NEW YORK STATE BAR ASSOCIATION

LEGALEase

The Use of Tenant Screening Reports and Tenant Blacklisting

NYSBA

What is the Tenant Blacklist

Tenants who are named in Housing Court holdover and nonpayment proceedings end up on what is called the "tenant blacklist." The Office of Court Administration sells Housing Court data to tenant screening companies. These companies use this data to make reports about tenants. Landlords then use the reports to decide whether to rent to you. Most landlords will not rent to you if you have ever been in Housing Court. If your name appears in the Housing Court's database, it can be difficult to find a new rental in New York City and other cities across the country.

How Tenant Blacklisting Works

The New York State Office of Court Administration ("OCA") sells data about eviction cases brought in the New York City Housing Court to "tenant screening bureaus" ("TSBs").

The data, which is transmitted electronically from OCA's computer system to the TSBs' computers, includes information about the initial filing of each case (names of the parties, type of case, amount sued for, and index number) and a single word disposition (e.g., judgment, settled, warrant of eviction issued, dismissed, discontinued, etc.). Tenants sued by a landlord find themselves blacklisted from renting another rental, regardless of why the case was started and regardless

of the outcome of the case. Even tenants who have won their case end up on the Tenant Blacklist.

TSB reports are often inaccurate, incomplete, or misleading — or all three. For example, if a tenant is awarded a 90% rent abatement because of deplorable conditions in the home, a TSB will report the disposition of that case simply as a "judgment" against the tenant for the remaining 10% of the rent. That makes it appear as though the landlord won the case when, in fact, the tenant won the case.

Traditional Credit Reports v. Tenant Screening Reports

Traditional Credit Reports

A credit report is a record of your credit activities. It lists any credit card accounts or loans you might have, their balances, and how regularly you make payments. It also shows whether any action has been taken against you because of unpaid bills.

Items Reported on Traditional Credit Reports

(1) Identifying information: Full name and any aliases, current and previous addresses, birthdate, and list of employers.

(2) Credit information: Any accounts held with banks, retailers, and credit card or account issuers.

(3) Public records information.

There are only three major credit bureaus. They are Experian, Trans Union, and Equifax ("The Big 3").

Tenant Screening Reports

- Reports are mostly used by prospective landlords in the tenant selection process.
- There are hundreds of screening companies.
- The report contains a list of all Housing Court cases filed for at least the past 7 years.

Housing Court Cases on Traditional Credit Reports

Type of Judgments

- Money Judgments from nearly all types of litigation appear on credit reports and drastically lower your credit score
- Possessory Judgments from eviction or foreclosure cases also appear on your credit report and lower your credit score.

Why Judgments Matter

- When you consent to a judgment in a Housing Court case, it appears not only on your tenant screening report but also on the "Public Record" section of the credit report.
- Consenting to a judgment dramatically lowers your credit score. Whenever possible, you should avoid consenting to a judgment in Housing Court.

Credit Scores

What is a credit score?

- A 3 digit number created by either FICO (Fair Issac) or a credit bureau based on many different sources of information.

Why credit scores matter

- It can affect your ability to obtain insurance, employment, credit card rates, auto loans, mortgages, payday loans.
- Judgments (whether they are satisfied or not) greatly lower score.
- Adverse information on your credit report may also prevent you from getting a loan at a fair interest rate.

Length of time reported

- The law allows tenant screening bureaus to report most items for 7 years.
- Credit bureaus may report bankruptcies for 10 years.

- If you find that a credit bureau is reporting old information, you should write to all 3 credit bureaus demanding that they remove the old items from your report.

How Housing Court Cases Appear on Traditional Credit Reports

How does the court record judgments?

- The court will record a judgment as either money (usually for rent) or possessory (when a landlord wins a Housing Court case and is allowed to evict you), or both.

How do credit report companies get information?

- Companies working for the credit bureaus obtain the information from the courts.
- Typically, only Housing Court ***judgments*** (not merely cases filed) appear on credit reports (although Trans Union is known to record filings in collection suits).

How Eviction Court Cases Appear on Tenant Screening Reports

What is reported & how it is reported to tenant screening bureaus?

- All new case *filings* (not only judgments, as with the big 3 credit bureaus)

and all events occurring each day are reported. Even a case filed against you in error appears on your tenant screening report.

- The New York State Office of Court Administration (OCA) formerly sold New York City court information, including tenants' names and addresses, in bulk electronic form by a computer-to-computer transfer. In March 2012, the OCA announced that it will no longer include the names of tenants involved in New York City Housing Court eviction proceedings in the electronic data feed it sells to tenant screening companies. The OCA's decision to omit this information from the electronic data feed is a victory for tenants because it will now be much harder for landlords to engage in blacklisting.

  This development does not, however, mean that blacklisting is over. The OCA continues to provide a daily electronic feed of all new cases and updates on pending ones. Although the feed will not contain the tenants' names, it is not difficult to match an index number to the tenant's name through the court's public access computer. Until the OCA stops providing the electronic feed to the data companies, tenant blacklisitng will continue.

- Additionally, the OCA is still selling, Housing Court data to anyone with a

contract to buy it. Landlords will likely use creative strategies to deal with the change in the OCA's policy regarding electronic Housing Court data.

Companies Buying Housing Court Data

Known Companies

- EvictionRecords.com
- FIRST ADVANTAGE SafeRent
- LexisNexis RISK & INFORMATION ANALYTICS GROUP
- NATIONAL TENANT NETWORK, INC.
- ON-SITE MANAGER, INC.
- TransUnion RentPort, Inc.

Unknown Companies

- Part of the problem with corrected errors on tenant screening reports is that there is a continuous resale of data to hundreds of other TSBs.
- There are about 650 TSBs in the United States. That makes it impossible to ensure that information for sale about your Housing Court history is accurate. The inability to dispute the accuracy of these reports leads to blacklisting good tenants.

Actual Tenant Screening Report

The tenant who is the subject of this report shown below was sued by his landlord in an owner's use case. The landlord wanted the apartment back, not because the tenant did anything wrong, but because the landlord claimed he wanted to live there himself.

This case was settled without an eviction, meaning that the tenant got to stay in his apartment.

The applicant met all criteria but one: A Housing Court case was filed against him. As a result, he was denied the apartment.

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LEASING RESIDENTS SETTINGS TOOLS REPORTS [redacted] Main Menu Log Out Help

Select Apartment > Applicant Info > Screening > Lease Terms > Finish

Overall Recommendation: DECLINE

This application fails to meet one or more of your credit decision settings that has been set to "Pass/Fail". As per your instructions, this recommendation has been automatically set to Decline. On-Site Manager, Inc.'s liability is strictly limited as put forth in the Terms of Service.

[redacted]

Score for [redacted] DECLINE				What's This?
Default Criteria	**Importance**	**Pass**	**Fail**	
Annual income to rent ratio exceeds 40.0	Extremely	✓		
Gross monthly income after rent and estimated debt exceeds 30.0% of monthly income	Extremely	✓		
Percentage of derogatory credit accounts does not exceed 25.0%	Moderately	✓		
Unpaid collections and grossly delinquent past due balances do not exceed $200.00	Moderately	✓		
Any bankruptcy in applicant's history has cleared	Very	✓		
Has not had a housing court lawsuit or landlord collection filed	Pass/Fail		✗	
Has not had more than 1 misdemeanor conviction	Pass/Fail	✓		
Has not had any felony convictions	Pass/Fail	✓		
Is not a registered sex offender	Pass/Fail	✓		

[redacted]

Credit Quick Summary		What's This?
Total annual income (includes spouse) (reported by Applicant)	$65,000.00	
Annual income to rent ratio	48.6 (based on rent of $1,750.00)	
Estimated monthly debt and rent payments	$1,828.65 (26% of monthly income)	
Total number of accounts	16	
Accounts with no late payments	16 (0 unpaid past due)	
Accounts paid 30-59 days past due	0 (0 unpaid past due)	
Accounts paid 60-89 days past due	0 (0 unpaid past due)	
Accounts paid more than 90 days past due	0 (0 unpaid past due)	
Total outstanding balance	$4,012.00 ($0.00 past	

Problematic Reporting

Information provided to TSBs that is inaccurate, incomplete, or misleading results in tenant screening reports that are inaccurate, incomplete, or misleading.

Negative Effects of Tenant Blacklisting

- New York State law gives tenants the right to withhold rent to get needed repairs in their rental homes. Blacklisting by TSBs takes away a tenant's right to withhold rent.
- Blacklisting prevents many qualified tenants from obtaining homes in competitive rental markets like New York City.
- Blacklisting deprives tenants of the ability to use the Housing Court to enforce their rights in a variety of contexts: sublet cases, dog cases, primary residence cases, and owner's use cases.

Widespread Effect

- The effects of tenant blacklisting are widespread and national in scope. Landlords outside New York City also use tenant screening reports.
- Approximately 650 companies across the United States provide tenant screening reports to prospective landlords.

Positive Changes & Reforms For Tenants

Class Action Filed Against A TSB

White v. First American Registry, Inc. is a landmark case that was filed against the largest TSB in the United States. The case was filed by a tenant who had been blacklisted from renting an apartment as a result of erroneous information on his tenant screening report, but the case was also brought on behalf of all blacklisted tenants. In this landmark case, a TSB was reporting that a case was "pending" against the tenant when it had actually been dismissed years earlier.

The case settled after many important rights for tenants were secured. As part of the settlement, the TSB agreed to pay money to those who were harmed and to stop the sloppy practices that had lead to blacklisting because tenants' screening reports were inaccurate and incomplete.

Below is an excerpt from the order of Judge Lewis A. Kaplan after the case settled. (3/7/07)

"This lawsuit arises by reason of the nature of defendants' business, which consists of selling landlords the opportunity to consult a list of individuals who have been involved in landlord-tenant litigation. As defendants doubtless well understand, risk averse landlords are all too willing to use defendants' product

as a blacklist, refusing to rent to anyone whose name appears on it regardless of whether the existence of a litigation history in fact evidences characteristics that would make one an undesirable tenant.

"Thus, defendants have seized upon the ready and cheap availability of electronic records to create and market a product that can be, and probably is, used to **victimize blameless individuals**. The problem is compounded by the fact that **the information** available to defendants from the New York City Housing Court ('NYCHC') **is sketchy in the best of cases** and inaccurate and incomplete in the worst. Any failure by defendants to ensure that the information they provide is complete, accurate, and fair heightens the concern – and there has been ample reason for heightened concern."

Other Important Changes

Many attorneys, advocates, and public officials continuously fight to change the unfair practice of Tenant Blacklisting. As a result of their work, the Office of Court Administration (OCA) no longer sells information on cases that were never put on the court's calendar — cases for which the landlord bought an index number but then never filed the papers to get the case on the calendar.

OCA has also stopped including tenants' addresses with the names of the respondents (tenants) in court cases. This means

that tenant screening companies get only the names of the tenants in the cases and must look up each case to determine where the tenant lived when the case was brought.

Important Changes in NYC Law: Tenant Fair Chance Act

- In February 2010, the New York City Council passed a law that requires management companies, broker's offices, and landlords that rent an apartment in a building with more than 5 units to notify prospective tenants whether or not they use tenant screening reports.
- The law mandates that these companies or groups post in their offices and in plain sight the name of the TSB they use. Landlords and brokers must also provide the address of the TSB they use.
- If the management companies, brokers, or landlords use written applications, they must include in writing (1) whether or not they use a tenant screening report, (2) if so, what company they use, and (3) how to contact that office so that tenants can request a free annual copy of their report. With this information, tenants can obtain a copy of their report and attempt to clear up any erroneous information on their record before applying for an apartment.

Keep Your Name Off the Blacklist and Out of the Database!

Avoid Blacklisting:

- If you are a Rent Stabilized or Controlled Tenant and you have received a "notice of non-renewal" or a "notice to cure," try to resolve the issue with your landlord before a Housing Court case is filed against you.
- If you have bad conditions in your apartment, file an **HP (repair) proceeding** in Housing Court rather than withhold your rent and demand that the landlord make the necessary repairs. TSBs do not report HP proceedings.
- If you receive a rent demand, try to settle so that you are not sued in court for nonpayment of rent. The filing of such a suit will likely cause you to be blacklisted.

What to do if a case has been filed against you

- **DO NOT CONSENT TO A JUDGMENT IF POSSIBLE!!**
- Ask your landlord for a written agreement, called a "stipulation," that does not include a judgment. The stipulation can state that the tenant will pay the rent by a certain date and that the case will be restored to the calendar if the payment is not made.

- If the landlord will not give you a stipulation without a judgment and you cannot get a good agreement without a judgment, you should get the following language written into your stipulations: **"upon payment, judgment will be vacated."** By getting this language, if you pay the money you owe and the judgment is not vacated, you can restore the case to the calendar by going to the clerk's office at the court and filling out an order to show cause to ask the judge to enforce the stipulation. Make sure that you bring a copy of your stipulation as evidence and get the judge to vacate the judgment as required by the stipulation.

Other important language to include in any stipulation you enter into:

- Make sure that the case is "**discontinued with prejudice and withdrawn."**
- Get the landlord to consent to the **"expungement of the proceeding from the database of any tenant screening bureau."**
- **"Deemed Satisfied"** is a MEANINGLESS phrase and will not get you off the Blacklist.

Make sure you ask the judge to "so order" or sign any stipulation you enter into.

What to do if you are on the Blacklist

- A prospective landlord that denies you a home based on information from a TSB is required to give you a letter (called an **adverse action letter**) stating the reason for the denial and the name of the TSB company it used.
- You should then contact that company to ask for a copy of your report. The company is required by the **federal Fair Credit Reporting Act** to give you a free copy of your report.
- Once you get the copy of the report, look at it to see whether the listing is a mistake (for example, the TSB named the wrong person or you never lived at the address listed in the report). Housing Court cases can appear for **seven years** after the case was filed. If your case is older than that, you should write to the TSB demanding that it remove the old case from your report.
- If your report contains any inaccuracy or mistake, you should write to the screening company to ask that it correct the mistake. If the TSB is not reporting the outcome of a case favorable to you, you can also write to ask that the report reflect what happened in the case. The screening company has **30 days** to comply under the federal law.

Below is a sample letter you can use to write to the TSB.

Sample Letter to a TSB

May 9, 2009

First Advantage Safe Rent
Consumer Relations Department
7300 Westmore Road, Suite 3
Rockville, MD 20850

Re: Landlord LLC v. Jane Doe
Index No. L&T 55555//06
Civil Court, New York County

To Whom it may Concern:

I am the respondent in the above-referenced proceeding. On March 1, 2009, the proceeding against me was discontinued with prejudice pursuant to a "so ordered" stipulation. (Copy enclosed.)

The landlord consented in that order to delete this proceeding from the database of any tenant-screening bureau.

It is my understanding that your firm is a subscriber to the New York City Housing Court electronic database.

Based upon the above, I hereby demand that this proceeding be expunged from your database and that you confirm that expungment to me in writing. Feel free to contact me if you have any questions.

Very truly yours,

Tom B. Tenant

Encl.

Judgments on Traditional Credit Reports

Although Housing Court filings appear on TSBs, only judgments in Housing Court cases appear on **credit reports (TransUnion, Experian & Equifax)**.

Tenants should obtain their credit report from each of the 3 credit bureaus to confirm that each is accurate. The Fair Credit Reporting Act gives individuals the right to get a free copy of each of their 3 credit reports once every year.

How to get a free report:

Go to: www.annualreport.com. OR you can write to the 3 credit bureaus to request your free copy.

THE USE OF TENANT SCREENING REPORTS AND TENANT BLACKLISTING

SUCCESS!

February 16, 2010

Mr. James Fishman
Fishman & Neil, LLP
305 Broadway, Suite 900
New York, NY 10007

Dear Mr. Fishman:

We have received your letter dated March 26, 2009, along with the Civil Court documents for [redacted]

Pursuant to your request, On-Site manager, Inc. will expunge the names of [redacted] & [redacted] from its records that are received from the New York City Housing Court electronic database.

We trust this letter addresses your request.

Respectfully,

Stacy Pello
Renter Relations

This pamphlet, based on New York law, is intended to inform, not advise. No one should try to interpret or apply any law without an attorney's help. Produced by the New York State Bar Association in cooperation with the Real Property Law Section.

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