Tenant databases

As a tenant you have rights under the *Residential Tenancies Act 2010* and *Residential Tenancies Regulation 2019.* This factsheet summarises the law in NSW about tenant databases or 'blacklists' kept by privately-owned (usually for profit) database operators, such as TICA

About tenant databases

Tenant databases are run by private companies (generally for profit). They collect, hold and give out information about tenants (including residents of land lease communities / residential parks) who real estate agents, landlords or residential park operators say are 'bad tenants'.

The records they hold are separate from those kept by credit reporting agencies and serve a different function. They are concerned entirely with a person's performance as a tenant.

Real estate agents, private landlords, park operators and others can subscribe to tenant databases. This allows them to check listings made about tenants by other subscribers and to list information about tenants to these databases.

Restrictions on listing - landlords/agents

A landlord/agent can only list information about a person in a tenant database if:

- the person was a tenant under a residential tenancy agreement that has terminated (or they were a co- tenant whose tenancy has terminated), and
- they breached the tenancy agreement and because of the breach:
  - they owe an amount more than the bond for the tenancy agreement, or
  - the NSW Civil and Administrative Tribunal (NCAT) has made a termination order, and
- the information identifies the nature of the breach and is accurate, complete and unambiguous.

Before making a listing

Before the landlord/agent can list information about a tenant, they must:

- give the tenant a copy of the information they want to list on the database (or otherwise take steps to disclose it to the tenant)
- give the tenant at least 14 days to review the information and respond
- consider any response by the tenant.

If the landlord/agent fails to do this, they face a fine of up to $2,200.

In their response the tenant can:

- object to the entry of the information in the database, or
- object that the information is inaccurate, incomplete or ambiguous

Restrictions on listing - database operators

A database operator, or anyone else, must not enter information about a tenant in a database unless:

- it is at the request of a landlord or landlord's agent
- the landlord/agent follows the 'Restrictions on listing' outlined above

Finding out about a listing

On application for a tenancy

If you apply for a tenancy and a landlord/agent finds information about you on a tenant database, they must write to you within 7 days and tell you:

- that you are listed
- the details of the landlord/agent who listed you (from whom you can seek a copy of the information)
- how to contact the database operator to find out what information it holds about you
- how and in what circumstances you can have the information removed or amended

Contacting the landlord/agent who listed you

Write to the landlord/agent who listed you and ask for a copy of the information about you in the database. They must provide it within 14 days, free of charge.

Contacting database operators

You may need to contact more than one operator to find out which one holds information about you.

Fees

Since 23 March 2020 tenant databases have been required to give free access to information about your listing, within 14 days, if you request it. If you are a NSW resident and have paid for access to information about you on a tenant database where it was not clear that access could be granted for free, consider making a complaint to NSW Fair Trading. For more information, see this article: https://www.tenants. org.au/blog/tica-charging-you-access-no-more

The main operator in NSW is TICA. You can write to TICA at PO Box 120, Concord NSW 2137. TICA requests you to allow up to 5 days to process the request and a further 8 days to send you the results. *According to its website* (tica. com.au) you need to provide:

- your full name
- your date of birth
- your driver's licence number
- a certified copy of your driver's licence or proof of age card
- your current address
- a utilities bill to verify your current address
- two stamped, self-addressed envelopes
- a fee of $19.80*
- * *However, note that since 23 March 2020 tenant databases have been required to give free access to information about your listing, within 14 days, if you request it.*

Other database operators include:

- National Tenancy Database (ntd.net.au)
- Trading Reference Australia (tradingreference. com)
- Barclay MiS (barclaymis.com.au)

Amendment and removal of listings

When a landlord/agent becomes aware of inaccurate, incomplete, ambiguous or out-of-date information on a database, they must write to the database operator within 7 days and instruct it to:

- amend the information to make it accurate, complete and unambiguous, or
- remove the out-of-date information from the database

The database operator must then amend, or remove, the information within 14 days. If it does not, it faces a fine of up to $2,200.

If you have been listed in a case of mistaken identity, you should consider taking legal action. Get legal advice – contact your local Community Legal Centre or LawAccess NSW.

Limit on period of listing

A database operator must not keep personal information in its database for more than 3 years.

Disputes about listings

You can apply to the Tribunal for an order that information about you is:

- wholly or partly removed from a database
- amended
- not listed in a database

The Tribunal may make an order if it is satisfied that:

- the information is inaccurate, incomplete, ambiguous or out-of-date, or
- the inclusion of the information in a database is unjust in the circumstances

See Factsheet 11: *NSW Civil and Administrative Tribunal*. Contact your local Tenants' Advice and Advocacy Service (TAAS) for advice about taking action in NCAT.

Tips for minimising the impact of a listing

The way to minimise the impact of a listing depends on your local area – landlords'/agents' use of databases can vary. Contact your local TAAS to discuss how you can best apply for other tenancies if you are listed.

There are a few things to consider, no matter where you are:

- Find out who listed you and why. Get as much information about a listing as you can from as many sources as possible. This might involve writing to a database operator or an agent you suspect made a listing.
- If you do not dispute the reason for the listing, talk to the landlord/agent about what you can do to resolve the issues that lead to the listing (e.g. making payments towards a debt). Keep a written record of any agreement you come to.
- Once you have resolved the issues, ask the landlord/agent to provide a written statement that acknowledges this. (If they are reluctant to do so, keep your own documentation that will serve a similar purpose.)

Contacts

- Community Legal Centres:
  phone 02 9212 7333, clcnsw.org.au for your local centre
- LawAccess NSW: phone 1300 888 529

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TENANTS' UNION OF NEW SOUTH WALES