
The dreaded tenant blacklist: What you need to know

T But their troubles didn't stop there. They ended up on the so-called tenant blacklist and subsequently had major problems securing future apartments.

These blacklists are not a new phenomenon, but they're not widely understood either. So what do you really need to know? How do you stay off the list? And once you're on it, is there any way to get off?

[Editor's note: This story was originally published in 2014, and was updated in 2016 and 2017. We are presenting it again here as part of our end-of-year Best of Brick (<http://www.brickunderground.com/best-brick>) week.]

What's the tenant blacklist and who's it for?

All it takes to end up on one of the blacklist is being named in any one of the hundreds of thousands of cases filed in New York City housing court every year, regardless of the reason or the outcome. Whether you have a good relationship with your current landlord doesn't matter. In fact, landlords can't get you added to the list.

Rather, tenant screening bureaus comb public court computers for cases and match them to the names and addresses of tenants, then sell the data along with credit reports to landlords vetting prospective tenants during the rental application process.

It's not hard to see why landlords rely on this information. They don't want a renter who's been sued for not paying the rent, repeatedly paying it late, or being a nuisance, says Frank Ricci, director of government affairs for the Rent Stabilization Association (<http://rsanyc.net/>), a trade group for New York's landlords.

Accessing these databases is “just one of many tools that owners use to screen tenants,” Ricci says. “Getting the wrong tenant in the building is impossible to remedy without a lot of time and expense. So owners want to get it right the first time.”

But for tenants, the major issue is that the information is incomplete. The blacklist doesn't provide any context for the case, such as who sued whom, the winning party, or whether there was a settlement.

“People are denied apartments based upon the fact that they were sued by a previous landlord regardless of why or what happened,” says James Fishman, a tenant's attorney with Fishman Rozen LLP (<http://www.nyctenantslaw.com/staff/james-b-fishman/>).

(Ironically, efforts by the organization Rentlogic to grade landlords, based on public records showing their buildings' maintenance issues, have been met with outcry from building owners and brokers (<https://www.nytimes.com/2016/09/25/realestate/why-isnt-there-a-landlord-blacklist.html>) who complain that the data doesn't show the full picture.)

City Council members have for the past three years introduced bills to try to make the tenant blacklist fairer. None so far has made it out of committee. The latest bill (<http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2813474&GUID=42E16D45-2E30-47DB-B82C-97A3FFAF187F&Options=ID%7CText%7C&Search=housing+court>), introduced last year by Upper East Side Councilman Ben Kallos, would require that people who put together tenant screening reports be licensed, and that their reports contain specific details about the substance of each housing court case that's included.

In the meantime, though, the threat of the blacklist remains a disincentive for tenants to fight unscrupulous landlords.

The real problem for tenants

When a tenant withholds rent, regardless of the reason, a landlord can take them to housing court, which deals with cases involving nonpayment of rent and evictions. Sometimes the landlord wins, and the court orders a tenant to pay back rent or move out. Other times the tenant wins, and is allowed to stay or gets a rent abatement. Most of the time, though, the case is settled out of court or dropped. Regardless, your name can wind up on a list.

Even when a tenant stops paying rent for legitimate reasons—say, they lack essential services or suffer from mold or vermin—if he winds up in court, he'll end up on the list. In fact, even in cases that don't involve money changing hands—like when you're involved in a so-called possessory judgment, which allows a landlord to take an apartment back—you can still end up on the blacklist.

“I want to warn tenants that when landlords or their lawyers tell them that there's no harm in agreeing to a possessory judgment because it isn't for money, that is wrong,” says lawyer Jeff McAdams (<http://www.mcadamslaw.net/>).

Because tenants are not informed that their names are in the databases, it's difficult for them to protect themselves.

Perhaps most troublesome, the threat of ending up on the list has impacted how tenants react when something goes wrong with their apartment, McAdams says.

"You have to ignore the rights you have and let landlords get away with mistreating you," he says.

Not surprisingly, some tenants live in fear and won't withhold rent even if they do have apartment problems.

“The decision of whether or not to litigate—whether or not to fight a case—is influenced by these blacklists,” says Sam Himmelstein (<http://www.hmgdjlaw.com/Attorneys/Samuel-J-Himmelstein.shtml>), a lawyer who represents residential and commercial tenants and tenant associations (and a Brick Underground sponsor).

What's a blacklisted tenant to do?

If you're blacklisted, it's going to be more difficult to rent an apartment—but that doesn't mean you can't find a place to live.

“I have never ever heard a client say to me, ‘as a result of being blacklisted, it was impossible for me to find an apartment,’” Himmelstein says. “I’ve come to the conclusion that it just narrows the universe.”

Here are some strategies to help you get your foot in the door:

Disclose the issue up front

Non-Profit Quarterly notes (<https://nonprofitquarterly.org/2016/08/26/fighting-the-tenant-blacklist/>) that tenants have the right to know why they were denied an apartment, so if you think something's fishy, consider requesting the criteria for tenant selection. Most landlords are willing to give a would-be tenant a chance to explain himself, especially if there is only one black mark on his record, says the RSA's Ricci.

“Sometimes there’s a good reason for a late payment or a nonpayment,” he says. “I know they listen to that and they take it into account.”

Skip the big-time landlords

Not every landlord uses tenant screening bureaus to vet potential renters, McAdams says. Smaller landlords may be the way to go if you’re on the list, as even if they do use the reports, they may be more willing to understand the specifics of your situation.

Enlist your landlord's lawyer

In some cases, a landlord has taken a tenant to housing court to formalize an agreement about moving out of an apartment. In these cases, if the relationship between the former landlord and tenant is cordial, the tenant can ask the landlord’s lawyer to send a letter stating that he was a good tenant, McAdams says. This letter can then be attached to future rental applications.

Correct (or expand) the record

To see if your name appears in a database, you can request a report from a company that provides tenant-screening data, such as CoreLogic (<http://www.corelogic.com/>), TransUnion (<http://www.transunion.com/>) or On-Site (<https://www.on-site.com/>). Just give them a call. It generally costs \$15-\$20, but can run up to \$50, a fee that many landlords pass on as part of the lease application fee.

If there's anything in the report about a housing court case, you should verify that the information is accurate, Fishman says, and if it's not, ask the screening bureaus to remove it. Any case older than seven years—a time limit set by the Fair Credit Reporting Act—should be deleted from the report by the agency, he says.

You can also request that the screening bureaus report the outcome of a case if you were sued in error. But this is a small victory, McAdams says, because a future landlord may not want someone who's ever been involved in a court case, mistake or not.

Lastly, if you're on the list already and the information is accurate, unfortunately, “there is no remedy,” McAdams says. You can only try to minimize the impact.

Bypassing the blacklist in the first place

If you're facing inhospitable conditions in your apartment but worry about winding up with a red flag on your record, there are other ways to get relief that are less likely to land you on the list. Note that any time you take a landlord to court, a future landlord may be less willing to rent to you if he or she discovers the past litigation.

File a “housing part” action

One of the major types of housing court litigation, a tenant-initiated HP (which stands for "housing part") (<http://www.courts.state.ny.us/courts/nyc/housing/startinghp.shtml>) involves the tenant suing the landlord for failing to comply with the law, particularly when it comes to building repairs, as well as the city for failing to enforce the law.

Fishman says that he's never seen a tenant blacklisted for going ahead with an HP.

Also, the process is straightforward: the tenant fills out a form to request an apartment inspection for any potential violations. The city then sends out an inspector and, if there are violations, a landlord can face steep fines, says Steve Wagner, an attorney with Wagner Berkow (<http://www.wagnerberkow.com>) (a Brick sponsor), who likes to refer to the HP proceeding as the “nuclear bomb.” No lawyer is needed (so it costs practically nothing), and a tenant can file the paperwork at his or her local housing court.

If the court finds in the tenant’s favor, the landlord will be forced to make the repairs by a specific time.

Sue in small claims court or Supreme Court

Outside of an HP case, a tenant can also sue their landlord in these two other venues, Fishman says. Because these are not housing court cases, and are not initiated by the landlord, they will not land a tenant on the blacklist.

Ask to remain anonymous

If you know a lawsuit is coming down the pike, “reach out to the landlord's attorney before the landlord files a case requesting that they name the tenant only as John or Jane Doe instead of the tenant's true name,” Fishman says. “This is best done with an attorney.”