclosing personal information.
- There may be instances, such as in a serious emergency, where this would be permissible – section 20(g).
- Landlords should make every effort to protect the privacy of their tenants and prevent disclosure of their personal information.

Best Practice:

A landlord keeps a log sheet in each of her tenant's files. On the log sheets, she records each time any personal information was disclosed to another party, with and without consent of the tenant. She records what information was disclosed, who the information was disclosed to, when, and why it was disclosed (her authority). When one of her tenants submits a request to access his personal information, she attaches a copy of this log sheet for him. She keeps all of her tenants' files in a locked file cabinet in her office and shreds the files once she no longer needs them. Respect tenants' privacy. Be cautious and ask for consent or give notification.

Can a landlord post eviction or late payment notices containing personal information on a tenant's door?

- Yes. However, the landlord must first make attempts to deliver the information personally, by registered mail, or by certified mail as per section 57(1) of the Residential Tenancies Act. If the tenant is evading the landlord or the tenant is habitually unavailable, posting a notice may be necessary.

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- According to PIPA, an organization may disclose personal information if it is authorized to do so by law - section 20(b).
- Since section 57 of the Residential Tenancies Act allows landlords to post certain notices to tenants in a “conspicuous” place, this is permissible under PIPA.
- The types of notices that a landlord may post include: termination of tenancy, notice to enter, notice of rental increase, statement of account, notice to vacate to non-tenants, notice of default of lease for non-payment.
- A landlord should always act reasonably and include a minimal amount of personal information on these notices and ensure that posting the notice is necessary.

Is it reasonable for the mailboxes or buzzers in an apartment building to have tenants’ names on them?

- If the landlord has a tenant’s consent, then it is reasonable.
- Alternatively, the landlord may give tenants notice of this beforehand and ask for them to opt-out if they do not want their names used this way.

Treat personal information as you would your valuables.

Can a landlord distribute a tenant phone list to tenants?

- A landlord should not disclose tenants’ phone numbers without obtaining their consent.

Security of Personal Information.

How should a landlord store tenants’ personal information?

- Landlords must make reasonable efforts to secure personal information to prevent unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction – section 34.
- A landlord should ensure that the information is locked, in a file cabinet for example, and inaccessible to unauthorized parties such as cleaning staff or administrative staff that have no need to access it.

How long should a landlord keep tenants’ personal information?

- A landlord should keep the information only for as long it is actually needed (i.e. legal or business purposes) – section 35.

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- Once a tenant moves out, any information that the landlord no longer has a reasonable need for should be returned to the tenant or safely destroyed.
- There would be no need to keep documents such as tenants' credit reports or tenancy applications once the tenant moves out, whereas records of rent payment may require a longer retention period for business tax purposes.
- A landlord should not simply dispose of personal information in the garbage, but should shred the information instead.

Access Requests and Complaints:

Tenants can access their personal information because... it's theirs!

Can tenants access their own personal information held by their landlords?

- Yes. A tenant must provide the landlord with a written request to access his or her own personal information in the custody or under the control of the landlord – section 26.
- The landlord has 45 days to respond to the request – section 28.

If a landlord receives a complaint letter about a tenant, can the tenant ask to see the complaint?

- A tenant may request access to the complaint letter (section 26(1)), however; the landlord must black out, or "sever", the name of the complainant from the letter before providing a copy – section 24(3)(c).
- The landlord must also sever any other personal information that does not belong to the tenant requesting the letter or would otherwise serve to identify the complainant- section 24(3)(b).
- If it would still be apparent who the complainant is, the landlord should not provide the letter to the tenant – section 24(3)(c).
- Access must also be denied if it would result in safety or security concerns – section 24(3)(a).

Can landlords charge a fee for tenants to access their personal information?

- Yes, if the landlord chooses. The fee should be reasonable according to the costs incurred such as photocopying and time the landlord spends to respond.
- If a fee will be assessed, a landlord must give a written estimate of the cost before responding – section 32(3).

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How should a landlord respond to an access request?

- Once a landlord receives a request from a tenant to access his or her personal information, the landlord has 45 days to respond.
- A tenant may request a copy of the records or examine them on site – section 30.
- If requested, the landlord must also include information about the purposes the information was used for and who the information has been disclosed to and under what circumstances – section 24 (1).

Does a landlord have to give the tenant everything?

- A landlord may refuse to provide access to information that is: protected by legal privilege; of a confidential, proprietary nature; was collected by the landlord for an investigation or legal proceeding, mediation, arbitration, or would mean that the landlord would stop receiving the information – section 24(2).
- A landlord must refuse to provide access to the tenant if: it would threaten someone's life or security; it would reveal someone else's personal information, or it would reveal the identity of someone who gave a confidential opinion – section 24(3).
- A landlord should make efforts to sever or black out the information that cannot be accessed where possible - section 24(4).

Can tenants complain against landlords about privacy issues?

- Yes. However, the Information & Privacy Commissioner recommends that tenants attempt to resolve the matter with the landlord first.
- Landlords should ensure that they give their tenants clear contact information so that tenants may address matters directly.
- If the tenant is still unsatisfied, a written complaint with a signature may be submitted to the address below.

What can a tenant complain about?

- If a tenant thinks the landlord has breached PIPA by improperly collecting, using or disclosing the tenant's personal information.
- If a tenant believes that the landlord is not taking reasonable security measures to protect personal information.
- If a tenant believes a landlord is charging excessive fees for access to personal information.

- If a tenant wants the OIPC to review the landlord's response to an access request because the landlord has refused or withheld the information or has not responded at all.

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This document was prepared to help organizations implement the Personal Information Protection Act (PIPA). This document is an administrative tool intended to assist in understanding PIPA. It is not intended as, nor is it a substitute for, legal advice. For the exact wording and interpretation of PIPA, please read PIPA in its entirety.

This document is not binding on the Information and Privacy Commissioner of Alberta.

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