

Blacklisting

What is 'blacklisting'?

"Blacklisting" is a colloquial term referring to when tenants are placed on a 'Residential Tenancy Database' in a way that portrays them as undesirable tenants, such as by alleging they've breached their obligations as tenants or have been ordered by the ACT Civil and Administrative Tribunal ('ACAT') to leave the property.

There are various residential tenancy databases used widely throughout Australia, such as the National Tenancy Database.

The listing of a tenant's information in the ACT is strictly regulated by the *Residential Tenancies Act 1997* ('the Act') and non-compliance with listing or notification requirements can carry penalties of up to \$5,000.

Our **Tenancy Advice Service** can assist with tenancy issues. To obtain assistance, please contact **1300 402 512** or TAS@legalaidact.org.au.

What is a "residential tenancy database"?

A "residential tenancy database" is a database containing personal information relating to, or arising from, a tenancy agreement with the intended purpose of the database's use by a landlord or their agent being to check a person's tenancy history to decide whether to enter into an agreement with the person.

The person or entity responsible for the maintenance of the database is called the database operator.

The Act specifically excludes the blacklisting laws from applying to a residential tenancy database kept by an entity for use **only** by the entity or its officers, employees, or agents - e.g. a database only accessible by a real estate agent and maintained by the agent's office for internal use.

The definition of a residential tenancy database is broad and may even capture websites whose primary purpose is not for blacklisting tenants. For example, if a website commonly used by tenants to apply for rental properties also contains a small segment used by landlords to learn of a tenant's history, it may be a 'residential tenancy database' despite its mixed purpose use.

When can my information be listed on a residential tenancy database?

Under the Act, the listing of a tenant's personal information on a database is only allowed in the following circumstances:

- a. the person was named as a tenant in a residential tenancy agreement that has ended; and
- b. the person has breached the agreement; and
- c. because of the breach, either the person owes an amount to the landlord that is more than the rental bond, or a court or the ACAT has made an order terminating the residential tenancy agreement; and
- d. the personal information relates only to the breach and is accurate, complete and unambiguous.

The personal information listed in the database must also indicate the nature of the breach, such as 'rent arrears' or 'damage to premises'.

Notice requirements and further restrictions

A landlord or their agent, along with the database operator, must not list information about a tenant in a database unless they have:

- without charging a fee, given the tenant a copy of the personal information or have taken reasonable steps to disclose the personal information to the tenant; and
- given the tenant at least 14 days to review the personal information and make submissions

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- objecting to its entry into the database or about its accuracy, completeness and clarity; and
- considered the tenant's submissions.

This means that a tenant must be notified and be given a reasonable opportunity to object to their potential listing by either the landlord, their agent or the database operator.

However, the notice requirements do not apply if the landlord, their agent, or the database operator cannot locate the tenant after making reasonable enquiries before listing. They also do not have to give the tenant 14 days to review the personal information if the information, at the time of listing in a tenancy database, is contained in publicly accessible court or tribunal records.

A database operator may not keep personal information listed in a tenancy database for longer than 3 years. This period may be further reduced if required under the Australian or ACT Privacy Principles.

This limitation period applies to each breach of the tenancy agreement separately. If a tenant is listed in a tenancy database for two separate breaches that occurred on two separate occasions, the earlier breach must be removed when the limitation period expires while the more recent breach may remain listed.

Ensuring the information in databases is accurate

It is the responsibility of a landlord or their agent who lists the personal information of a tenant in a tenancy database to ensure that the information is accurate and up-to-date.

If a landlord or their agent becomes aware that certain information is inaccurate, incomplete, ambiguous, or out of date, they must, within 7 days, give written notice to the database operator of the following:

- that the information is inaccurate, incomplete or ambiguous and how the information must

be amended; or

- if the information is out of date, that the information is out of date and must be removed.

Example

You owe your landlord an amount that is more than the rental bond paid under the residential tenancy agreement.

The landlord lists the unpaid amount in a tenancy database.

You then pay the landlord the amount a few months after it was due to be paid. The landlord must, within 7 days of becoming aware of the payment, give the database operator written notice of the information being inaccurate and that the details of the payment be included in the listed personal information so that it is no longer inaccurate.

The information about the debt does not necessarily need to be removed once you repaid your debt. The information listed in the tenancy database simply needs to reflect the fact that the debt has been repaid.

A database operator who receives written notice from the landlord or their agent about amending or removing the information must do so within 14 days after receiving the notice.

A tenant is entitled to ask for a copy of the personal information listed in the database from either the landlord, their agent or the database operator. The request must be made in writing. The landlord, agent or database operator are entitled to charge a fee for providing this information, as long as it is not excessive. The information must be provided 14 days after the tenant asks for the information in writing, and if a fee is charged, the day the fee is paid.

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ACAT's Powers in Relation to Databases

The ACAT has the power to make orders in relation to residential tenancy databases. The Act allows tenants to apply to the ACAT under three separate situations:

1. *Where there is a contravention of the Act*

The Act entitles tenants who have been listed or are about to be listed to apply to the ACAT if the listing of personal information is in contravention of the Act.

A tenant must apply to the ACAT within 6 months after the day they become aware of the listing. If the ACAT decides that there has been a contravention of a provision of the Act in relation to databases, it may order a party to take steps to remedy the contravention or any other order the ACAT considers appropriate, including removing the listing.

If the ACAT decides that there has been a contravention of the Act, it may also make an order requiring the contravening party (being either the landlord, their agent or the database operator) to pay the aggrieved party an amount the ACAT considers appropriate as compensation for the loss or damage caused by the listing. This amount cannot exceed \$5,000, or any other amount prescribed by regulation.

2. *Where there is no contravention of the Act*

A tenant who has their personal information listed in a tenancy database is also entitled to apply to the ACAT where there is no contravention of the Act.

The ACAT may order a listing person (the landlord, an agent or a database operator) to remove the tenant's personal information from the database or amend the information in the database.

The ACAT may make the above orders only if satisfied that:

- the personal information is inaccurate, incomplete, ambiguous or out-of-date; or
- the listing of the personal information is unjust in the circumstances, having regard to:

- o the reason for the listing of the tenant's personal information; and
- o the tenant's involvement in the acts or omissions giving rise to the listing of the information; and
- o the adverse consequences a tenant has suffered or is likely to suffer because of the listing; and
- o any other matter the ACAT considers relevant.

3. *Where the tenant has not yet been listed*

A tenant who becomes aware that their personal information is going to be listed may also apply to the ACAT for an order:

- that the tenant's personal information not be listed in a tenancy database; or
- that the tenant's personal information not be listed in a tenancy database except with changes or conditions; or
- any other order the ACAT considers appropriate.

The ACAT may only make these orders if satisfied that the other considerations mentioned in (1) or (2) above are satisfied.

If you have any questions arising out of the information provided in this fact sheet, contact the **Tenancy Advice Service** at:
1300 402 512 or TAS@legalaidact.org.au