

Tenancy databases

Tenancy databases hold information about the tenancy history of tenants. They are often used by real estate agents and lessors to decide a tenant's suitability when assessing tenancy applications. In Queensland, the Residential Tenancies and Rooming Accommodation Act 2008 ('the Act') regulates the use of tenancy databases by agents, lessors and database operators.

Tenancy databases, such as TICA, are sometimes referred to as 'blacklists'. If an agent or lessor alleges you have defaulted on your tenancy obligations, and lists you on a tenancy database, you may find it difficult to rent a property.

In Queensland the Act sets out rules an agent or lessor must follow when listing a tenant on a tenancy database. Tenants can only be listed for lawful reasons. The Act sets out steps you can take to dispute database listings that do not meet the requirements of the Act.

These database rules apply to all external tenancy databases, but do not apply to internal databases kept by a real estate agent or housing provider.

When you apply for a tenancy the agent or lessor must advise you which tenancy databases they use, the reasons they use the databases, and how you can contact the database operator.

During the tenancy application process if the agent or lessor becomes aware you are listed on a tenancy database they must notify you about this listing. Within seven days they must give you information about who listed you and how you can dispute this listing.

A tenancy database listing should include your name, the listing date, and contact details for the member that made the listing.

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Tenancy Facts are published by Tenants Queensland (TQ) to assist tenants and residents. Tenancy Facts are available from your local QSTARS advice service or TQ at www.tenantsqld.org.au

Who's who? A **lessor** is the person who gives a **tenant** the 'right to occupy' a residential premises under the Act. Lessors often employ real estate **agents** to work on their behalf. A **provider** is a person who provides rooming accommodation to **residents**.

The Residential Tenancies Authority (RTA) is the government authority that oversees tenancy laws in Queensland. Tenancy forms are available from the RTA online at www.rta.qld.gov.au or call the RTA on 1300 366311

The Tribunal refers to the Queensland Civil and Administrative Tribunal (QCAT), which hears residential tenancy disputes. To find your local Tribunal visit www.qcat.qld.gov.au or call QCAT on 1300 753 228



Quick facts

- Agents and lessors can only list tenants on a database in accordance with the Act.
 - Tenants can only be listed for a lawful reason allowed under the Act.
 - Tenants must be informed about proposed listings and given 14 days to object.
 - Tenants can only be listed after the tenancy has ended.
 - Only tenants named on the agreement can be listed.
- Tenants cannot be listed for more than 3 years.
- Tenants can dispute and seek removal of listings that do not comply with the Act.
- When you apply for a tenancy the agent or lessor must,
 - provide information about any tenancy databases they use, and
 - if they become aware you are listed on a tenancy database give you information about the listing.
- If you write to the listing agent, lessor or database operator to request a copy of your listing they must provide a copy within 14 days, (they can charge a reasonable fee).
- If a listing is unlawful, incorrect, ambiguous, out of date, or unjust, you can write to the listing agent, lessor or database operator and ask them to amend or remove the listing.
- You can apply to the Tribunal to dispute a proposed listing, or existing listing. The Tribunal can order an agent, lessor or tenancy database operator, amend or remove a listing.
- Listing entities may face penalty fines if they knowingly list a tenant for an unlawful reason, or if they fail to comply with a Tribunal order to amend or remove a listing.



Tenancy databases

Who can be listed?

You can be listed on a tenancy database if:

- The tenancy has ended; and
- You are named as a tenant on the tenancy agreement (other occupants, visitors or children cannot be listed as they were not on the agreement); and
- There is a lawful reason for the listing under the Act.

Before you are listed, the agent or lessor must:

- Take all reasonable steps to notify you of a proposed listing on a tenancy database; and
- Give you at least 14 days to object to the proposed listing; and
- Consider submissions you make regarding the proposed listing.

Reasons you can be listed

There are three reasons a tenant can be listed on a database.

1. Money owed above the bond amount

You can be listed if you left a tenancy and owe money for the tenancy in excess of the rental bond amount (if you did not pay a rental bond the amount must be greater than one week's rent).

You must also have:

- Received a Notice to Remedy Breach about rent owing which you did not comply with; or
- Failed to pay money by the due date stated under a conciliation agreement or Tribunal order; or
- Abandoned the premises.

2. Termination for objectionable behaviour

You can be listed if the Tribunal made an order to terminate your tenancy due to your objectionable behaviour.

3. Termination for repeated breaches

You can be listed if the Tribunal made an order to terminate your tenancy due to your repeated breaches.

Under the Act it is an offence for a lessor, agent or tenancy database operator, to list information on a tenancy database that they know is unlawful. This could result in an RTA investigation and penalty fine.

How long can you be listed?

Three years is the maximum length of time personal information can be held on a tenancy database. After three years the listing must be removed. Database operators can be fined for failing to remove a listing that is more than three years old.

If your listing is not automatically removed after three years you can write to the listing agent, lessor or database operator to advise the listing is out of date and must be removed. If the listing is not removed you can apply to the Tribunal for an order.

How to know if you are listed

When you apply for a rental property, if the agent or lessor becomes aware you are listed on a tenancy database they must notify you about the listing. Within seven days they must give you a written notice with details of who listed you, the database you are listed on, and how you can dispute the listing.

If your lessor or agent proposes to list you on a database after your tenancy ends they must give you notice of the proposed listing and give you 14 days to object to the listing. If you move out and do not provide forwarding details you may not receive notice of a proposed listing.

How to get a copy of your listing.

You can write to the listing agent, lessor, or database operator to request a copy of your listing. They must give you a copy within 14 days. They can charge a fee for this information but this fee must not be excessive.

When can you dispute a listing?

You can dispute a listing and take action to have your listing amended or removed if the listing is:

- not for a lawful reason (such as money owing over the bond or termination for objectionable behaviour or repeated breaches); or
- inaccurate, incomplete, ambiguous, or out of date; or
- unjust – given the circumstances of the listing and the hardship now experienced by the tenant.

Examples of unlawful listings

- A person who lived in the premises is listed, but they were not named on the tenancy agreement.
- A tenant left owing money but the rental bond was enough to cover the amount owed.
- A tenant paid money owed in accordance with a conciliation agreement or Tribunal order.

Examples of out of date listings

- A tenant paid a tenancy debt within 3 months after it was due.
- The Tribunal terminated the tenancy but the matter has been reopened or appealed, or the termination order was set aside.
- A tenant was listed more than 3 years ago and the listing is now out-of-date.

Example of an inaccurate listing

- A tenant owed a debt for the tenancy but paid the money more than 3 months after it became due.

Examples of unjust listings

- A tenant was in hospital and fell behind with the rent.
- A tenant left a property to escape from domestic violence and a remaining tenant was responsible for damage after they left.

Steps to remove a listing

1. Find out about your listing

Contact the listing agent, lessor, or database operator, to request a copy of your listing. Your letter can also ask for copies of any evidence they are relying on to justify the listing. It is best to do this in writing. Date the letter and keep a copy.

If you make a written request they must provide a copy of your listing within 14 days. They can charge you a fee to provide this information. This fee must be reasonable.

If a listing agent is no longer in business you will need to contact the database operator to access information. In Queensland many real estate agents use the TICA database. You can contact TICA to request a copy of your listing. Contact details for TICA are listed in this factsheet.

2. Write a letter to dispute the listing

If a listing does not comply with the Act, or is inaccurate, incomplete, ambiguous or out of date, you can write to the listing agent, lessor or database operator to request that your listing be amended or removed. Make sure you keep a copy of this letter.

If you write to the listing agent or lessor they have seven days to amend or remove the listing, or write to the database operator to amend or remove the listing. If they write to the database operator they must keep a copy of this letter for at least one year.

If a database operator receives written notice that a listing is unlawful, inaccurate, incomplete, ambiguous, or out of date, they must amend or remove the listing within 14 days.

3. Apply for RTA dispute resolution

You may apply to the RTA Dispute Resolution Service for conciliation to resolve your dispute regarding a tenancy database listing. This is an optional step.

4. Apply to the Tribunal to remove the listing

If the agent, lessor, or database operator refuses to remove or amend a listing, you can apply to the Tribunal for an urgent hearing. You can request an order that your listing is removed from the database.

Protection for victims of domestic and family violence

A person who is a victim of domestic and family violence can apply to QCAT for an order not to be listed on a tenancy database, or can request a listing be removed. This applies if the database listing relates to a breach of the tenancy agreement arising from an act of domestic or family violence.

A co-tenant can apply to the Tribunal under s245 Injury to domestic associate and request an order they not be listed. Under s461 tenants can apply to dispute an existing listing if it is unjust due to the circumstances.

However, a tenant under the agreement, who was a perpetrator of domestic or family violence, can be listed on a tenancy database if there are grounds for the listing.

Applying to the Tribunal

You can apply to the Queensland Civil and Administrative Tribunal (QCAT) for a tenancy hearing to dispute a proposed tenancy database listing, or seek removal of an existing listing. All tenancy database applications are urgent QCAT applications. You can apply to the Tribunal under the following sections of the Act:

Application about proposed listing (section 462)

If you are notified about a proposed listing on a tenancy database, and you believe the listing would be unlawful or unjust, you can apply to the Tribunal for an order that the listing not be made.

Application about breach of listing rules (section 460)

If a listing is not for a lawful reason set out in the Act, you can apply to the Tribunal to request an order that the listing be removed. You must apply to the Tribunal within six months of becoming aware of your listing.

Application about personal information held (section 461)

If the listing is inaccurate, incomplete, ambiguous, out of date, or unjust in the circumstances, you can seek an order that the listing be amended or removed. You will need evidence to support your case. There is no time limit to apply to the Tribunal to dispute these kinds of listings.

The Tribunal may take into account:

- The reason for the listing.
- Whether you were responsible for the acts or omissions that led to the listing.
- The adverse consequences that you have suffered, or are likely to suffer as a result of the listing, such as homelessness, and
- Any other relevant matter (such as the circumstances that led to the listing).

Lodging a Tribunal application

To apply to the Tribunal fill in a QCAT form 2 Application for Minor Civil Dispute – Residential Tenancy Dispute. This form is available from your local courthouse or QCAT at www.qcat.qld.gov.au

On the application form you are the applicant. Your first respondent is the agent or lessor who listed you. Include the database operator (eg: TICA) as your second respondent. Naming both parties ensures the Tribunal will notify them of any order to remove your listing.

Your QCAT application must state the section of the Act you are applying under and the orders you want the Tribunal to make. You will need to attach a copy of your listing and evidence to support your request for removal; for example evidence showing a debt has been paid, or a statement explaining why the listing is unlawful or unjust.

Lodge copies of your completed QCAT application at the Magistrates Court closest to the rental premises, or at the QCAT Registry at 259 Queen Street Brisbane (or mail to GPO Box 1639 Brisbane 4001).

When you lodge your QCAT application you will need to pay a filing fee. Your application can request the respondent compensate you for this fee, especially if the listing was unlawful.

If you are low income you can use a QCAT Form 49 to request a waiver of the filing fee due to your financial hardship.

QCAT will send you a letter to notify you of the date, time and location of your hearing. QCAT will also send a notice of the hearing and copies of your application to the respondents.

How to contact TICA

In Queensland, many agents and lessors are members of TICA. If you are listed on TICA you can write to request a copy of your database listing, or can write to TICA to dispute a listing if it does not meet the requirements of the Act.

TICA

PO Box 120 Concord NSW 2137

Website: www.tica.com.au

Phone: 190 222 0346 (cost \$5.45 per minute; more from mobiles).

Visit the TICA website at www.tica.com.au for details of costs and the TICA brochure tenants can use to request information.

If you write to request a copy of your listing TICA must provide this within 14 days. TICA can charge you an access fee. This fee must be reasonable. Your mail request to TICA will need to include the TICA access fee and a stamped self addressed envelope.

It is best to mail or fax your request to TICA. A telephone enquiry can be very costly and may not provide you with a copy of your listing, which you will need if you have to apply to the Tribunal.

Further help

Tenants Queensland

Tenants Queensland (TQ) is a specialist community and legal service which has been providing services to and representing the interests of residential renters in Queensland since 1986. QSTARS is managed by TQ and delivered in collaboration with partner organisations.

For more information visit www.tenantsqld.org.au

Queensland Statewide Tenant Advice and Referral Services (QSTARS)

QSTARS provides specialist tenancy advice, advocacy support and referral for Queensland renters.

Contact QSTARS for tenancy advice on: **1300 744 263**

Open Mon – Fri 9am – 5pm (extended hours to 7pm on Tues & Wed)

Visit www.qstars.org.au for fact sheets and information



Tenants Queensland is an independent community organisation. We gratefully acknowledge funding from the Commonwealth Government Community Legal Services program and the State Government Department of Housing and Public Works QSTARS program

Disclaimer: This brochure provides information only and is not intended to provide legal advice.

Time limits

When disputing a listing be aware that time limits may apply. To dispute an unlawful listing under section 460 you must apply to the Tribunal within six months of becoming aware of your listing.

There is no time limit to apply to the Tribunal under section 461 to dispute an inaccurate, incomplete, ambiguous, out of date or unjust listing, or a listing that is causing you extreme hardship.

Enforcing a Tribunal order

If the listing agent, lessor or database operator, fails to comply with a Tribunal order to remove a listing it is a serious offence. You can make a complaint to the RTA who can investigate the matter and seek penalty fines. You can also apply to the court for an enforcement order for the Tribunal decision.

Tenancy Facts

Tenants Queensland fact sheets are available at www.tenantsqld.org.au

Tenancy Facts include:

1. Renting in Queensland
2. Starting a tenancy
3. Rental bonds
4. Rent and other charges
5. Entry and privacy
6. Repairs and maintenance
7. You want to leave
8. Lessor ends the tenancy
9. Resolving tenancy disputes
10. Tenancy databases

Translating and Interpreting Service (TIS)

If you need an interpreter let us know when you call, or call the TIS translating and interpreting service on **131 450** and they can help you contact our service.

Queensland Civil Administrative Tribunal (QCAT)

QCAT hears tenancy matters at the QCAT registry in Brisbane or in your local Magistrates Court (except Brisbane). To get QCAT forms or find your local Tribunal visit www.qcat.qld.gov.au or call QCAT on 1300 753 228.

Residential Tenancies Authority (RTA)

The RTA is the Queensland government authority. RTA tenancy forms are available at www.rta.qld.gov.au or call 1300 366 311