



OFFICE OF **FAIR TRADING**

NSW Consumer Protection Agency

Department of Commerce

Tenant databases

Information for renters

FT269

August 2004



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 new rules introduced by the Property Stock and Business Agents Amendment (Tenant Databases) Regulation 2004. The purpose of this brochure is to explain your rights as a tenant under these rules.

What is a tenant database?

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

When does the Regulation come into effect?

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 new rules mean?

Under the new 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.

So, from 15 September 2004, if you are listed 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. If you are listed on a tenant database, the agent's reasons for listing you will be included.

What are my rights as a tenant?

Before signing a residential tenancy agreement

At the time of signing the residential tenancy agreement, 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 personal information about you that the agent intends to list. Be sure to keep a copy of this correspondence.

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.

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

For what reasons can I be listed?

- 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 and Tenancy Tribunal (Tribunal)
- where the Tribunal has issued a termination and possession order for breach of the residential tenancy agreement
- where the Tribunal has issued a termination and possession order for serious or persistent breach of the residential tenancy agreement
- where the Tribunal has issued a termination and possession order for serious damage or injury.

Listing a tenant for money owed due to damage to the residential property

If you have made an application to the Tribunal under the *Residential Tenancies Act 1987* for an order in relation to the tenancy, the agent cannot list you for money owed due to damage unless the Tribunal has determined the application.

After I have been listed on a tenant database

If you pay off any debt that is listed on a database, the agent must notify the database operator that you have paid the debt. They must do this within seven days of becoming aware that the payment has been made.

How long can a listing stay on a tenant database?

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 after 15 September 2004.

For non payment of a debt

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

If this is your only listing, the operator must remove you altogether from the database when the debt is deleted.

If you owe the landlord money, and the debt is paid **after** three months, then within seven days of becoming aware that the payment has been made, the agent must notify the database operator who must then 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.

Once again, if this is your only listing, the operator must remove you altogether from the database when the debt is deleted.



PLEASE NOTE

The Regulation applies to any listing made on or after 15 September 2004.

For other allowable reasons

If you are listed for an allowable reason other than non-payment of a debt (see 'For what reasons can I be listed?' above), the database operator must delete any reference to that listing after three years.

In cases of non-payment of a debt and other allowable reasons, you would not be removed from the database altogether if any other listing for you was still current or if you had been listed prior to 15 September 2004.

How to avoid problems

- Pay your rent on time.
- Do not intentionally or recklessly damage the residential premises.
- Never fail to pay an amount of money to your landlord by the due date if the Tribunal has ordered it.
- Comply with the terms of your residential tenancy agreement.
- Understand your rights and responsibilities as a tenant by reading the *Renting guide*. You must be given a copy by your agent when you sign the residential tenancy agreement.
- Keep copies of all correspondence in a safe place, including letters from agents and proof of payments in relation to database action.



IMPORTANT

Keep in a safe place copies of all correspondence, including letters from agents and proof of payments in relation to database action.

What if I think I've been listed unfairly?

Under the Regulation, you have the right to challenge a listing made after 15 September 2004. You should take the following steps:

- Make your objection known to the agent. (It is recommended that you 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, this must be noted on the database.
- Contact the Office of Fair Trading on 9377 9100 or 1800 451 301 (outside Sydney) for assistance in resolving your complaint.

How do I know if I'm listed on a tenant database?

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.

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



13 32 20

For help on any fair trading issue call your nearest Fair Trading Centre or Government Access Centre or call the service listed below which is relevant to your enquiry.

Fair Trading Centres – call 13 32 20

Albury	Dubbo	Newcastle	Sydney
Armidale	Gosford	Orange	Tamworth
Bathurst	Grafton	Parramatta	Tweed Heads
Blacktown	Hurstville	Penrith	Wagga Wagga
Broken Hill	Lismore	Port Macquarie	Wollongong
Coffs Harbour	Liverpool	Queanbeyan	

Specialist services

Rental bond9377 9000 ..1800 422 021 (*outside Sydney*)

Tenancy9377 9100 ..1800 451 301 (*outside Sydney*)
.....9377 9099 (*TTY)

Strata schemes9338 7900 ..1800 451 431 (*outside Sydney*)

Aboriginal tenancy.....9377 9200 ..1800 500 330 (*outside Sydney*)

REVS9633 6333 ..1800 424 988 (*outside Sydney*)
.....1300 369 889 (*TTY)

Business licences.....9619 8722 ..1800 463 976 (*outside Sydney*)

Registry of Co-operatives and Associations
.....6333 1400 ..1800 502 042 (*outside Bathurst*)

Consumer, Trader and Tenancy Tribunal (CTTT)
.....1300 135 399

TTY9338 4943
(*telephone service for the hearing impaired*)

Language assistance ..13 14 50
(*ask for an interpreter in your language*)

Office of Fair Trading
1 Fitzwilliam Street Parramatta NSW 2150
PO Box 972 Parramatta NSW 2124
9895 0111

www.fairtrading.nsw.gov.au

This brochure must not be relied on as legal advice. For more information about this topic, please refer to the appropriate legislation.