

3.9 Misrepresentation

3.9.1 Overview

Misrepresentation occurs when an RGI household intentionally does not disclose the correct income and/or household composition when either requested by the Corporation during Annual Review, or as soon as a change occurs. The responsibility to accurately report this information is detailed in Section 3.7 of the Lease Agreement which states:

If the Tenant is on rental assistance or subsidy, the Tenant shall submit to the Landlord annually, or more frequently at such times as requested in writing by the Landlord, a statement signed by the Tenant, in a form prescribed by the Landlord from time to time with all supporting documentation requested by the Landlord, setting out the details of the Tenant's gross family income together with the details of the gross income of all of the persons living with the Tenant in the Premises. The Tenant agrees to notify the Landlord immediately after any change in circumstances of the Tenant that is financial in nature or that may affect the amount of the subsidy or the eligibility of the Tenant for the subsidy. The Tenant acknowledges that the Landlord has the right to reduce or terminate the subsidy and charge market rent if the Landlord determines that the financial circumstances of the Tenant and those persons living with the Tenant have changed or the information supplied by the Tenant or those persons living with the Tenant is inadequate, false or untimely. Any change in the subsidy amount of the entitlement of the Tenant to the subsidy shall be effective immediately upon notice of the change to the Tenant. If the Tenant furnishes any incorrect or misleading information in his/her application to rent the Premises or in any subsequent statement furnished by him/her pursuant to this Lease, the Landlord may, from the date of the change based on the corrected information, readjust rent accordingly in addition to other remedies available. If such recalculation indicates that additional rent is owing, the Tenant shall, upon demand by the Landlord, pay such additional rent.'

Under the Portfolio Operating Agreement (1994) Durham Region Non-Profit Housing Corporation (DRNPHC) is required to 'take appropriate and reasonable action to enforce the RGI household's obligations and/or to enforce the Eligibility Criteria if the household misrepresents the household income'.

DRNPHC will not tolerate intentional misrepresentation of income or family composition by households who receive subsidized accommodation. All reports of potential misrepresentation shall be investigated to the best ability of the Corporation to determine their validity. If misrepresentation by an RGI household can be confirmed, the Corporation shall take appropriate action according to its misrepresentation policy.

3.9.2 Communication of Misrepresentation Policy to DRNPHC Households

The Corporation shall inform all RGI households of the obligations and remedies under its misrepresentation policy through:

- a) verbal explanation of the obligation to report changes in household income and occupancy by Tenant Placement staff at lease signing;
- b) written notification in the lease document (applicants are required to initial each page of the lease to confirm they have read and understand the terms of their lease);
- c) written statements of obligations to report changes in household income or occupancy in Annual Review letters and forms;
- d) information contained in the New Residents' Guide provided to all residents upon move in; and
- e) written reminders of obligations in all other related correspondence.

3.9.3 Investigation Process

- a) Reports of Potential Misrepresentation

All reports of potential misrepresentation received by DRNPHC staff shall be reported to the Manager of Tenant Services, who shall make the preliminary decision to proceed with an investigation. If the report relates to a market household or if the information has already been received and processed by the Corporation, no further investigation occurs. If the report relates to an RGI household and the information differs from the data contained in that household's file, then further investigation occurs.

- b) Sources

Potential misrepresentation can be brought to the attention of the Corporation through many different sources including but not limited to:

- i. the Annual Income Review Process
- ii) other residents
- iii) anonymous tips (by phone, letter)
- iv) site staff
- v) staff/tenant discussions
- vi) staff working with the Social Services Department

c) Verification of Information

DRNPHC staff shall attempt to verify the reported information by making inquiries with the following sources:

- employers
- Social Service Workers
- DRNPHC site staff
- Equifax Credit Bureau
- any other person who has knowledge of the material.

The process for verifying information depends on whether the misrepresentation relates to **unreported occupancy** or **unreported income**.

i) Unreported Occupancy

Information regarding unreported occupancy is most often communicated to the Corporation by other residents or an anonymous source and is therefore difficult to verify. The Property Manager and site staff should be contacted to see if they can provide some additional insight. If the household is receiving social assistance, the case worker should be contacted for information.

Although anonymous tips and input from site staff or other residents are not sufficient evidence by themselves for an eviction, the report is pursued by contacting the resident by letter. If the report received is vague, the Manager of Tenant Services can request further monitoring of the household by site staff prior to the household being contacted. If further monitoring is necessary, the file will remain 'open' until additional information is obtained.

ii) Unreported income

Unreported household income is often discovered through the Annual Income Review Process. Income verification documents submitted by households occasionally reveal that they have not properly reported changes in their income. (eg. a member of the household commenced employment at a much earlier date than what was reported to the Corporation) Employment information, including a start date, can easily be obtained by contacting the employer. If information regarding unreported income is received from an outside source staff will investigate the report. This would include contacting an employer and requesting documents from the household involved. The signed 'authorization to release information' provision in the Declarations section of the Annual Income Review and Tier II Forms may be faxed out to an employer if requested. In all cases the name of the contact person and the details of the conversation shall be recorded.

3.9.4 Remedies of Misrepresentation

- a) According to the Landlord and Tenant Act, DRNPHC's Operating Agreement, and the upcoming Tenant Protection Act, the Corporation may remove an RGI household's subsidy and proceed with an eviction if it determines any member of the household has intentionally misrepresented their income or composition. Actions to be taken will be determined on a case by case basis and consideration will be given to both the severity and impact of the misrepresentation.

**Indicators of 'intention' may include, but are not limited to, forging of income documents or letters or an admission of the act.*

- b) Unreported Occupancy

In cases of unreported occupancy, a letter shall be sent directly to the tenant to request information regarding the occupancy of their unit. The letter states that the Corporation has received information contrary to that in their file and that they must contact the Manager of Tenant Services within 14 days to respond to the allegations.

There are two possible responses to the above mentioned 'occupancy' letter:

- i) *the tenant denies that there is any unreported person living in their unit.* The Corporation shall request an affidavit from that Household to confirm the occupancy. Staff will also request a copy of a driver's license and rent receipts (if possible) to clarify the permanent residence of any individual that may be living in the household under investigation. Once the above information has been received no further action takes place. Documents provided by the tenant are placed in their file.
- ii) *the tenant admits, or further investigation confirms that another person is living in their unit.* The additional occupant shall be added to the lease. The Corporation shall request income information for the additional occupant. The household's eligibility for a subsidy shall be reviewed according to the new information and a retroactive rent amount (if applicable) shall be calculated. If the household is no longer eligible to receive a subsidy, the full monthly market rent will be charged.

- c) Unreported Income

Remedies of Unreported income may include:

- retroactive rents charged to the household;
- an agreement to correct problem, i.e. repayment of amounts owing in full or

- establish payment plan;
- court action, i.e. Minutes of Settlement, orders, or eviction of household;
- criminal fraud charges reported to the police.

i) Retroactive Rent Charge

All households that do not report changes in their income or composition within 3 months* of the change, shall be held responsible for any retroactive rent amount calculated by the Corporation. Retroactive rent is defined as the difference between the rent paid by a household for a period of time and the correct rent based on actual household income.

- Households are given benefit of a 90 day Notice period when retroactive rent is calculated if subsidized rent is increasing to full market. This 90 days mirrors the notice given to market households for rent increases under the Tenant Protection Act. When calculating retroactive rent for households receiving subsidy, rent is increased for the first of the second month following the month in which the household income increased.

Having established the correct income information and secured appropriate documentation, a retroactive rent amount is calculated and the household is sent a letter. The letter provides details of the retroactive rent calculation and indicates the household's new housing charge and the amount owing to the Corporation.

If a household does not supply the requested information to confirm income and facilitate a rent calculation, the household is sent a 90-day Notice of Rent Increase to the full market rent.

Depending on the amount of retroactive rent (defined below), the Corporation shall pursue legal action or report the situation to Police. Action taken by the Corporation can range from entering into minutes of settlement to immediate termination of the rent subsidy to eviction.

ii) Repayment

If the retroactive rent amount is less than \$6,000.00, the tenant is given the opportunity to repay the outstanding amount in full. A repayment agreement may be entered into at the discretion of the Corporation. Repayment plans shall generally not exceed two years in length. Repayment Agreements shall be monitored for compliance by DRNPHC's Finance Section.

If the tenant does not pay the amount in full immediately or enter into a

repayment plan, DRNPHC shall take necessary legal action to evict the tenant. After a household has been evicted, the Corporation shall take all legal action necessary to recover monies owed as a result of misrepresentation. All households who do not pay the outstanding retroactive rent shall have this amount placed on their personal credit history.

iii) Court Action

The list of Court actions available to the Corporation includes:

- Minutes of Settlement -

The Corporation may request that the tenant enter into a Minutes of Settlement Agreement to repay the retroactive rent owing. This agreement, signed by the tenant, may be used to support an eviction in Court at a later date if the stipulations in the Agreement are not met. If terms of the agreement are not met the Corporation may proceed to Court to request that the Judge honour the Minutes of Settlement

- Applications to the Tribunal

If the tenant will not enter into an agreement to pay the retroactive rent, the Corporation may open an application (N6) with the Tribunal for misrepresentation. This will result in a Hearing being scheduled. At the Hearing the Adjudicator will either grant an Order or dismiss the case. If the Adjudicator grants an Order, the Corporation may file the Order with the Enforcement office and proceed with an eviction. The Order can also be used in small claims court to garnish wages of the tenant to recover the retroactive rent. The Corporation may also choose not to enforce the Order and allow the tenant to sign a repayment agreement.

- Eviction of the household

The Corporation may choose to evict the household if an agreement to repay retroactive rent is not fulfilled or if it is determined that the misrepresentation was intentional (see 3.9.4 a). This can be accomplished under the Tenant Protection Act for non-payment of rent or misrepresentation of income in subsidized housing.

iv) Criminal Charges

If the retroactive rent amount exceeds \$6,000.00, a letter is sent to the household requesting they contact the Corporation to discuss the matter. If the

household provides additional information clarifying the income or occupancy, the case will be reviewed and the retroactive amount revised. If the amount of retro rent is still greater than \$6,000.00 or if no response is received, the case information package is prepared and forwarded to the Durham Regional Police Fraud Investigation Unit. The package contains details of the case including:

- a 'witness' list of staff/other persons involved with the case
- a statement of the Corporations Policy re Misrepresentation
- a chronological history of the tenancy
- excerpts from the Operating Agreement re the tenant's obligation to report changes/ or comply with Annual Income Reviews
- copies of all supporting documentation (Leases, Annual Income Review Documents, and correspondence)

Police use this package as the basis for evidence to have charges laid. It is also used as evidence when/if the case goes to court. DRNPHC shall also take necessary legal action to evict the tenant. A Form 6 Notice shall be prepared and served on the household. The Corporation cannot attempt to collect the outstanding retroactive rent since the matter will be handled by the police. The request for restitution will be made in Court by the Crown Attorney.

d) Appeals

If a household disagrees with the retroactive rent calculation, additional documentation may be submitted to the Manager of Tenant Services for consideration. The Manager of Tenant Services shall discuss the appeal with the General Manager who shall decide if any change to the original calculation should be made. The household shall be notified in writing of the General Manager's decision.