

## *Challenging the Human Rights Code*

### **Benjamin Fulton's Story**

My own experience of not being able to access housing comes from the discrimination I faced from landlords who thought that renting to a blind person was not a good idea. I came to Toronto to attend Osgoode, one of the most prestigious law schools in the country. My marks were good but my funds were limited. Unable to afford the housing on campus, I turned to the inexpensive housing just south of campus, unofficially called the "student village." It is a part of Toronto where a large number of buildings have basement suites rented out to students. In some cases, 3-storey houses are completely rented out to students, with a different student in each room. Every student pays their rent to the landlord and it is very lucrative for many landlords. It also provides a handy "mortgage helper" for homeowners wanting an easy source of income to help offset the cost of property taxes and other expenses.

I came early to make sure I would have a place set up well in advance of the school year. I moved to Mississauga and stayed with friends in their living room while I looked for a place. After a few days of looking I found a place for \$500/month. I arranged with the landlord to view the place. It met all the requirements. I was ready to hand over my deposit when the landlord suddenly said that it had been rented to someone else just before I got there. I was considerably upset because I had called one hour before saying that we were on our way over and confirming it was still available. I may not always know when I'm being lied to but something didn't smell right at all. Driving away from the place my friend and I came to the same conclusion. The landlord saw my white cane and decided not to rent to me on that basis alone.

As I continued to look for housing, my fears crystallized into an undeniable reality. The landlords in the student village were discriminating against me on the basis of a disability. In some cases I was told to my face that the landlord didn't want to rent to a blind person. Comments to the effect that I should look elsewhere were hurled in my direction. In some cases there was a go-between who told me what the landlord said, so I could not even confront the person denying me housing. In one case I was told by someone that she was the landlord's sister and was staying there so they didn't have to follow the laws. Little did I realize at the time exactly what this would come to signify.

I finally found a place after weeks of searching. The landlord required that I sign a waiver before moving in. He was worried I would sue him if I fell down the stairs. I signed it because I had no intentions of suing anyone and I needed a place to live.

Over the summer I was able to use a scholarship to attend a university in Italy for part of my course work. Following that I was visiting my family in British Columbia and Alberta. Because I didn't need the place I let it go, with plans of returning in August and finding something else. In August of 2016 I was again in Mississauga and looking for a place in North York (Toronto). This time the search dragged on for over a month. It was halfway through September by the time I found a place. It was again in the student village. All the rooms were rented out to students. A York University student showed me my room. I called the landlord and told him I would take it. We met in Mississauga near my house. I gave him first and last month's rent and had him write

out a receipt. I knew he could just scribble on the paper and I wouldn't know the difference but I had enough faith that he would write me an actual receipt. Thankfully he had written an actual receipt.

After returning home I received a call from the landlord. He had been thinking about it and thought that maybe renting to a blind person wasn't a good idea. He wanted to refund my money. I clung to my receipt. I had paid first and last month's rent and I was determined to stay there for the semester. The landlord relented.

I moved in on the 1st of October and by the end of November the landlord had a new vision of blind people. I helped fix a sink in the bathroom. He was surprised that I knew where the supply valve was. He learned to trust the competence of persons with disabilities and he actually wanted me to stay longer; however, I had a placement in Toronto that semester and the student village was farther from my placement than Mississauga.

The third year I again resumed the search for housing. That year I had no luck at all whatsoever. Place after place turned me away. I had to give up because the search for housing was taking too much time from my studies. I had to commute over 90 minutes each way every day I attended classes. I changed my schedule as much as I could to minimize travel, but I was still coming in 3 or more times a week. Halfway through the second semester, in the middle of midterms and mounting school obligations, I rented an Airbnb unit for 10 days at \$35 a night. I couldn't afford it for long, but my workload was too much to complete while I was commuting for over 3 hours a day.

The stress and anxiety I experienced cannot be overstated. I remember thinking about ways to prove that the landlords were discriminating on the basis of disability. I knew I would need to be able to present a strong case. I felt that any of the landlords could easily change their story or make up something when testifying.

Then I remembered that one of the landlords put their discrimination into a text message. Earlier during the school year I had spent so much time showing up to places only to be turned away that I started telling the landlords I was blind before coming to look at the place. I just didn't have enough hours to go to place after place only to be turned away.

In one case I was texting with the landlord. We made arrangements for me to visit. As I was confirming the plans I mentioned that I am blind and I received a response that they did not want to rent to me because they could not afford it if anything happened.

I offered to sign a waiver as I had with a previous landlord. I offered to get insurance to cover if I broke anything. Nothing I did could change their minds, and I spent the entire year commuting.

Following the school year I was a fully trained student at law and I started my articles shortly after. My supervisor was supportive and encouraged me to file perhaps the biggest piece of litigation I have currently been involved with.

It started with a complaint to the Human Rights Tribunal. The response I received indicated that what the earlier landlord told me was correct. If the landlord or a family member of the landlord lives at the address and shares a kitchen or bathroom with the tenant, then they are allowed to discriminate by law and there's nothing I or anyone else can do about it. Or, can we ... ?

Not letting the challenge rest so easily, I rallied my forces and reached out to the Centre for Equity Rights in Accommodations (CERA), now known as Housing Rights Canada. They helped me reach senior counsel and together we worked on a Charter challenge to the provisions of the Human Rights Code that permit this kind of discrimination. It is our opinion that this discrimination should not be allowed and that everyone should have the right to access the housing they desire.

The case was argued in June of 2023 and we are eagerly awaiting the tribunal's decision. As for me, my stint as a student is done and I'm back to living in Mississauga. Thankfully I don't have to commute anymore.

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