

Using tenancy databases

A guide for landlords and agents of rental properties

Tenancy databases are a legitimate business tool which, if used correctly, help to decide a tenant's suitability when assessing tenancy applications. The *Residential Tenancies Act 2010* sets out who, when, and why a person can be listed. The NSW Civil and Administrative Tribunal can resolve disagreements over proposed and existing listings.

What is a tenancy database?

Tenancy databases are run by private companies, not by the Government or the Tribunal. They collect and hold information about tenants and can only be used by members (mostly agents) who pay membership fees. Members can list tenants on the database for certain reasons and can check the database to see if a prospective tenant has been listed by another member. There are a number of tenancy databases which operate in NSW, including TICA, National Tenancy Database and Trading Reference Australia. Tenancy databases are sometimes referred to as 'blacklists' or 'bad tenant databases'.

Files kept by an individual landlord or agency for internal use (hard copy or computerised) are not databases for the purposes of the legislation.

Listings - who

Only tenants named on the tenancy agreement can be listed on a tenancy database. Approved or unapproved occupants, visitors or children cannot be listed. This is because only the named tenant or tenants are accountable for the premises and have obligations under the tenancy agreement.

Listings - when

Tenants can only be listed on a database after the tenancy agreement has ended. You cannot list a tenant simply because they fall behind with the rent, are served a termination notice or are not looking after the property in a satisfactory way.

Listings - why

Listings can only be made for one, or both, of these reasons:

1. The tenant has vacated owing an amount more than the rental bond for a breach of the tenancy agreement, and the amount is still outstanding at the time of listing
2. The Tribunal has made an order terminating the tenancy agreement because of something the tenant has done wrong and the tenancy has ended.

A tenant cannot be listed on a tenancy database for any other reasons apart from those above. Listing on a database can seriously impact on a person's ability to rent a property in the future, so care should be exercised before taking such a step.

Any information recorded on a database must identify the reason for the listing in an accurate, complete and unambiguous way. For example, 'eviction order given on grounds of rent arrears, tenant owes \$500 in rent above the bond'.

Notice if listing found

If, when checking a prospective tenant on a database, you find out they have been listed by another person you are required to advise them in writing within 7 days. This should include the contact details of who has listed them and how they can go about checking what the listing says and having it removed or amended (if need be). You do not have to advise the person of the reason for the listing. They can get this information from either the person who listed them (free of charge) or direct from the database operator in writing or by phone.

Notice required before listing

You must not list or arrange for a tenant to be listed on a tenancy database unless you have advised the tenant in writing and given details of the proposed listing, or taken

reasonable steps to try to advise them. This would involve sending a letter to the tenant's forwarding address (if known) or to the address of the rented premises (in case they are having their mail redirected). You must give them at least 14 days to object before you list them.

You should also be aware that under the national privacy principles tenants must give their consent before you can check their rental history or pass on information for 'secondary purposes' such as database listings. Such consent authorisation could be included on your tenancy application form.

Removing or updating listings

All listings older than 3 years must be removed from a database. Listings under 3 years must also be removed if they are 'out-of-date'. This is where the amount owed above the bond has been repaid to the landlord within 3 months or if the termination order obtained from the Tribunal was not enforced.

Listings need to be amended if you discover that the information is inaccurate, incomplete or ambiguous. For example, if the listing just says the tenant was evicted but does not identify the nature of the breach.

Any changes to the database records need to be done within 7 days, if you can do it yourself, or within 14 days if you need to notify the database operator to have it done. The new laws apply to all existing listings as well as future listings. All existing listings need to be reviewed to ensure they comply with the new laws, by 1 May 2011.

Disputes about listings

A tenant who believes that a listing, or proposed listing, about them is incorrect, out-of-date or unjust can apply to the Tribunal if they cannot get it removed or amended.

Examples of listings that may be unjust include:

- a tenant who left the property to escape domestic violence and their former partner was responsible for damage after they left
- a tenant who was in hospital after a car accident and fell behind with their rent.

The Tribunal can order information about a person in a database to be wholly or partly removed, amended in a certain way or not listed at all if it was a proposed listing. Be mindful that the Tribunal also has the ability to award compensation if a person suffers a loss as a result of inaccurate, ambiguous or out-of-date information being listed about them.