

Using tenant databases

Information for agents

Many real estate agents use tenant databases to identify potentially unreliable tenants. The Property, Stock and Business Agents Amendment (Tenant Databases) Regulation 2004 introduced rules of conduct for real estate agents and property managers who use tenant databases.

Who does the Regulation apply to?

Real estate agents who manage property and on-site residential property managers and their registered employees.

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?

Before a residential tenancy agreement is signed, an agent must advise the tenant, verbally or in writing, that if they breach the agreement their personal information could be listed on a tenant database.

It is recommended that agents keep a written record of such notification as proof of compliance. Some records have to be kept for 5 years.

Before a tenant is listed

The following conditions must be met:

- the agent must have provided property management services in respect of the tenant's residential tenancy agreement
- the residential tenancy agreement must be terminated
- the agent must give the tenant/former tenant:
 - a written notice of intention to list them on a tenant database and the reason for doing so
 - a reasonable opportunity to respond and review or correct any personal information to be listed.

However, an agent does not have to notify a tenant or give a tenant that opportunity, if the agent cannot locate the tenant after making reasonable inquiries. The agent must keep a written record of the notification and any response by the tenant, or attempts to locate the tenant, for at least 5 years.

If the agent and tenant cannot agree about the personal information to be listed, the agent must note the tenant's objection on the database.

Reasons for listing a tenant

An agent cannot list a tenant for a trivial or subjective reason. A tenant can only be listed for the following specific reasons:

- the tenant owes 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)
- the tenant has failed to pay an amount of money to the landlord in accordance with an order of the Consumer, Trader and Tenancy Tribunal (CTTT)
- the CTTT has issued a termination and possession order for serious or persistent breach of the residential tenancy agreement
- the CTTT has issued a termination and possession order where the tenant causes serious damage or injury.

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

Before listing a tenant for this reason, the agent must:

- complete a condition report
- note the damage on the condition report
- report the damage to the police and be given the corresponding incident number
- check whether the tenant has made an application to the CTTT regarding the residential tenancy agreement.

Where a tenant has made an application to the CTTT, an agent cannot list the tenant for money owed due to damage unless the CTTT has determined the application.

After a listing has been made

It is recommended that an agent tries to send a copy of the listing to the tenant after it has been made.

Notifying database operators when debts are paid

If a tenant is listed after 15 September 2004 for owing the landlord money and the debt is paid, then within 7 days of becoming aware that the payment has been made, the agent must notify the database operator that the debt has been paid.

Use of compliant database operators

Under the Regulation, an agent must only contract with tenant database operators who:

- ensure that listed tenants have cost-free access to their listed personal information
- amend listed information that the tenant claims is incorrect, inaccurate or incomplete at no cost to the tenant (unless the agent disputes the claim*)
- delete listings within the following time frames:
 - within 7 days of being notified that a tenant's listed debt has been paid, if the debt was paid within 3 months of the date it was incurred
 - on the third anniversary of the date of the listing, for a tenant's debt paid more than 3 months after it was incurred (after having recorded the date on which the debt was paid, within 7 days of being notified by the agent
 - on the third anniversary of the date of the listing, if a tenant has been listed for any reason other than for non-payment of a debt.

**If an agent disputes the tenant's claim, the tenant's claim should be noted on the database.*

Penalties and disciplinary matters

Fines of up to \$2,200 for corporations and \$1,100 for individuals and partnerships apply for non-compliance with the Regulation. A breach of a rule of conduct can also lead to disciplinary action being taken under the Regulation, which can result in cancellation or disqualification of a licensee.