Residential Tenancy Databases

Rights under the New Regulations

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Background – what is a tenancy database and what are the regulations?

Residential tenancy databases (sometimes called "blacklists") are privately owned databases that contain information about a tenant's rental history. They are used by real estate agents and landlords to select prospective tenants.

A real estate agent can pay a membership fee to access a database when choosing a tenant. As a member, they can use a database to screen prospective tenants and enter a listing for previous tenants. There are several national databases in Australia. The most commonly used in Victoria is the National Tenancy Database. Other databases include: Barclay MIS and TICA (Tenancy Information Centre of Australia).

Previously, residential tenancy databases were unregulated in Victoria. However, on **1 September 2011**, new regulatory requirements commenced under Part 10A of the *Residential Tenancies Act* 1997 (Vic) (**RTA**).

This fact sheet sets out information about the new regulatory regime and what rights your client might have in relation to tenancy databases.

Key things to remember about the new regulations (in general terms):

- a landlord cannot rely on a residential tenancy database without notifying the client;
- listings can only be made for particular breaches and after the tenancy agreement has ended;
- the landlord has an obligation to correct inaccurate information on a database;
- tenants can apply to VCAT for an order that information on a database be amended or removed; and
- listings cannot be kept on a database for more than three years.

Relevance to the HPLC's clients

An entry on a tenancy database can prevent clients from accessing the private rental market. Given that the waiting list for public housing is up to 15 years and there is an acute shortage of emergency accommodation, private rental properties are sometimes the only option for clients facing eviction.

In addition to private rental being difficult to afford, if a tenant is blacklisted they will have serious difficulties accessing a property.

It is therefore important that we are able to properly advise our clients on their rights in relation to these databases, including whether there are options to have listings removed or amended.

Landlord notification obligations

- is the landlord using a tenancy database and is the client listed on it?

When a person applies to rent a property (i.e. to enter into a tenancy agreement), the landlord* must give that person written notice:

(a) when the application is made, if the landlord usually uses a residential tenancy database for deciding whether to enter into tenancy agreements (s 439C)

The notice must state:

- the name of each of the residential tenancy databases that the landlord usually uses (or may use) to decide whether to enter a tenancy agreement with a person;
- that the reason the landlord uses the database is for checking a person's tenancy history; and
- how the client can contact the relevant database operator(s) to obtain information.

The landlord must give this information even if they do not intend to use the database in your client's particular case.

(b) within 7 days of checking a database, if that check reveals a listing of the applicant's personal information (s 439D)

The notice must state:

- the name of the database;
- that personal information about the applicant is on the database;
- the name of each person who listed the personal information on the database (if this is available); and
- how the applicant can have the personal information removed or amended.

*"Landlord" is defined in section 3 of the RTA to mean the person by whom premises are let under a tenancy agreement (or to be let under a proposed tenancy agreement). For the purposes of Part 10A, "landlord" also includes rooming house owners, caravan park owners, caravan owners, site owners and the agent of a landlord. Therefore, "landlord" in this fact sheet includes real estate agents.

An explanation of these notification requirements may provide some comfort to your client because it means that the "blacklist" is more transparent i.e. they will know if a check might be (or has been) done, who with and how to contact them.

What can be listed on a database (and what cannot)?

A landlord must **not** list a person on a tenancy database unless (s 439E):

- the person was named on the tenancy agreement;
- the tenancy agreement has ended;
- the person breached the tenancy agreement or specified provisions of the RTA, including by:
    - maliciously damaging a rental premises, rooming house or caravan site;
    - endangering a neighbour's safety;
    - failing to pay rent;
    - failing to comply with a compliance or compensation order made by VCAT under section 212 of the RTA;
    - using a rental premises, room in a rooming house or caravan site for an illegal purpose; or
    - sub-letting a rental premises without the consent of the; and
- **because of the breach**, either:
    - the person owes an amount more than the bond; or
    - VCAT has made a possession order.

The personal information on the database must relate to the breach and must be accurate, complete and unambiguous.

If a possession order is made because, for example, the landlord wants to move into the property or to sell or renovate the property, an entry cannot lawfully be made on a tenancy database.

Importantly, listings cannot be kept on a database for longer than three years (s 439K).

Landlord obligations to notify, amend, remove and provide information

Before listing a tenant on a database, the landlord (or the database operator) must (s 439F):

- give the tenant a copy of the personal information they plan to enter on the database;
- give the tenant 14 days to review the information and object to its entry on the database or make submissions about its accuracy, completeness and clarity; and
- consider the submissions or objections made by the tenant (steps 2 and 3 are not required if the information is publicly available on court or Tribunal records).

If a landlord becomes aware that information listed is inaccurate, incomplete, ambiguous or out of date, they must notify the database operator within seven days (s 439G). The notice must:

- identify the inaccurate, incomplete or ambiguous information and the amendments needed to rectify it; or
- tell the operator that the information is out of date and must be removed.

The operator must change or remove the listing within 14 days of being given the notice (s 439H).

Getting access to information on a database

If a tenant makes a written request for a copy of personal information to (s 439I):

- a landlord who has listed their information on a database; and/or
- a database operator that keeps their personal information on a database,

the landlord or database operator must provide that information within 14 days of the request.

Any fees charged by a landlord or database operator for providing personal information must not be excessive and the fee can only be charged for providing the information (i.e. not for lodging a request).

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Penalties for breach – CAV complaint

A landlord (or database operator) can be fined **20 penalty units** for:

- failing to give written notice about the databases they usually use (s 439C);
- failing to give written notice if they access a database about a person and find information about them (s 439D);
- adding information to a database without giving the person a copy of that information (s 439F(1));
- listing information without giving the person 14 days to respond and considering this response (s 439F(2)); and
- failing to provide a copy of a person's listed information within 14 days of the person requesting it in writing (s 439I).

There is a fine of **60 penalty units** (for an individual) or **300 penalty units** (for a company) if:

- within seven days of becoming aware that information it has listed is inaccurate, incomplete, ambiguous or out of date, a landlord does not write to the database operator requesting amendment or removal of that information (s 439G);
- within 14 days of receiving a written request for amendment or removal of information from a landlord, a database operator does not amend or remove the information (s 439H); or
- a database operator keeps information listed for longer than three years (s 439K).

1 July 2011 to 30 June 2012 – one penalty unit is $122.14.

A tenant who believes a landlord or database operator is in breach of one of these provisions should lodge a complaint with Consumer Affairs Victoria using the Residential Accommodation Complaint Form.

Applying to VCAT for amendment or removal

If a landlord (s 439L):

- fails to give written notice if they access a database about a person and find information about them*;
- lists impermissible information on the database (i.e. other than particular breaches by particular people);
- lists information without giving a person 14 days to respond to the proposed listing and considering this response; or
- fails to write to the database operator to request amendment or removal within seven days of becoming aware that information it has listed is inaccurate, incomplete, ambiguous or out of date,

or a database operator:

- fails to amend or remove personal information within 14 days of being requested to do so by the landlord; or
- keeps information listed for longer than three years,

a tenant can apply to VCAT for an order:

- requiring a landlord or database operator to amend or remove personal information that is listed on a database; or
- prohibiting a landlord or database operator from listing personal information on a database.

A tenant can make an application even if the information was entered on the database before the regulations commenced (i.e. before 1 September 2011).

These provisions do not provide for compensation. If a client suffered injury as a direct result of an offence under these provisions, an application for compensation may be able to be made under Division 2, Part 4 of the *Sentencing Act* 1991 (Vic).

* It is not clear how this will work in practice