

CONSUMER ACTION NEWS

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Tenant screening reports

Overview: Tenant screening reports

By Ruth Susswein

Most of us know that a credit report is a record of our credit card and loan payments that reveals our timely or untimely payment history. But there is another lesser-known report that landlords rely on to assess prospective tenants, called a tenant screening report. These reports reveal if an applicant has a history of late rent payments or eviction, which can help a landlord predict if she will pay her rent and abide by the lease terms. From a tenant's perspective, however, a negative screening report can close the door on rental housing.

As the world continues to climb out of the economic devastation of the pandemic, the U.S. is on the cusp of a national housing crisis that could result in an eviction tsunami. More than 11 million tenants in the U.S. owe thousands of dollars in back rent. Tenants who lost income during COVID often have been able to pause rent payments (forbearance), and, for health reasons, evictions have been banned during the pandemic, but the eviction moratorium expired on July 31.

While the federal government has allotted billions of dollars in emergency rental assistance through state and local agencies to help tenants repay the rent that is owed, that money has been too slow to reach those in need. This puts tenants who can't catch up on rent at risk of eviction. Once tenants are evicted or have eviction notices filed against them (even if the eviction is not processed by the courts), that information can show up on screening reports and badly damage tenants'

chances of finding a new place to rent.

Nine in 10 landlords use some version of these screening reports to qualify prospective tenants. The cost of \$20-\$40 per report is usually paid up front to the landlord by the applicant, and the fee is non-refundable, even if the landlord rejects the tenant.

What is in a tenant screening report?

These reports can include an applicant's:

- eviction history
- criminal history (convictions and arrest records over the last seven years)
- credit history and credit score
- bankruptcies, judgments and liens
- collections history
- identifying information (Social Security number, date of birth)
- income
- employment history
- recent addresses

Screening companies (<https://rentprep.com/screening-services/tenant-background-check-services-reviews/>) rely on electronic court records, which can include housing court data, sex offender registries and terrorist watch lists. Sometimes these reports provide a simple recommendation to reject or accept an applicant. Some of the biggest tenant screening companies are RealPage, TransUnion

SmartMove, RentGrow, CoreLogic MyRental, RentPrep and Experian Connect.

Landlords rely on tenant screening reports to help reduce their risk of renting to a person who has abused rental terms in the past or who might be considered a credit risk. Small landlords, especially, rely on rental income to pay their own mortgages and can't afford to rent to someone who will skip payment or destroy property.

Understandably, most landlords would not want a tenant with a history of eviction. However, just like traditional credit reports, tenant screening reports can contain errors.

According to the *New York Times* and the nonprofit newsroom The Markup, these automated background checks are produced quickly and cheaply and are frequently flawed. The media outlets reviewed hundreds of lawsuits against screening companies that allegedly misidentified people, destroying their chances of renting. They reported on an Oregon woman who was tagged with burglary, narcotics charges and jumping bail in her tenant report. But none of the charges belonged to her (<https://themarkup.org/locked-out/2020/05/28/access-denied-faulty-automated-background-checks-freeze-out-renters>). The report combined criminal records from five different women who were different races, had different birthdates, and included one who was an "active inmate."

Consumer recourse

Landlords are required to tell an applicant if they were rejected based on a screening report and which company supplied it.

Under the Fair Credit Reporting Act, rejected applicants are entitled to a free copy of the screening report. As with any credit or consumer report, consumers can

dispute inaccurate information, and the company is required to correct the errors. In practice, however, while consumers may be able to get errors fixed eventually, rental applicants can't combat erroneous screening reports in time to avoid a rejection, since they don't know in advance which screening company a landlord will use, and rental decisions are made far quicker than the time needed for companies to correct flawed reports.

Federal regulators, like the Consumer Financial Protection Bureau and the Federal Trade Commission, have sued tenant screening companies and penalized them for providing inaccurate data. Yet inaccurate reports are still regularly relied upon by landlords. Screening companies lay blame on incorrect public records. Faulty screening reports risk, and sometimes ruin, a consumer's ability to rent a place to live (<https://www.nytimes.com/2021/05/20/magazine/extended-stay-hotels.html>).

For more on the problems tenant screening reports have caused, see "Screening out fairness," below.

If your application was rejected because of information in a screening report, find out which company supplied the report, review it, and dispute inaccurate information. The CFPB offers guidance on how to deal with tenant screening report errors (<https://www.consumerfinance.gov/about-us/blog/errors-in-your-tenant-screening-report-shouldnt-keep-you-from-finding-a-place-to-call-home/>).

If you have been evicted and fear it will be listed in a tenant screening report, but you think it doesn't tell the whole story, consider explaining your circumstances up front, before a report is obtained by the landlord or property manager, to improve your chances of being considered.

For more tips on what to do if the tenant screening report is wrong, see "Tips to combat an imperfect rental history," on page 6.

Screening out fairness

By *Monica Steinisch*

Landlords and property managers use tenant screening reports to help them decide whom to rent to and reduce their risk of taking on a bad tenant, but the industry is plagued by reporting errors, consumer complaints and accusations of built-in bias. Despite these problems, this flawed system continues to profoundly impact prospective renters' lives.

Disparate impact

Tenant screening reports compile a considerable amount of data—eviction, criminal, employment and

credit history going back seven years or more in some cases. Often, the data is boiled down to an algorithmically-generated recommendation or rating. While efficient for the landlord, the decision may result in "disparate impact"—unintentional discrimination—since the underlying data may reflect racial disparities in American society.

For example, the Joint Center for Housing Studies of Harvard University reported in January that Black and Hispanic renters faced the greatest threat of eviction during the pandemic, as these groups were the most likely to lose employment income as businesses shut-

tered and many high-contact industries shed jobs (<https://www.jchs.harvard.edu/blog/black-and-hispanic-renters-face-greatest-threat- eviction-pandemic>). Tenant screening reports do not account for racial or ethnic inequities, or even for extenuating circumstances (like a pandemic).

Unfounded rejections

Speed is one of the benefits tenant screening companies sell to landlords, but the automated systems that enable companies to quickly generate their reports often permit errors to make it through undetected. Common errors include name mismatches; criminal records that have been expunged or sealed, or arrests that didn't result in conviction (and shouldn't be included in a report); and eviction filings that didn't result in an eviction or a judgment in the landlord's favor.

While the federal Fair Credit Reporting Act requires screening companies to take reasonable steps to ensure the "maximum possible accuracy" of the information they collect and share, not all screening companies do enough to verify the information they provide to landlords, resulting in the unjustified rejection of potential tenants (<https://www.hjcmn.org/wp-content/uploads/2021/04/Tenant-Screening-Report.pdf>). The Federal Trade Commission sued and settled a case with the tenant screening company RealPage in 2018 for poorly matching criminal records with the right person.

U.S. Sen. Sherrod Brown (D-OH) pressed several tenant screening companies in a letter this spring about the impact of inaccuracies in screening reports and scores (<https://www.brown.senate.gov/newsroom/press/release/brown-attention-screening-inaccuracies-lock-tenants-out>). "The prevalence of inaccurate data, incomplete records, mismatched information, and duplicate information within screening reports harms and diminishes the housing options for tens of millions of renters," he said. Brown asked for answers to a long list of questions about how the companies acquire and use data in generating their reports.

An eviction cloud

A key component of tenant screening reports is rental history, which includes evictions and unpaid rent or utility bills. Many landlords reject any rental applicant who has ever had a prior eviction, regardless of how much time has passed or why it took place.

As a Fordham Law Review paper explains (http://fordhamlawreview.org/wp-content/uploads/2020/06/Bhatia-May_N_16.pdf), the background screening report likely includes almost no context about what actually occurred between the housing applicant and their prior landlord. Details, such as who sued whom, which party prevailed

in the legal dispute, whether the case settled, or whether the parties ultimately dropped the case, may be excluded. If a tenant stopped paying rent for a legitimate reason—for instance, because the property was in uninhabitable condition—the report may only show that the tenant was involved in an eviction dispute and provide no further context.

Proposed solutions

A range of proposed changes have the potential to make tenant screening reports more equitable and more constructive for landlords, tenants and communities.

Put limits on tenant screening reports. Some cities and states have passed or are considering reforms to limit what tenant screening reports can contain. For example, a Cook County, Ill., ordinance blocks landlords from looking back more than three years for criminal convictions. For more, see "Legal protections for renters," on page 4, and Consumer Reports' investigation (<https://www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times/>).

Seal eviction cases. The Shriver Center on Poverty Law wants eviction cases filed during the COVID-19 pandemic and economic recovery period to be sealed (<https://www.povertylaw.org/article/an-eviction-crisis-we-can-stop/>). It says that tenants also should have the ability to seal prior eviction records in certain circumstances. Once sealed, tenant screening companies should be prohibited from disseminating eviction court records. U.S. Sen. Cory Booker is working to ban the use of eviction court data if the tenant has won the case (<https://medium.com/@corybooker/corys-plan-to-provide-safe-affordable-housing-for-all-americans-da1d83662baa>), which is already the law in California.

Deny eviction if partial rent payment is accepted. The Shriver Center also would like landlords who accept partial rent payments to be barred from filing an eviction. According to data analyzed by the Eviction Lab (<https://www.nytimes.com/2019/12/12/upshot/eviction-prevention-solutions-government.html>), it's common for evicted tenants to owe the equivalent of less than a month's rent—often less than \$600.

Six Democratic senators wrote to the Consumer Financial Protection Bureau (CFPB) in March to express concern about the role of tenant screening reports in the impending eviction crisis (<https://bit.ly/2Vm62Bs>). The CFPB has put landlords and credit bureaus on notice that they are obligated to accurately report rental and eviction information, and that the Consumer Bureau will be watching (<https://www.consumerfinance.gov/about-us/newsroom/as-federal-eviction-protections-come-to-an-end-cfpb-warns-landlords-and-consumer-reporting-agencies-to-report-rental-information-accurately/>).

Legal protections for renters

By Alegra Howard

Two main laws protect rental tenants in all 50 states: the U.S. Fair Credit Reporting Act (FCRA) and the Fair Housing Act (FHA).

The FCRA (<https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf>) restricts the way a landlord can use your credit and eviction history during the application process and requires your written permission before a landlord can see your tenant or credit report (although this process is hardly optional, as choosing not to grant permission will, no doubt, result in you not getting the home). If your rental application is denied, the FCRA requires that the landlord notify you (verbally or in writing) of where to get a free copy of the report that was used as the basis of your denial. If the information listed in the screening report is wrong, you'll want to correct it with the reporting agency and the source of the inaccurate information. (For example, ask previous landlords who listed inaccurate information to remove it.)

The FHA makes it illegal to discriminate against anyone intentionally or unintentionally when it comes to housing (https://www.hud.gov/program_offices/fair_housing_equal_oppl/fair_housing_act_overview). It states that a landlord's guidelines for accepting a rental applicant must be the same for every applicant, and it restricts landlords from refusing to rent to you based on disability, race, color, national origin, religion, sex, and whether you are pregnant and/or have children under 18 years old.

Evictions can stay on a tenant report for up to seven years (much like adverse information on a credit report). Tenant rights advocates argue that the eviction screening policy outlined in the FHA doesn't do enough to protect renters. The widespread use of tenant screening reports often pushes low-income and vulnerable populations with damaged rental histories into second-rate housing. Several states and local jurisdictions are working to require that courts expunge or seal incomplete eviction (and conviction) records so that landlords can't access them during the application process.

In an effort to balance landlords' need to know with tenants' right to housing, California generally does not allow eviction court records to be disclosed unless they led to a judgment against a tenant within 60 days of filing (<https://www.nolo.com/legal-update/california-tenants-protected-win-eviction-lawsuits.html>). Eviction proceedings

that are voluntarily withdrawn by the landlord or won by the tenant also must be concealed.

Minnesota (<https://www.lawhelpmn.org/self-help-library/fact-sheet/expunging-eviction-case>), Nevada (<https://thenevadaindependent.com/article/sisolak-signs-more-than-70-bills-including-sealing-eviction-records-during-covid-all-payer-claims-database-and-curbside-cannabis-pickup>) and Oregon (<https://oregonlawhelp.org/resource/expungement-of-eviction-records>) have passed laws that allow courts, on a case-by-case basis, to restrict older and pandemic-related evictions to prevent landlords from making automatic eviction-based denials in situations that would be unfair to prospective tenants. Legislators in Ohio (<https://www.beaconjournal.com/story/news/2021/04/16/renters-could-expunge-seal-evictions-proposed-ohio-senate-bill/7226991002/>), Massachusetts (<https://www.passthehomesact.org/bills.html>), Connecticut (https://www.journalinquirer.com/politics_and_government/bill-would-seal-records-of-evictions/article_b2902274-a69c-11eb-9c71-27475e87d9f8.html), and Washington, D.C. (<https://lims.dccouncil.us/Legislation/B24-0106>), are considering similar regulations to protect tenants and improve access to housing.

Each tenant screening company has its own error correction process. This information (<https://themarkup.org/ask-the-markup/2020/05/28/what-can-you-do-if-your-tenant-background-report-is-wrong>) must be included in the "adverse action notice" you receive from the landlord if your application is denied. Under the FCRA, you have 60 days after receiving the report to dispute incorrect information, and the screening company has 30 days to investigate your claim. (This timeline is important if you have a looming move-out date and will be looking for a new place to live.)

If you can't make headway in correcting errors, file a complaint with the Consumer Financial Protection Bureau (CFPB) (<https://www.consumerfinance.gov/data-research/consumer-complaints/>) and the Federal Trade Commission (FTC) (<https://reportfraud.ftc.gov/#/>)—the two share federal oversight of the tenant screening industry. The CFPB's complaint database is public, so you'll be able to read about other consumers' attempts to correct tenant report errors by searching for the tenant screening company's name.

If you believe you have experienced housing discrimination by a landlord or leasing agency, contact HUD's Office of Fair Housing and Equal Opportunity at 800-669-9777 or file a complaint online (https://www.hud.gov/program_offices/fair_housing_equal_oppl/online-complaint).

HUD also provides a list of tenant rights resources for your state (https://www.hud.gov/topics/rental_assistance/tenantrights). Lastly, your state attorney general's office handles consumer complaints and might be able to help set your record straight (<https://www.usa.gov/state-attorney-general>).

Evictions are costly for landlords and tenants. Some are turning to eviction diversion programs as an alternative to the courts—like this one in Texas (<https://www.td-hca.state.tx.us/TEDP.htm>). These novel programs provide rental assistance and a tenant advocate to improve the process. They can save landlords a good deal of money and keep tenants in their homes.

Small landlords rely on screening reports, but need rental assistance too

By Ruth Susswein

Choosing a reliable tenant is part instinct and part data. Small landlords, in particular, are dependent on rental income to pay their mortgages, taxes and other bills, so many—90%, according to TransUnion—rely on screening reports to predict an applicant's future behavior.

Many landlords consider anyone with a record of overdue bills or a past eviction to be too risky. Yet in today's pandemic-plagued environment, there are many a renter who lost income and got behind on the rent—even had eviction proceedings filed—who may not be as risky as she appears to be in a screening report. But it's tough for a landlord to know who is worth taking a risk on. Many mom-and-pop landlords own single-family houses or just one or two units, are retired, and rely on rent as their only source of income. The prolonged period of eviction moratoriums and paused rental payments has been a financial burden on these landlords.

Emergency rental dollars

To prevent a tidal wave of evictions, keep people housed and help landlords stay afloat, hundreds of billions of federal dollars from the American Rescue Plan (<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/promising-practices>) have been earmarked to pay back rent and current rent for those who were hit hard

If you are currently facing the threat of eviction and need help paying your rent during this pandemic recovery period, the National Low Income Housing Coalition has compiled a list of state and local resources for emergency rental assistance. Enter the name of your city or county at the bottom of the rental assistance webpage (<https://nlihc.org/rental-assistance>) to learn about rental assistance programs in your area. Also use the CFPB's new online search tool to find a local rental assistance program (<https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/renter-protections/find-help-with-rent-and-utilities/>).

financially by COVID. However, many renters and landlords don't know that emergency rental assistance programs (ERAP) exist. To learn about ERAPs in your area, see the National Low Income Housing Coalition's database (<https://nlihc.org/rental-assistance>) and the U.S. Treasury Department's resource guide (<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program>). Under most rental assistance programs, the tenant typically applies for emergency funds and the money goes directly to the landlord. Tenants often need information from the landlord to complete the ERAP application. If tenants do not apply for the government assistance, landlords can apply on the tenant's behalf. The CFPB has created tools (<https://www.consumerfinance.gov/about-us/blog/rental-assistance-may-help-you-and-your-tenants-get-through-the-pandemic/>) to assist both tenants (<https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/renter-protections/emergency-rental-assistance-for-renters/>) and landlords (<https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/renter-protections/conversation-about-payment-agreements/>) in recovering up to 12 months of back rent or three months of future rent, depending on what the local program permits. Use the agency's new online search tool to find your local rental assistance program (<https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/renter-protections/find-help-with-rent-and-utilities/>).

Tips to combat an imperfect rental history

By Alegra Howard

Here are some things you can try in order to smooth the way to a new rental, even if you've had trouble in the past.

1. Check your own reports first. A handful of screening companies provide the bulk of tenant reports—get your own free copy and check it for errors before applying for a home (<https://www.consumer-action.org/helpdesk/articles/tenant-reports>). If you know the building you want to live in, call and ask which specific tenant screening company they use. If you find an error, dispute it as soon as possible. You may have to wait one to two months until it's corrected, so give yourself plenty of lead time.

2. Clean up your history. If you forgot to pay a late fee, thought your deposit covered your last month's rent, or damaged something in your previous rental that you didn't pay for, work it out with the landlord and ask that they expunge the ding from your tenant report. Keep a receipt of the transaction to prove you've paid your debt.

3. Put your best foot forward. If you know there's undesirable information in your tenant screening report that you can't repair, make sure to explain the circumstances to the landlord before they get the report. Your transparency and extra documentation (employer or landlord references, earnings statements, history of on-time utility and cell phone payments, updated credit score, etc.) might provide them with a more accurate reflection of who you are currently, as opposed to the partial story a background report reveals.

4. Ask to apply with a cosigner. A cosigner is legally on the hook to pay your rent should you not be able to. Landlords may see this as a good compromise if you have objectionable rental or credit history. You can ask that the cosigner be removed from the agreement once you make a predetermined number of on-time (or early) rental payments.

5. Put down a larger security deposit. Although it's not the easiest option, offering to pay 1.5 times, or even double, the requested security deposit may prove to a landlord that you are less of a financial risk than a tenant report shows. (Some state laws may prohibit a deposit of more than two months' rent.)

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