

Tenant databases

Information for renters

Many real estate agents are not willing to rent a residential property to anyone who is listed on a tenant database. To protect tenants from unfair treatment in relation to the use of tenant databases, real estate agents and property managers must follow rules introduced by the Property Stock and Business Agents Amendment (Tenant Databases) Regulation 2004. The purpose of this fact sheet is to explain your rights as a tenant under these rules.

What is a tenant database?

Tenant databases provide agents with information about the previous tenancies of prospective tenants where there may have been problems. This information helps agents assess if an applicant is likely to be a financial risk to the landlord.

When did the Regulation start?

The Regulation applies to any listing made on or after 15 September 2004. The Regulation does not apply to listings made prior to 15 September 2004.

What do the rules mean?

Under the rules an agent is only permitted to list a tenant on a database for specific reasons. It is also the agent's responsibility to use a database that is operated in accordance with the rules.

If you are listed on a tenancy database on or after 15 September 2004, it should be for something more serious than a minor breach of the residential tenancy agreement. For example, it may be the result of owing money to a landlord for unpaid rent or damage to the rental premises.

What are my rights as a tenant?

Before signing a lease

At the time of signing the residential tenancy agreement (lease) your agent must inform you

(verbally or in writing) that if you breach the agreement your personal information could be listed on a tenant database.

It is recommended that you keep a copy of any written correspondence between you and the agent in case of a dispute.

Under what conditions can I be listed?

You can only be listed once the residential tenancy agreement has been terminated.

The agent must advise you in writing of their intention to list you and the reason for doing so. You must be given a reasonable opportunity to respond, including time to review and correct the information about you the agent intends to list. Be sure to keep a copy of this correspondence.

An agent cannot list you for a minor breach of a tenancy agreement. You can only be listed for specific reasons as follows:

- for owing the landlord money for rent and/or damage caused intentionally or recklessly to the residential premises (but only if the amount owing exceeds the amount of the rental bond)
- failure to pay an amount of money to the landlord in accordance with an order of the Consumer Trader & Tenancy Tribunal (CTTT)
- where the CTTT has issued a termination and possession order for serious or persistent breach of the residential tenancy agreement
- where the CTTT has issued a termination and possession order for serious damage or injury.

If you disagree with the agent about any details of the listing, the agent must note your objection on the database.

If the agent cannot locate you after making reasonable inquiries, you can still be listed.

Exception

If you have made an application to the CTTT for an order in relation to the tenancy, the agent cannot list you for 'owing the landlord money for damage' unless the CTTT has determined your application.

How long can a listing last?

It varies, depending on why you are listed and whether a debt is involved. See the rules below. Remember that these rules only apply to listings made on or after 15 September 2004.

For non-payment of a debt

If you owe the landlord money, and the debt is paid within three months, within seven days of becoming aware that the payment has been made, the agent must notify the database operator who must delete all reference to that debt from the database within seven days of being notified.

If you owe the landlord money, and the debt is paid after three months, within seven days of becoming aware that the payment has been made, the agent must notify the database operator who must record the payment on the database within seven days of being notified. The database operator must delete all reference to that debt after three years.

For other allowable reasons

If you are listed for an allowable reason other than non-payment of a debt, the database operator must delete any reference to that listing after three years.

How to avoid problems

To avoid problems:

- pay your rent on time
- do not intentionally or recklessly damage the residential premises
- never fail to pay money to your landlord by the due date if the CTTT has ordered it

- comply with the terms of your lease
- understand your rights and responsibilities as a tenant by reading the *Renting guide*
- keep copies of all correspondence in a safe place, including letters from agents and proof of payments.

What about unfair listings?

If you think you have been listed on a database unfairly after 15 September 2004, you have the right to challenge the listing. You should take the following steps:

- make your objection known to the agent (you should do this in writing and keep a copy of your correspondence in case of a dispute)
- if the information listed is inaccurate, out of date or incomplete, contact the agent and request that the information be amended
- if the agent objects to your requested change/s, your objection must be noted on the database
- contact the Office of Fair Trading on 13 32 20.

How do I know if I'm listed?

If you are listed on a database after 15 September 2004:

- the agent is required to give you written notice of their intention to list you and reasons for doing so and
- the agent is required to use a database which provides you with cost-free access to any listed information about yourself.

If you were listed prior to 15 September 2004, you may not have been notified of that listing. If you are experiencing difficulties in applying for a rental property ask the agent if you are listed on a tenant database.

Fines apply to agents and property managers who fail to observe the tenant database rules of conduct.

Fair Trading enquiries 13 32 20
TTY 1300 723 404
Language assistance 13 14 50

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.
© NSW Government

www.fairtrading.nsw.gov.au

