



# NATIONAL TENANT NETWORK

## Tenant Screening

Tenant screening is a popular topic on the Web and elsewhere. More and more companies provide tenant screening services of increasing sophistication, and we advise our readers to use them. In doing so, however, the landlord subjects himself to the strictures of the Federal Fair Credit Reporting Act, most of which have nothing to do with the landlord if he utilizes tenant screening reports. This article focuses on the requirements that affect landlords who uses screening services or credit reports and explores what they entail. The terms "credit report" and "tenant screening report" will be used interchangeably.

A tenant screening report is undoubtedly subject to the Act. As users of a consumer report, landlords must establish reasonable procedures to assure compliance with the law. Having and observing reasonable procedures will ensure that, in the event of an honest mistake, landlords can avoid liability.

### **When a Credit Report May be Obtained**

The circumstances under which a consumer report may be issued include:

"Any consumer reporting agency may furnish a consumer report under the following circumstances and no other...in accordance with the written instructions of the consumer to whom it relates...to a person which it has reason to believe...intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or ...otherwise has a legitimate business need for the information in connection with a business transaction that is initiated by the consumer, or to review an account to determine whether the consumer continues to meet the terms of the account."

What this means to the landlord is that, to obtain a report, he must demonstrate to credit reporting agency that the applicant has requested the report, or the landlord is obtaining a report in connection with an application initiated by the applicant, or the landlord is reviewing the credit of an existing tenant, or a former tenant who owes him money, or the landlord is reviewing the credit of an existing tenant in order to decide whether to renew a lease or otherwise continue the landlord/tenant relationship.

If the landlord misrepresents his interest to obtain a credit report, he probably would be liable both to the reporting agency and the prospect or existing tenant.

Compliance requirements arise in two ways in the landlord/tenant relationship. The first is when the prospect initiates the application process. The second is during an existing landlord/tenant relationship, or in connection with a debt which arose out of it.

At the first phase of the relationship, the prospect has shown his desire to rent an available unit and has filled out an application. At this point, the landlord has the right, without any authorization from the applicant, to obtain a credit report.

The key to the right to obtain a report is that there is an existing transaction. There may be no existing transaction if there is no rental unit available at the time of the application. In the event the landlord accepts applications during periods of no vacancy to have prospects on file in the event of a vacancy, we do not recommend that a credit report be obtained until a vacancy develops and further contact is made by the landlord to assure continuing interest in pursuing the application. There are other reasons for not obtaining such reports, including their cost and the fact that they may become stale quickly. A report should be obtained in connection with such an application only if the prospect has explicitly, in writing, authorized it and instructed the landlord to obtain it and credit reporters to supply it.

Although written authorization is not required, any credit reporting agency will advise that it be obtained. The authorization should be included in the body of the application, in plainly visible type, immediately above the signature line. The language should not only permit the landlord to obtain a report but, instruct him to obtain one, and all credit

reporting agencies to provide one. In the event more than one person must be checked, each person should sign.

In the second phase of the landlord/tenant relationship, the parties are in the midst of a business transaction (the lease or rental agreement) or there is a debt owing as a result of it that the landlord needs to collect. Here again the landlord has the right to obtain credit reports without any authorization by the tenant. Obtaining a report without written authorization is not as risky as doing so before the relationship because the ongoing business transaction is demonstrable, but must not be construed as authorization to pull credit reports out of curiosity. The landlord would be well advised to develop a policy defining the circumstances under which a report might be obtained. Here are some examples of things that might be cited as triggers for obtaining a credit report.

- Renewal of a fixed term lease for longer than six months
- Default in rent for a period of more than ten days
- Damage to the rental unit reasonably suspected to be more than the security deposit
- Initiation by the landlord of a legal proceeding arising from the rental agreement
- Vacating the rental unit with money owing

Law concerning rights to privacy exists in all jurisdictions in the U.S. If the landlord obtains a credit report without the ability to define a need to know, he may incur liability for invasion of privacy. Inquiries are reported by credit reporting agencies. Many businesses interpret repeated inquiries without an extension of credit as negative, so such inquiries will damage the tenant's credit worthiness and such damage might give rise to an action against the landlord. The landlord should set up the circumstances under which he will make credit inquiry of existing tenants in writing in advance, and stick to the policy, so he can justify his actions if necessary.

#### **What the User Can and Cannot do with a Credit Report**

Credit reports can only be issued to persons who have a legitimate interest in obtaining them. The report should not be distributed or given to others. Credit reports should be kept in a secure location and access to them limited to those with a need to know.

Credit reporting firms require that the landlord keep reports confidential and not distribute copies to others. The landlord's contractual obligation with the company prohibits him from giving a copy of the report to anyone else, even the prospect or the tenant. Unless a specific state law overrides the contract and requires provision of a copy to the prospect or tenant, the contractual obligation must be respected.

The landlord has every right, however, to disclose the contents of the report, as distinguished from giving a copy to the prospect or tenant, and even to show it to the prospect.

If the landlord, based on the contents of the report, takes an adverse action, such as denying the applicant or demanding additional consideration of any sort for the rental, he may disclose the contents of the report. If the landlord does not take adverse action, the company can bind him not to disclose the contents of the report. This is important as, where adverse action is taken, the landlord might wish to discuss the derogatory information with the applicant to obtain an explanation. If the explanation results in a decision not to act adversely after all, this should be noted by the landlord.

#### **What Adverse Action Requires the Landlord to Do**

The landlord must do certain things when he takes adverse action against an applicant. In some instances, the information on which the adverse