Circle Green Community Legal

As a tenant you have rights and responsibilities under the *Residential Tenancies Act 1987* (the Act). This fact sheet incorporates the changes affected by the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 from 15 April 2019.

Residential Tenancy Database

WHAT ARE RESIDENTIAL TENANCY DATABASES?

Residential Tenancy Databases (RTDs) are databases run by private companies who collect information about tenants and make this information available to lessors and real estate agents. RTDs are used to check the rental history of prospective tenants. A database may list personal information and any breaches of previous tenancy agreement as alleged by the lessor. RTDs are commonly called 'blacklists'.

*In the **Residential Tenancies Act** the **landlord** is referred to as the **lessor.***

WHEN APPLYING FOR A RENTAL PROPERTY

If a lessor usually uses a RTD to assess rental applications, they must inform you of this in writing at the time that you apply. They must do so whether or not they intend to use it for your application.

If you apply to enter into a rental agreement and a lessor discovers that you are listed on the RTD they must, within 7 days, give you written notice:

- That you have been listed on a database
- The name of the database
- The name of the person who entered the listing
- If and how you can try and have a listing amended or removed.

WHEN CAN YOU BE LISTED ON A RTD?

Regulation of RTDs ensures that tenants are not unfairly excluded from the rental market due to petty, vague or inaccurate listings.

A lessor can **only** list personal information about you on an RTD if:

- You are the person named as a tenant in a rental agreement that has ended;
- You have breached the rental agreement;

- Because of the breach you owe the lessor an amount of money that is more than the security bond **or** because of the breach a court has made an order terminating the rental agreement;
- The personal information is accurate, complete, unambiguous, and only relates to the breach;
- The lessor has given you a copy of the personal information or taken other reasonable steps to disclose it to you; and
- the lessor has given you at least 14 days written notice to review the personal information and has also given you the opportunity to object to its entry into the database or to object about its accuracy, completeness and clarity.

LIFESPAN OF A LISTING

A listing can stay on a RTD for a maximum of 3 years however it must be removed sooner if it is incorrect, ambiguous or "out of date".

A listing becomes out of date if it was made because the tenant owed the lessor an amount more than the bond, and that amount was repaid within 3 months after the amount became due or it was made in respect of a court-ordered termination which has been set aside on appeal.

The lessor must give written notice to the database operator within 7 days that the listing is out of date and have the listing removed.

WHAT IF YOU HAVE PAID THE AMOUNT OWED?

If you have paid the amount owed within three months of it becoming due, then a listing on the RTD is out of date under the Act and must be removed. The lessor or real estate agent must remove it within 7 days of you paying the amount owed.

If you have paid the amount owed, but it took you more than three months to pay, then a listing on the database may be "inaccurate" under the Act, and it should be amended. The amendment should make it clear that you no longer owe money.

WHAT CAN YOU DO IF YOU SUSPECT YOU'VE BEEN LISTED?

If you suspect your name has been listed on a RTD you can:

1. Write to the lessor who you think listed you on a RTD and ask them if you are listed, in what database, and why. Keep a copy of the letter/email and any reply you receive. The lessor must give you a copy of the information within 14 days of you making the request.
2. Ask the RTD operator (see contact details below). The RTD may charge a fee. If you have been listed and the information is wrong, or it involves a past problem that has been fixed, explain your case and ask the lessor or the RTD operator to correct the information. Keep a copy of the letter and any reply you receive. Lessors who subscribe to database companies are able to remove listings from the database as well as amend listings.
3. Apply to the Magistrates Court for an order to remove a listing if the information held on the RTD is inaccurate, incomplete, ambiguous, out-of-date or unjust in the circumstances.

The *Residential Tenancies Act* specifically states that it is unjust to be listed on a RTD if the circumstances relating to the listing result from the tenant being subjected to family violence, and this means a Court can order the removal of the listing. If your tenancy has been effected by family violence, you can see further information in the Family Violence fact sheets.

4. Make a complaint to the Office of the Australian Information Commissioner.

CONTACTING RTD COMPANIES

Lessors must let you know, in writing, which databases they usually use for their rental history checks and how to contact the database operator.

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

Note: Under section 82I (4) of the *Residential Tenancies Act 1987* a fee charged by either the lessor or database operator for giving personal information must not be excessive and must not apply to lodging a request for information.

1. TENANCY INFORMATION CENTRE OF AUSTRALIA (TICA):

To obtain a copy of the personal information that TICA has about you on file, you need to download a form from https://www.tica.com.au/tenants.php. You can post the completed form (along with photocopy of your drivers licence or proof of age card) to TICA:
PO Box 120

CONCORD NSW 2137
For further information see www.tica.com.au

TICA will charge an administrative fee of $19.80 (payable by electronic funds transfer) to cover processing of the residential tenancy database report. TICA will email or post the report to you upon receipt of payment. The TICA website also advertises an annual subscription for $55. You do not have to subscribe to TICA to access a copy of the personal information TICA has about you on file.

2. NATIONAL TENANCY DATABASE (NTD) - EQUIFAX:

To obtain a copy of the personal information NTD has about you on file, you can complete the online form at https://www.tenancydatabase.com.au/contact-us. NTD will provide a free copy of your report within 10 days via email once your ID credentials have been successfully verified.

3. TRADING REFERENCES AUSTRALIA (TRA):

To obtain a copy of the personal information TRA has about you on file, you can complete an online search for $26.02 on their website: https://tradingreference.com/services/tenants/.

Alternatively, you can download the forms and send these to TRA (along with a photocopy of your photo ID) and they will conduct the search on your behalf. They will provide a reply within 21 days. You can contact TRA by phone or email:

Phone: +61 2 9363 9244

Email: info@tradingreference.com

Some RTD companies ask for far more personal information than they require to process your request and also ask you to consent to that information being used for purposes other than those for which it was requested. Such purposes include adding your personal information to their databases and sharing it with assorted third parties who may or may not be subscribers to those databases.

You do not have to consent to your information being used for any purpose other than identifying you so that you can be provided with a copy of personal information the RTD company has on file about you. You do not necessarily have to supply all of the information that the RTD requests.

MAKING A COMPLAINT

If you wish to make a complaint to the Office of the Australian Information Commissioner about a RTD on the grounds that the database listing is a breach of your right to privacy as set out in the Privacy Act, you can contact the Commissioner by mail, phone, email or an online complaint form. You must first contact the agency you think has mishandled your personal information to make a complaint, if they do not respond to your complaint within 30 days or you are not happy with the response then you may lodge a complaint with the OAIC.

GPO Box 5218
Sydney NSW 2001
Phone: 1300 363 992
Online complaint form: https://webform.oaic.gov.au

WHAT IF THE LESSOR IS THREATENING TO LIST YOU ON AN RTD?

A lessor should not threaten to list you on a RTD to force you to do something that you do not have to do. For example, a lessor 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 you have a right for the bond to be refunded (in whole or part).

If the lessor is threatening to put you on a tenancy database, contact Consumer Protection on 1300 304 054 or go to consumerprotection.wa.gov.au

OFFENCES

The Act provides for fines if a Lessor or Real Estate Agent wrongly lists a tenant, fails to remove a listing, or fails to provide a tenant with information required under the Act.

If you wish to make a complaint about a breach of the *Residential Tenancies Act 1987*, you can contact Consumer Protection on 1300 304 054 or go to their website.

RELEVANT FORMS

Form 18A - Tenancy database notice

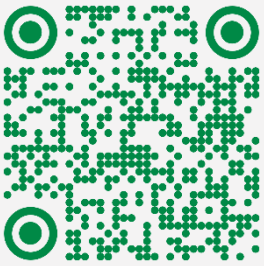
FURTHER HELP – TENANTS ADVICE AND ADVOCACY

Circle Green Community Legal
(08) 6148 3636
www.circlegreen.org.au

Consumer Protection for consumer and tenancy related matters
commerce.wa.gov.au/consumer-protection | 1300 304 054

To find a tenant advocate in your area,
visit our website or use the QR code →

https://circlegreen.org.au/resource/find-a-tenant-advocate



Disclaimer

This fact sheet only contains general information. This fact sheet is not legal advice and should not be relied on as a substitute for legal advice. You may wish to seek advice from a lawyer regarding your own particular circumstances. We are not responsible for any consequences arising from your use of, or reliance on, the information contained in this fact sheet.

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www.circlegreen.org.au/disclaimer/

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