

1.11 Tenant Databases

What are Tenant Databases?

Tenant databases are sometimes called “Tenant Blacklists”. The databases are lists containing information about tenants and their rental history from the perspective of those who can use the database. A database may state breaches of the terms of a tenancy agreement as alleged by the owner/agent. A company (database operator) who sells access to the database keeps this list.

Who can use a Tenant Database?

Owners and agents (and even debt collection agencies) can use a database by paying a fee to the company that keeps the list. They can contact the company to put a tenant’s personal and tenancy details on the database or search the database for information about particular tenants.

Could I be on a Tenant Database?

YES! A number of standard tenancy application forms and tenancy agreements include a part (clause) which may in effect say that the tenant agrees to have their details listed on a tenant database. If you sign a form or agreement with such a clause then you are giving permission for your details to be listed on a database.

Some tenancy applications forms may require you to sign a statement supplied by a tenancy database company. The statement may be titled “Tenant Privacy Disclosure Statement”. If you sign it, you will be authorising the release of your personal information to various services and authorities. However, if you don’t sign, your application for tenancy may not be approved. This can put tenants in an unfair situation – see the end of this chapter for information on how to lodge a complaint about such practices.

The most likely scenario to prompt a database listing after entering a tenancy agreement is when the owner/agent decides a breach has taken place. The breach does not have to be serious – it is up to the owner/agent to decide. For example, one tenant thought they had been listed on a database because they were two days late with their rent! For more information see chapter [3.08 When the Tenant is in Breach of the Agreement](#).

Are there laws about Tenant Databases?

The Residential Tenancies Act WA 1987 (WA) currently does not provide tenants with any clear legal protection from tenant database listing. Some magistrates in the Magistrates Court have refused to listen to such matters for this reason.

However, there are other laws regulating privacy and the use of personal information, such as the *Privacy Act 1988 (Cth)* (“*Privacy Act*”).

What about my right to privacy?

Tenant database companies have operated for many years without regulation. However, changes were made to the *Privacy Act* in December 2002 and now tenants can only be listed on a tenant database if they have given their permission/consent for the real estate agent to pass on information to tenant database companies. The *Privacy Act* also states that individuals should be made aware that information

about them is being collected. However, because the changes affect only those who are listed after December 2002, some tenants may already be listed without their knowledge.

The changes to the *Privacy Act* have opened up a possible legal course of action for challenging tenant database listings as a breach of a tenant's right to privacy. Complaints lodged by tenant organisations on behalf of tenants with the Federal Privacy Commissioner have referred to:

- The high cost of accessing personal information held by the database company;
- Database companies not notifying tenants about being listed or about why they are being listed;
- The range of obligations that prospective tenants are being asked to consent to in their tenancy applications; and
- The length of time that the listings remain on the database.

The Privacy Commissioner

The Commissioner has recommended that one particular database company and/or its members:

- Advise tenants at the time when an adverse listing has been made;
- Ensure tenants have access to the listing categories;
- Use the terms 'objectionable behaviour' and 'repeated breaches' only if there is a relevant court order;
- Provide tenants with the ability to add a statement to any listings which they dispute; and
- Remove tenants from a listing after a specified time (four or five years depending on the database use).

Compensation for tenants

Tenants listed with a tenancy database may be entitled to compensation if they:

- Paid 'excessive' amounts of money to the tenancy database company in order to find out whether they were listed or not;
- Suffered loss or damage (suffering and hardship) as a result of being listed on a tenancy database for more than four years and were rejected for a tenancy on the basis of being listed;
- Suffered loss or damage as a result of a listing that states 'tenancy history only';
- Suffered loss or damage as a result of not being informed of a listing at the time it was made (for listings made after 21 December 2002);
- Suffered loss or damage as a result of being listed inaccurately and without validation.

Tenants will need to have some evidence of their loss or damage, such as being rejected for a tenancy and having nowhere to live due to being listed with a database company.

Compensation claims can be lodged with the Privacy Commissioner as part of the complaint procedure. Compensation will become a factor after a complaint has been lodged with the Privacy Commissioner and investigated. Information about the complaint and compensation process is outlined below under the heading 'Making a complaint'.

What can I do if I am listed on a Database?

If your name has been listed on a tenant database you can:

1. Write to the owner/agent who told you that you are on a database, or who you think listed you on a database. Ask them if you are listed, who with and why. Keep a copy of the letter and any reply you receive.
2. If you find out you are listed, write to the owner/agent again, or the database operator (see contact details below). If the information is wrong, or it involves a past problem that has been fixed, explain your case and ask the owner/agent or the database operator to correct the information. Keep a copy of the letter and any reply you receive. Owner/agents who subscribe to database companies are able to remove listings from the database as well as amend listings.
3. Make a complaint to the Privacy Commissioner (see section 'Making a complaint' at the end of this chapter).

Contacting the Database companies

The two largest database companies in Australia are TICA (Tenancy Information Centre of Australia) and NTD (National Tenancy Database). There also many other smaller database companies operating in Australia.

You can either phone or write to TICA and NTD to request access to your database listing and/or request that your listing be removed.

Contact details for TICA:

PO Box 120
CONCORD NSW 2137
www.tica.com.au
Ph: 1902 220 346

Contact details for NTD:

PO Box 156
COLLINS STREET WEST VIC 8007
www.ntd.net.au
Ph: (03) 8629 1682

Beware that as at December 2009, TICA's phone service costs \$5.45 per minute (higher from a mobile or pay phone). If you choose to mail your request, TICA will charge a \$14.30 fee (to be processed within 5 working days and then 8 working days to forward the information to you). TICA requires a stamped, self addressed envelope to be included for return. To access the information from TICA free of charge you will need to specifically request free access to the information. A free access request may take up to 28 days to be processed. Your request can be faxed through to TICA on (02) 9743 4844 at a charge of \$22.

When asking TICA if it holds information about you, you will need to supply your name, date of birth and a driver's licence number. If you don't have a driver's licence you will need another form of identification.

Contacting NTD can be done via mail, fax ((03) 8629 1628) or email (info@ntd.net.au). NTD's service is free if you are prepared to wait up to 10 working days for a response. However, a \$15 charge is payable for an immediate response. NTD have a "Request for Personal Information Form" available online which is free to lodge unless your request requires significant research or preparation time. NTD do require you to provide a photocopy of you drivers licence or another form of identification.

Making a complaint

If you wish to make a complaint to the Privacy Commissioner about Tenant Databases on the grounds that the database listing is a breach of your right to privacy as set out in the *Privacy Act*, you can write to:

Director of Compliance
Office of the Privacy Commissioner
GPO Box 5218
SYDNEY NSW 2001

A complaint may also be lodged via fax ((02) 9284 9666) or email (privacy@privacy.gov.au).

Complaint forms can be downloaded from www.privacy.gov.au/complaints.

The Privacy Commissioner is happy to assist people to make a complaint, and can be contacted on **Freecall 1300 363 992**.

When making a complaint, bear in mind that you may have signed a disclosure form which consents to your details being put on a tenancy database.

What if the owner/agent is threatening to list me on a Database?

If the owner/agent is threatening to list you on a database to force you to do something that you don't have to do, they may be committing an offence (under section 338A of the Criminal Code). For example, an owner/agent may say: "If you don't agree to sign the bond disposal form for all of your bond to be paid to me, I will put you on a database and you will never be able to rent in this state again", even though the tenant had a right for the bond to be refunded (in whole or part).

If this has happened to you, you can make a complaint to the police. Contact your local police station to make a statement. Even if the police don't lay charges against the owner/agent there will be a record that you made a complaint.

If the owner/agent is threatening to put you on a tenancy database, please make a complaint to the Department of Commerce. You can download the complaint forms from www.commerce.wa.gov.au/ConsumerProtection/.

List of Tenants' Rights Manual chapters referred to in this info sheet:

- [3.08 When the Tenant is in Breach of the Agreement](#)