



Shelter SA
Housing: a basic human right

SHELTER SA's

SUBMISSION FOR

THE INQUIRY INTO

RESIDENTIAL TENANCY

DATABASES

DECEMBER 2003

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INTRODUCTION

Let us make no mistake about the seriousness of the issue at hand here. Currently, Residential Tenancy Databases (RTD's) can severely disadvantage a person who is listed on a default database, in that they will have much greater difficulty accessing housing for themselves and their family in the Private rental market. Given the decline in social housing and the subsequent long waiting lists, coupled with decreasing levels of homeownership and the lack of affordable housing in the Private rental market, negative (or "default") listings on Residential Tenancy Databases can render a person homeless or can force them to live in overcrowded situations with friends or family, or in substandard or over-priced accommodation. The existence of Residential Tenancy Databases means that tenants can be 'punished' (via restricted access to housing in the private rental market) for minor breaches of their tenancy agreement, even if a breach was caused by something beyond the tenant's control such as illness, accidents or redundancy.

When used appropriately, Residential Tenancy Databases are viewed by many as a legitimate tool to allow property owners to assess risk and protect their investments. However, the current arrangements in all States and Territories apart from Queensland, significantly contribute to the power imbalance between the landlord and the tenant. Indeed, threats of being listed on a Residential Tenancy Database hinder some tenants from exercising their legitimate rights under the relevant Residential Tenancy Act.

It is evident that Residential Tenancy Databases are not always used appropriately, as stated by the Lavarch Committee in Queensland (in 2002, before the new legislation was introduced):

"The operation of databases and their use by property agents and lessors are not always meeting the standards of fairness, accuracy and openness and as a result serious problems are being experienced by tenants and the community more widely" (Issues Paper, 2003: pg. 19)

Currently there are no regulations, (except in Queensland) as to reasons for listing a tenant. Listings may be inaccurate, trivial or vexatious. They may be the result of a personality clash, unrealistic expectations on behalf of the property owner, or simply be incorrect. Inconsistency and lack of agreed criteria for listing creates a situation where property managers can adversely affect (or threaten to do so) a tenant's future housing options, based on arbitrary standards. Tenants can be listed for things that are not breaches of the tenancy agreement or the Residential Tenancy Act, such as being a day late paying rent or having a poor periodic inspection. Listings may be kept on the Residential Tenancy Database indefinitely, even if a debt has been paid or the situation has been resolved. In some cases, "approved occupants" who are not the named tenants can also be listed on Residential Tenancy Databases.

Tenants are not required to be advised when they are listed or the reason, which means it is very difficult for them to correct inaccurate listings. Even after suspecting that they may be on a Residential Tenancy Database, tenants may have difficulty finding out which database they are listed on and how to access the information listed about them. There can be considerable cost for the tenant to access the



information held on the Residential Tenancy Database about them, such as the TICA public inquiry phone-line which charges \$5.45 per minute.

If a tenant wants to dispute the listing there are no set procedures to do so. This situation is made worse in South Australia because there is no independent Tenants' Advice and Advocacy Service for private renters to assist them with complaints against Residential Tenancy Database operators. The lack of such a service also makes it difficult to collect case studies about difficulties tenants are having with Residential Tenancy Database operators.

From discussions with various Real Estate Agents, it appears that Residential Tenancy Databases (RTD's) are used the majority of Real Estate Agents in South Australia during the application process to assist in assessing an individual's suitability for a tenancy. In Western Australia, private landlords, who are members of Landlords' Advisory Service, can also access the National Tenancy Database (NTD), although it is not clear if that is the case for SA and other states or not. The two major Residential Tenancy Database operators are TICA (Tenancy Information Centre Australasia) and NTD (National Tenancy Database). Both operate nationally, with TICA having 160,000 tenants on its database and NTD having 600,000 tenants on its database. (Guthrie, 2000:4). There are five other smaller Residential Tenancy Database operators: Barclay Group, RP Data, Trading Reference Australia, APOD and Console. TICA and NTD appear to be the Residential Tenancy Databases most commonly used in South Australia.

While the use of Residential Tenancy Databases has been more problematic in Queensland and New South Wales than other states, it is becoming an issue of increasing concern in South Australia. Shelter SA considers that the current lack of regulations (in all states except Queensland) needs to be urgently addressed to make the operation of Residential Tenancy Databases fairer and more transparent.

4.2 Issues Relating to Listing Tenants on Residential Tenancy Databases (RTD's).¹

4.2.1 Unfair Listings

Q48. What information should be listed on an RTD? Should the listing include information on the type of breach or reasons for the breach? Who should determine what information is listed on an RTD?

Recommendation 1:

Shelter SA recommends that the reasons why a person can be listed on a Residential Tenancy Database be the same nationally as they currently are in Queensland, where:

The Residential Tenancy Act 1994 (amended May 2003, and came into effect on 1 August 2003) specifies that:

¹ (Numbering, e.g. 4.2 and Q48, relates to sections of the Issues Paper that were relevant for Shelter SA to respond to.)



A named tenant can only be listed after the tenancy has ended for specific reasons:

- for monetary amounts, where the amount owing is more than the bond, for rent arrears (where the Notice to Remedy Breach process for rent arrears has been followed), for an amount owing after a conciliation agreement or Tribunal order (and the money hasn't been paid within the required time) or money owing after abandonment.
- for repeated breaches, where the tenancy has been terminated by a Tribunal for that reason.
- for objectionable behaviour, where the tenancy has been terminated by a Tribunal for that reason.

(from: "Tenancy Database FAQ", RTA Queensland)

No other reasons for listings are permitted by the Queensland legislation and Shelter SA believes these regulations should be adopted nationally.

Recommendation 2:

Shelter SA considers that the amendments to the *Queensland Residential Tenancy Act 1994* regarding Residential Tenancy Databases should be used as a basis for drafting National Legislation.

Recommendation 3:

Shelter SA also recommends that:

- (a) "Refer to Agent" comments be disallowed, as this means that the tenant cannot have a copy in writing of what is listed against him/her, which means that the tenant cannot address incorrect information. "*Such a listing gives a previous real estate agent carte blanche to make claims that do not have to be substantiated.*" (Michele Marvin, Tenants Union of Victoria, as quoted in *The Age*, Sept. 5, 2003)
- (b) Photographs of the condition of properties be disallowed.
- (c) "Good tenant" reports or "history only" reports be disallowed:
"*Queensland legislation does not allow general tenant histories, including positive histories, to be included on a Residential Tenancy Database. This is because Residential Tenancy Databases used in Queensland are predominantly default databases, and even the appearance of a tenant's name only on a database can be misconstrued as arising from a tenancy default.*" (Tenancy Database FAQ, RTA Queensland).
- (d) The type of breach should be listed, but the reason for the breach (e.g. unable to pay rent due to illness) not be included, as this is subjective (that is, the reason given by a property manager may be a very different reason than one given by a tenant).
- (e) Appropriate nationally based legislation be written defining what can and cannot be included on a Residential Tenancy Database, and that it be the responsibility of the property manager to ensure that information listed on a database is accurate, is not trivial and meets the listing criteria.



TICA currently states on its website that the following list provides breaches tenants can be listed on the database for:

DEFAULT LISTINGS

Arrears of rent, Broken tenancy agreement, Absconded, Dishonoured Cheques, Tribunal orders (Against the Tenant in favour of the Agent or Lessor), Court orders (Against the Tenant in favour of the Agent or Lessor), Failed to comply with Residential Tenancy Act, Rental bond claims, Failing to provide adequate notice, Sublet without consent, Bankruptcy, Entered into Payment Arrangement, Damage to property, Taking possession without consent.

HISTORY LISTINGS

Past tenant no default recorded, Satisfactory Payment History, Tenancy History, Current Tenant, and Recommended Tenant.

NTD on its website states that:

“Most tenants treat rented premises responsibly and a database built on objective information provides reference for such tenants - particularly when the rental market is "tight"....

The real estate agent / property manager will advise NTD of your conduct throughout the lease / tenancy, and that information will form part of your tenant history.”

Recommendation 4:

That Residential Tenancy Database operators be required to amend their websites to note that tenants in Queensland cannot be listed for some of the breaches currently listed on their websites, (e.g. dishonoured cheques, or history listings) according to the Queensland Residential Tenancy Act 1994.

Q49. Who do you think should be listed on an RTD? People who have signed the tenancy agreement or anyone occupying the house at the time?

Recommendation 5:

Only tenants named on the tenancy agreement should be listed on a Residential Tenancy Database. Approved or unapproved occupants, visitors or children should not be listed. This is because only the named tenant/s are accountable for the rental premises and obligations under the tenancy agreement.

(based on Queensland legislation, refer to “Tenancy Database Fact Sheet”, RTA Queensland)



Q50. When should a person be listed? E.g. During or at the termination of a tenancy agreement?

Recommendation 6:

Shelter SA recommends that, in line with Queensland legislation, a person should only be allowed to be listed after the termination of the tenancy agreement.

Below is an extract from the *Tenancy Database Frequently Asked Questions*, (Queensland Residential Tenancies Authority website) which highlights the importance of fair listing processes:

Why can't you list before the end of the tenancy? By the time the tenancy has ended, the tenant has moved on to another property before the listing catches up with him/her and the new agent won't be "warned".

Not being able to be listed until the end of a tenancy may allow some individual tenants to secure a new tenancy without the listing having yet occurred. This should not be the case with a "serial" bad tenant who would have been previously listed or should have been identified through other reference checks undertaken at the time of tenant selection and other methods of risk management used by property managers. The tenancy database provisions reflect national standards for handling personal information and the speed of listing should not override fair listing processes, particularly given the severe impact a listing can have on a person's access to housing.

Q51. In what circumstances should a person be listed? Are there any exceptions to these circumstances?

Recommendation 7:

- (a) Persons should only be listed after the tenancy has ended (following the recommendations outlined under Q48, pages 3 and 4 of this submission).
- (b) Persons should not be listed for "good", "neutral" or "history only" reports.
- (c) Persons should only be listed if the amount that they owe is more than the bond, and the amount shown as owing on their database listing should not include the bond amount.
- (d) Persons should not be listed if the amount owing is being paid under a conciliation agreement or Tribunal Order, and the tenant is fulfilling the obligations of that order.



Q52. Should a person be given the opportunity to review and correct inaccurate information before it is listed? If so, what process should be followed?

The current situation, where a tenant is advised at the time of application for the tenancy that they may be listed on a Residential Tenancy Database at some stage in the future is unfair, as months or years may have passed since they signed the tenancy application form. The tenant will therefore probably not know that they are listed on a Residential Tenancy Database, or even which Residential Tenancy Database they may be listed on. This means that tenants may be incorrectly or unfairly listed without their knowledge, which makes redress impossible. Sometimes it is only after having their tenancy application rejected many times or after an agent tells them that they are on a Residential Tenancy Database that they become aware that they are 'blacklisted'. As stated by the Victorian Consumer Affairs Minister, John Lenders, " 'Black-listing' tenants without their knowledge, let alone ability to correct the record, is unacceptable." (*The Age*, Sept. 5 2003)

If a person suspects that they are on a Residential Tenancy Database it can be expensive and inconvenient to find out what information is contained about them. For example, TICA charges \$5.45 per minute for tenants to access information about their listings. Due to changes in the Privacy Act, they do now also provide a postal service for \$11, although this option is less well advertised on the website than the telephone number. Currently the person or agency that has listed the person is not obliged to advise a tenant if they are listed or not, even if the tenant asks them directly. This can lead to a person having to find out (somehow) which database or databases that the agency uses, and then contact the Residential Tenancy Database operator directly.

Tenants should have the opportunity to know what information is being listed about them, and to have the chance to correct any incorrect listings. (Refer to response to Q. 58, pages 8 & 9 of this submission for discussion about the process for a tenant to dispute a proposed or existing listing.)

Recommendation 8:

The property manager should not make a listing on a Residential Tenancy Database unless they have taken reasonable steps to advise the tenant of the proposed listing including details about the proposed listing (including which RTD's, specific reasons or amounts). The tenant should be given a reasonable opportunity to consider the information that is going to be entered, and made aware of the dispute resolution process available.

(based on Queensland legislation, refer to "Tenancy Database Fact Sheet", RTA Queensland)

Q54. Should a person be informed about a listing on a RTD? If so, when should the person be informed and by who?

Refer to response to Q52, page 7 of this submission.



Q55. Should a property manager be required to provide reasons as to why they have refused an application?

Recommendation 9:

A property manager should be required to advise an applicant if their application was refused due to a default listing on a Residential Tenancy Database.

Q56. Is it reasonable for RTD operators to charge for accessing a listing? If so, why and under what circumstances is it appropriate? What is a reasonable charge?

As stated in the *Issues Paper* (2003: pg. 14):

“National Privacy Principle 6 requires an organisation holding personal information about an individual to provide the individual with access to that information except in a limited, and specified, number of circumstances. The Principle prohibits charging an individual to lodge a request for access. If the organisation is to charge the individual to provide access to records (e.g. to give them copies), then those charges must not be excessive.”

Currently NTD charges \$15.00 to cover immediate processing of requests for a copy of the personal information that NTD holds about a person, or no charge if a person can wait up to 10 working days.

TICA charges \$5.45 per minute for people who wish to check the information kept on file about them, which is surely an excessive rate. TICA also provides a postal service at the cost of \$11.00, which takes up to 14 days.

Recommendation 10:

- (a) There should be no charge for a person to receive a copy of any information listed about them by mail, and such information should be sent within 10 working days.
- (b) That TICA be required to include information about the option of tenants contacting them by mail, whenever it mentions the \$5.45 per minute public enquiry line.

Q58. If a dispute about a listing arises, how should it be resolved?

The following process assumes that the tenant has been advised about the details of the proposed / existing listing:

Recommendation 11:

The process for a tenant to dispute a proposed or existing listing should be:

- talk to the property manager and try to reach an agreement, or failing that,
- lodge a Dispute Resolution request with the Residential Tenancies Tribunal (or similar), requesting assistance in negotiating an agreement about a listing



- apply directly to the Residential Tenancies Tribunal (or similar) to seek an order for the property manager not to list, or to vary the listing on the Residential Tenancy Database.

(based on Queensland legislation, refer to “Tenancy Database Fact Sheet”, RTA Queensland)

Q59. Under what circumstances should a RTD listing about a tenant be changed/removed? Who should determine whether a listing should be changed/removed?

Recommendation 12:

- (a) If a property manager has gone out of business, any tenants listed by that agent should be removed.
- (b) If a rent roll is sold to another agent, the purchaser must ensure that they obtain the necessary information to support any listings made by the previous property manager, or have those listings removed.
- (c) Listings should be changed/ removed at the mutual agreement of the tenant and the property manager.
- (d) Listings should be changed/ removed after a hearing at the Residential Tenancies Tribunal (or similar) where the Tribunal makes an order to change or remove the listing.
- (e) Once a debt has been paid off in full, the listing should be removed. (It is not satisfactory to have “nil” written next to the debt, or the date that the debt was paid off.)

Recommendation 13:

If the Residential Tenancy Tribunal (or similar) orders the property manager to remove or to change the listing on a Residential Tenancy Database, then that person should be obliged to provide evidence to the tenant that the listing has been removed or changed as agreed.

Q61. How long should a listing remain valid? Should listing duration relate to the severity/type of the breach?

The Age (Sept. 5, 2003) reported the following story:

“David Pais had no idea that he was on a tenant black list. After his relationship broke up, Pais, the father of two girls aged four and six, could not afford to pay the rent on the family home, but his search for cheaper housing proved oddly fruitless. Despite good references from Real Estate Agents and employers, he was knocked back.”



It was only after he contacted the Tenants Union of Victoria that he discovered that he had been listed on a residential tenancy database almost 15 years earlier for a debt of \$241.40.”

This story highlights the problems with a system that does not advise the tenant about any listings, and a system whereby debts, even very small ones, are kept on the database indefinitely. Credit Reporting Agencies remove Credit default listing after five years, whether or not the debt has been paid. It would seem equitable that similar timelines be prescribed for Residential Tenancy Databases.

The TICA website currently states that:

“Once listed a tenant will remain on file until such time as the debt has been cleared and the time specified for listing a default by TICA has been completed.

There are three time periods that a tenant default can remain on the TICA database. These periods are three years, five years or indefinitely.

Three years: If a default is recorded with TICA for a breach of a tenancy agreement where no money has been lodged, the recording will remain for three years after the recording was lodged. After the three years has expired and upon confirmation from the listing member that no monies are owing the comment will be changed to read "Tenancy History Only"

Five years: If a default recorded with TICA is for a debt incurred and a dollar value has been lodged, the recording will remain for five years after the debt was cleared. However once the debt is cleared TICA will record that the debt was cleared and the report will show the date it was cleared. After the five years has expired the debt amount will be removed and the comment will be changed to read "Tenancy History Only".

Indefinitely: Your default details will remain on the database until such time as the debt owed has been satisfied. This recording will show future agents how long the debt has been outstanding. It would be in your best interest not to fall into this area of the system.”

NTD had no timeframes prescribed and listings were kept “indefinitely”, although they were considering putting in time frames / limits (Guthrie, 2000: pg. 10).

The National Privacy Act states that “Databases must have an information retention policy” but gives no further guidelines or requirements. Therefore database company policies will vary regarding retention of information on a database, resulting in variations across the industry.” (Guthrie, 2000: pg. 28).

Recommendation 14:

- (a) There needs to be consistency in the policies regarding retention of information on a database, as a tenant should not be penalised more by one company than another.



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- (b) Once the time frame has expired, the listing should be removed totally, rather than being transferred to a “Tenant History Only.”
 - (c) That default listings be removed once the debt has been paid in full.
 - (d) That default listings be removed after five years, whether or not the debt has been paid.

CONCLUSION

Given the serious consequences that being listed on a Residential Tenancy Database can have on a person’s ability to access appropriate housing, the regulation of Residential Tenancy Databases by National Legislation is absolutely critical. Unfair and unregulated use of Residential Tenancy Databases can undermine tenants’ rights and the operation of State tenancy laws, and contribute to increasing levels of homelessness.

The importance of this issue is acknowledged by the SA Labor Party Housing Platform, (point 37, October 2000), which states that Labor “*will support the regulation of Residential Tenancy Databases, including independent monitoring of compliance and consumer access to affordable dispute resolution processes.*”

Legislation regarding Residential Tenancy Databases must include (but not be limited to):

- fair listing criteria
- a requirement for property managers to make reasonable attempts to advise tenants of a potential listing, prior to it being listed
- effective dispute resolution processes
- the right for people to access details about their listing without charge
- the abolition of ‘neutral’, ‘good’ or ‘history only’ listings
- a clear process for the removal of incorrect or outdated listings, or where debts have been paid in full.

Shelter SA considers that the amendments to the *Queensland Residential Tenancy Act 1994* regarding Residential Tenancy Databases should be used as a basis for drafting National Legislation.



References:

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Pryor, L. “Accuracy of tenancy blacklists questioned”, (*The Sydney Morning Herald*, November 26, 2003).

‘Bad tenant’ databases: tuv.org.au/bad Residential Tenancy Databases.html

Landlords’ Advisory Service website: www.landlordsadvisory.com.au

National Tenancy Database website: www.ntd.net.au

“Residential Tenancy Databases, Issues Paper” (November 2003, *Ministerial Council on Consumer Affairs Standing Committee of Attorney –General*).

South Australian Labor Party website: www.sa.alp.org.au/policy/platform/house.html

“Tenancy Database Fact Sheet”, *Residential Tenancies Authority Queensland*, (www.rta.qld.gov.au/tenancy_databases.cfm)

“Tenancy Database FAQ”, *Residential Tenancies Authority Queensland*, (www.rta.qld.gov.au/tenancy_databases.cfm)

Tenancy Information Centre Australasia (TICA) website: www.tica.com.au

“The lockout lists”, (*The Age*, September 5, 2003).