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The Use of Tenant Screening Reports and Tenant Blacklisting



NEW YORK STATE BAR ASSOCIATION

THE USE OF TENANT SCREENING REPORTS AND TENANT BLACKLISTING

What Is the Tenant Blacklist

Tenants named in New York City Housing Court in summary holdover and nonpayment proceedings could end up on what is called the “tenant blacklist.” Before June 2019, state law allowed the New York State Office of Court Administration (OCA) to sell NYC Housing Court data to tenant screening companies. These companies used these data to make reports about tenants. Landlords then used the reports to decide whether to rent to a tenant. Historically, many landlords would not rent to a tenant who had ever been to court in a landlord-tenant eviction proceeding. Formerly, if your name appeared in the Housing Court database, it could be difficult to find a new rental in New York and other states across the country.

How Tenant Blacklisting Previously Worked

OCA previously sold to “tenant screening bureaus” (TSBs) NYC Housing Court data about eviction cases brought in the NYC Housing Court.

The data, which was transmitted electronically from the OCA’s computer system to the TSBs’ computers, formerly included information about the initial filing of each case (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 found themselves blacklisted from securing another rental, regardless of why the case was started and regardless of the outcome of the case. Even tenants who had won their case ended 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 would 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.

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Developments in Tenant Blacklisting

In March 2012, OCA announced that it would no longer include in the electronic data feed it sells to TSBs the names and addresses of tenants involved in NYC Housing Court eviction proceedings.

OCA's decision to omit this information from the electronic data feed was one of the first victories for tenants.

In October 2016, New York City Mayor Bill de Blasio announced a new affordable-housing lottery rule to prohibit a developer or leasing agent from denying housing to otherwise-qualified applicants solely on the basis that they were named in a Housing Court proceeding.

The Housing Stability Protection Act of 2019 (HSTPA), which went into effect in June 2019, made significant changes to tenants' rights in the blacklisting context. HSTPA banned OCA from selling data related to tenancies, evictions, and rent.

HSTPA further provides that tenants may not be denied an apartment "solely" because they appear on the blacklist. The new law does not create a private cause of action against a landlord for violating HSTPA. Instead, a tenant must file a complaint with the NYS Attorney General's office. Tenants may not bring their own lawsuit against the landlord under this law. Because this law is still new, it is unclear whether blacklisting will remain an obstacle to secure housing for tenants who have been named in a Housing Court case.

In a further attempt to strengthen the anti-blacklisting laws, New York City Councilmember Benjamin Kallos introduced a measure that would allow the city's Commission on Human Rights to investigate suspected blacklisting. His proposal, if passed, would also permit tenants to pursue cases in court privately.

However, tenant advocates believe that, as long as brokers are permitted to use tenant screening reports and screening companies remain unregulated, the tenant blacklist will continue to present issues for tenants applying for apartments.

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Tenant advocates should also note that HSTPA still allows landlords to consider non-pretextual considerations like bad references, bad credit, out-of-state evictions, unverifiable sources of income, and criminal convictions.

Traditional Credit Reports vs. 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, birth date, 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: Experian, TransUnion, and Equifax (the “Big 3”).

Tenant Screening Reports

- Prospective landlords have mostly used reports in the tenant selection process.
- There are hundreds of screening companies, all of which remain unregulated.
- Any report published must contain a list of all Housing Court cases filed for at least the past seven 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.

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- Possessory judgments from eviction or foreclosure cases also appear on your credit report and lower your credit score.

Why Judgments Matter

- Before 2015, when a tenant consented to a judgment in an NYC Housing Court case, or when a Housing Court judge entered a judgment against a tenant after a hearing or trial, the judgment appeared not only on the tenant's screening report but also on the "Public Record" section of the credit report.
- Now credit bureaus may report a judgment on a credit report only if they have at least 3 of the following pieces of information about a consumer: person's name, address, Social Security number, and date of birth. As a result of this new requirement, many consumers have had judgments removed from their reports and have seen large increases in their credit scores.
- Consenting to a judgment may still dramatically lower your credit score if the credit or tenant screening companies have enough information about you. Whenever possible, you should avoid consenting to a judgment in Housing Court.

Credit Scores

What is a credit score?

- A credit score is a three-digit number created by either FICO (Fair Isaac) or a credit bureau based on many different sources of information.

Why credit scores matter

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

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Length of time reported

- The law allows tenant screening bureaus to report most items for seven years.
- Credit bureaus may report bankruptcies for 10 years and judgments for 20 years.
- If you find that a credit bureau is reporting old information, you should write to all three credit bureaus demanding them to remove the old items from your report on the basis that they have become obsolete.

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 may continue to get the information manually from the court's database, even though OCA may no longer provide this information to them via an electronic stream. It will, however, be very expensive and time-consuming for credit bureaus to do so..
- Typically, only NYC Housing Court judgments (not merely cases filed) appear on credit reports (although TransUnion is known to record filings in collection suits).

How Eviction Court Cases Appear on Tenant Screening Reports

What is reported and 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 can appear on your tenant screening report.

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Companies Buying Housing Court Data

Known Companies

- EvictionRecords.com
- CoreLogic SafeRent
- LexisNexis Risk Solutions
- On-Site Manager, Inc.
- TransUnion Rental Screening

Unknown Companies

- Part of the problem with correcting errors on tenant screening reports is that there is a continuous resale of data to hundreds of other TSBs that pop up almost daily.
- 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

A tenant who is the subject of this report shown below was sued by his landlord in an owner's use holdover 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. But when the tenant later decided to move, the owner's use case, which the tenant won, appeared on his report.

The tenant met all criteria but one: The owner's use case that was filed against him. As a result, his prospective landlord denied him an apartment on that basis.

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RentalEXPRESS
BY REALTOR.COM

LEASING ACCOUNTS RENTALS TOOLS REPORTS **RENTALS** Mail Mail List Out Help

Default Applicant > Account Info > Screening > Lease Terms > Print

 **Overall Recommendation: DECLINE**

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

DECLINE

Score for [REDACTED] DECLINE	Score's Title	Importance (Pass/Fail)
Default Criteria		
Annual income to rent ratio exceeds 40.0	Extremely	<input checked="" type="checkbox"/>
Spree monthly income after rent and estimated debt exceeds 61.2% of monthly income	Extremely	<input checked="" type="checkbox"/>
Percentage of derogatory credit accounts does not exceed 25.0%	Moderately	<input checked="" type="checkbox"/>
Unpaid collections and priority delinquency past due balances do not exceed \$275.00	Moderately	<input checked="" type="checkbox"/>
Any delinquency in applicant's history has cleared	Very	<input checked="" type="checkbox"/>
Has not had a housing court lawsuit or landlord collection filed	Pass/Fail	<input checked="" type="checkbox"/>
Has not had more than 1 misdemeanor conviction	Pass/Fail	<input checked="" type="checkbox"/>
Has not had any felony convictions	Pass/Fail	<input checked="" type="checkbox"/>
Is not a registered sex offender	Pass/Fail	<input checked="" type="checkbox"/>

[REDACTED]

[REDACTED]

Credit Quick Summary		Score's Title
Total annual income (includes spouse) reported by applicant	\$85,000.00	
Annual income to rent ratio	48.8 (based on rent of \$1,750.00)	
Delinquent monthly debt and rent payments	\$1,805.40 (10% of monthly income)	
Total number of accounts	13	
Accounts with no late payments	12 (2 unpaid past due)	
Accounts paid 30-60 days past due	1 (2 unpaid past due)	
Accounts paid 60-90 days past due	0 (0 unpaid past due)	
Accounts paid more than 90 days past due	0 (0 unpaid past due)	
Total delinquent balance	\$4,823.00 (\$3.00 past)	

Problematic Reporting

Inaccurate, incomplete, or misleading TSB information 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. But because a fear of blacklisting causes many tenants not to litigate their just warranty-of-habitability defenses, TSBs take away a tenant's right to withhold rent.
- Blacklisting has prevented many qualified tenants from obtaining homes in competitive rental markets like New York City.

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- Blacklisting has deprived tenants of the ability to use Housing Court to enforce their rights in a variety of contexts: sublet cases, dog cases, primary residence cases, and owner's use cases.
- The effects of tenant blacklisting have been widespread and national in scope. Landlords outside New York City have also used tenant screening reports. It remains to be seen what effect HSTPA will have on the use of tenant blacklisting going forward.

Positive Changes and Reforms for Tenants

Class Action Filed Against A TSB

White v. First American Registry, Inc. is a landmark case 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 lawsuit, a TSB was reporting that a case was "pending" against the tenant when it had 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 led 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 was 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:

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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.

Massey v. On-Site Manager Inc. is a class action filed against another of the largest TSBs in the United States. Class members proved that the company violated the Fair Credit Reporting Act by reporting civil judgments and records of arrest that either were more than seven years old or were beyond the statute of limitations. Massey settled with On-Site's agreement to pay more than \$1.1 million to class members. Massey was a major victory for consumers because it was the first to establish that consumers cannot waive their rights under the Fair Credit Reporting Act.

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 five units to notify prospective tenants whether 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 they use a tenant screening report, (2) if so, what company they use, and (3) how to contact that office so that tenants can

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request a free annual copy of their report. With this information, tenants can get a copy of their report to try 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 rent-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 might cause you to be blacklisted.
- If your landlord has overcharged you or if you are entitled to a rent abatement for conditions in your rental home, consider paying your rent and then suing your landlord rather than let your landlord sue you. You won’t be blacklisted if you pay rent and then sue to get it back.

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

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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 to court as evidence and that you 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. If a judgment was entered against you, make sure you get it “vacated,” not “satisfied.”

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

- File a complaint with the Attorney General’s Office if you suspect that you’ve been denied an apartment based on a housing court case that you were named in..
- 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 because it has become, “obsolete” under federal law.

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- 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

CoreLogic Safe Rent
April 30, 2020
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, 2019, 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 expungement 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).

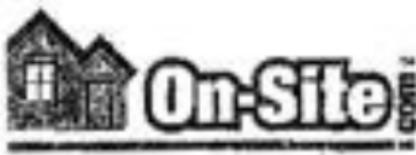
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Tenants should obtain their credit report from each of the three credit bureaus to confirm that each is accurate. The Fair Credit Reporting Act gives individuals the right to get a free copy of each of their three credit reports once every year.

How to get a free report:

Go to www.annualreport.com or write to the three credit bureaus to request your free copy.

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 Peflo
Renter Relations

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