

Starting a tenancy, information for tenants

This is a collection of fact sheets for people who rent on topics related to starting a tenancy:

- Tenancy databases (pages 2 – 3)
- Discrimination when renting (pages 4 – 5)

All the fact sheets in this document can also be accessed as individual pages on the Fair Trading website in the *Renting a home, Starting a tenancy* section.

July 2012

Tenancy databases

Information for tenants and prospective tenants

Tenancy databases are used mainly by agents as a way of screening prospective tenants.

The *Residential Tenancies Act 2010* sets out who, when, and why a person can be listed. The Act also enables disputes over proposed and existing listings to be resolved. If you believe that an agent or landlord has listed information about you that is incorrect, out-of-date or unjust, there are ways you can go about having the information removed or amended.

What is a tenancy database?

Tenancy databases are run by private companies, not by the Government or the Consumer, Trader and Tenancy 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 their own internal use (hard copy or computerised) are not databases for the purposes of the legislation.

Listings - who

You can only be listed on a database if you are named on the lease as a tenant. Approved or unapproved occupants, visitors or children cannot be listed.

Listings - when

You can only be listed on a database after your tenancy has ended. You cannot be listed on a database simply because you fall behind with the rent, are given a termination notice or are not looking after the property in a satisfactory way.

Listings - why

You can only be listed on a database for one or both of the following two reasons:

- You have vacated owing an amount more than the rental bond for a breach of the agreement which is still outstanding at the time of listing.
- The Tribunal has made an order terminating the agreement because of something you have done wrong and the tenancy has ended.

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'.

How will I know if I have been listed on a database?

Landlords or agents must advise you in writing if they propose to list you on a tenancy database. They must also give you details of the proposed listing, or take reasonable steps to try to advise you. They can do this by sending a letter to your new address (if known) or to the address of the rented premises (in case you are having your mail redirected).

They must give you at least 14 days to object before listing you on the database. You can apply to the Tribunal if you think the proposed listing would be incorrect or unjust.

If you apply for a tenancy and the landlord or agent discovers you have been listed on a database, they must advise you in writing. They should inform you of the contact details of the person who has listed you and how you can go about checking what the listing says and having it corrected or amended (if need be). They do not have to advise you of the reason for the listing. You are entitled to a copy of the information from the person who listed you (free of charge) or direct from the database.

operator. The database operator can charge you a fee for the information but it must not be excessive.

Some database operators also provide information over the phone, but be aware that high charges may apply.

Removal of out-of-date, incorrect or unjust listings

Any listing that is 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 any amount you owed above the bond has been repaid to the landlord within 3 months or if the termination order made by the Tribunal was not enforced.

Listings also need to be amended if the information is inaccurate, incomplete or ambiguous.

You can also seek to have your name removed from a tenancy database if you think the listing was unjust.

Any changes to the database records must be done by the landlord or agent within 7 days of them becoming aware that the information needs to be changed, if they can do it themselves, or within 14 days if they need to notify the database operator to have it removed or amended.

The laws apply to all listings, including any listings made before the new laws commenced.

Disputes in the Tribunal

You are able to apply to the Tribunal to have incorrect, out-of-date or unjust listings removed if you cannot resolve the matter with the agent or landlord.

The Tribunal can order information about you in the database to be wholly or partly removed, changed, or not listed at all if it was a proposed listing. The Tribunal also has the ability to award compensation to you if you have suffered a loss as a result of inaccurate, ambiguous or out-of-date information being listed on a tenancy database.

www.fairtrading.nsw.gov.au
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.

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Discrimination when renting

Information for tenants and prospective tenants

Everybody should be given a 'Fair Go' when renting or trying to rent a property. While landlords and agents have the right to choose the most suitable tenant, they are not able to unfairly discriminate against you when you apply for a rental property.

Anti-discrimination laws

The law states that you cannot be discriminated against or harassed because of your:

- race (colour, nationality or descent)
- sex (male or female)
- pregnancy
- marital status (e.g. singles or unmarried mothers)
- disability (physical, intellectual or psychiatric disability)
- homosexuality (both gay and lesbian)
- age (both young or old)
- transgender (transsexual).

It is also against the law to discriminate against you because of the race, sex, pregnancy, marital status, disability, homosexuality, age or transgender of your relatives, friends or associates.

But people sometimes claim "that's discrimination!" without understanding the law. As long as the landlord or agent is not discriminating on one of the listed grounds they may rent to whoever they like. If, for example, they do not want smokers in their premises or tenants with pets, or if they reject your rental application because you have a poor tenancy history or they do not think you can pay the rent, there is no law to stop them from rejecting you as a tenant for that reason.

However, landlords and agents may be liable for discriminatory acts if, for example, the owner instructs an agent not to rent the property to 'foreigners' and the agent carries out those instructions. In that case both the landlord and the agent may be liable. It is no defence for an agent to say she or he was simply carrying out instructions.

Direct and indirect discrimination

Direct discrimination is when a person is treated less favourably than another person because of their race, sex, marital status etc. One example of direct discrimination would be if a landlord refused to rent to you because you have children.

Indirect discrimination is where there is a requirement (a rule, policy, practice or procedure) that is the same for everyone, but which has an unequal or disproportionate effect on particular groups (for example, women, people of certain races, young people). Unless this requirement is 'reasonable having regard to the circumstances of the case' (Anti-Discrimination Act) it is likely to be indirect discrimination.

The following are examples of possible indirect discrimination:

- setting more restrictive standards, such as a higher than necessary income
- requiring all younger tenants to have one of their parents sign the lease as a co-tenant knowing that they do not intend to live in the premises
- having an across the board 'no pets' policy which also excludes the needs of disabled tenants, such as those with a guide dog
- requiring all applicants to have a proven rental history for a minimum number of years, which, for example, could exclude young people trying to rent their first home
- placing unrealistic restrictions on the number of occupants permitted which, for example, could exclude those who are pregnant
- having a complicated and long application form which may, for example, deter recently arrived migrants from applying.

Fair trading laws

Fair trading laws prohibit agents from engaging in conduct that is, in the circumstances, misleading in

connection with the supply of goods and services to a customer.

The following is an example that may be both discrimination and misleading conduct.

An Aboriginal person rings the real estate agent about a rental property. On the phone the agent tells the caller that the property is available. When the Aboriginal person goes to the office to lodge an application, the agent informs them that it is no longer available. Then a non-Aboriginal person asks the same agent and is told that the property is still available.

In an actual case like this, the Administrative Decisions Tribunal ruled that the real estate agent was liable under anti-discrimination law and awarded \$6,000 damages against the agent.

More information

If you believe that you have been discriminated against when applying for a rental property and would like more information, contact the NSW Anti-Discrimination Board on 9268 5555 or 1800 670 812 or visit their website at www.lawlink.nsw.gov.au/adb.

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