

TENANCY DATABASES IN THE CONTEXT OF TENURE MANAGEMENT

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Abstract

Private companies have established tenancy databases to assist real estate agents and property managers to screen prospective tenants. For a fee, agents and managers may obtain information regarding prospective tenants from databases, and on the basis of this information, tenants can be refused accommodation in the formal rental market. This paper reports on a study of processes through which tenants become listed on databases and the key housing access issues that arise for tenants as a result. Specifically the paper focuses on the way listing and screening practices of property managers impact on low-income and vulnerable tenants who are increasingly dependant on the private rental market for affordable housing. While listing and screening practices of property managers are understood in terms of risk management in the industry, it becomes necessary to consider the responsibility for social risk management of those excluded and marginalised in the private rental sector. Further, the study points to broader impacts of tenancy databases on the tendency for some tenants to proceed 'as if' they may be listed. This aspect of the positioning of tenants as data subjects facilitates regulation of sectors of the market, but also draws attention to new dimensions of housing vulnerability.

Introduction

Private companies established tenancy databases to assist real estate agents and property managers to screen prospective tenants. For a fee, agents and managers may obtain information regarding prospective tenants from databases, and on the basis of this information, tenants can be refused accommodation in the formal rental market. This paper reports on a research project that investigates tenancy databases in the context of risk management, the processes through which tenants become listed on databases and the key housing access issues that arise for tenants as a result.

Researchers at QUT and UQ are conducting an analysis of the uses and impacts of tenancy data bases in the private rental sector of the housing industry in Australia. The research, conducted under the auspices of AHURI (Qld.) at QUT, involves a series of face-to-face semi-structured interviews with representatives of the property management industry; with owner-manager landlords; with tenants' advocates; and tenants who knew or believed they were listed on databases. This research project was conducted in the states of Queensland, New South Wales and Victoria to enable a broad coverage of the areas where databases are used in Australia and enable a comparison of their affects in different market and state (legislative) contexts.

Clearly, the management of risk is an important element in the adoption and use of tenancy data bases in the real estate industry (Seelig, 2001; Guthrie, 2002). Information technology also provides a tool for speeding up the approval process for applicants, and thus minimises the time taken to lease rental property (Kipnis, 2000). However, consumer affairs and tenant advocacy interests have registered concern about the formalisation of information exchange about 'bad' tenants. Services and agencies have reported difficulty finding other forms of housing outside the formal private rental market for clients listed on databases; the result is that some clients are becoming homeless (Tweed Interagency Group, 2001). Further, these groups have raised concerns about the way the databases operate, referring specifically to problems associated with inappropriate listings, inadequate dispute resolution processes, breaches of privacy, and inappropriate threats to list (Guthrie, 2002: 16-17). Johnston (1999) has argued that such problems also create inefficiencies in the management of private rental tenure through the institutionalisation of misinformation and disinformation. These issues form the critical starting point for the research.

The legislative and policy frameworks within which tenancy databases operate in Australia emphasise self regulation on the part of property managers and database operators and they require tenants to be proactive in seeking information about their status as database subjects and redressing inaccuracies. Several key questions addressed in the AHURI, QUT research project arise from this context:

- What is the role of tenancy databases in the context of broader risk minimisation strategies in the private rental sector in Australia?
- What processes and strategies are pursued by Australian private real estate and property managers (including estate agents and self-managing private landlords) to screen and minimise exposure to risk?

- What screening and risk management strategies are pursued by those landlords who do not have access to the databases, or who choose not to list tenants?
- What are the impacts on current and future housing and tenure options for tenants?
- How do tenants respond to these impacts?

Methodology

The research method followed two major stages. The first was a discrete scoping exercise to understand the operation and use of tenancy databases in Australia as part of broader risk management strategies in the rental housing market. Principal research strategies used in this stage were:

- literature and internet searches,
- documentation and analysis of relevant legislative and policy frameworks, and
- approaches to stakeholders and database gatekeepers for initial mapping of the uses of tenant data-bases in 'risk management' processes and practices.

This initial scoping exercise was followed by a second stage consisting of focus group interviews and semi-structured face-to-face interviews in each state with representatives of key stakeholder groups, including tenants and tenant advocates, third sector property managers, informants from different kinds of landlord and property management groups. This provided an effective voice for a range of stakeholder perspectives.

Participants

A broad range of participants were approached to participate in face-to-face interviews or in focus groups. Recruitment strategies were adopted that were appropriate for each group of participants. Most professional property managers were recruited through the Property Management Chapters of the State Real Estate Institutes. In Queensland, we were assisted in seeking property managers' perspectives through an on-line survey, circulated on the site www.propertymanagementjournal.com.au. Property owners were recruited through the Property Owners Association in each state and through newspaper and internet advertisement. Tenant Advocates were approached from large organisation such as Tenants Union and Shelter in Queensland, New South Wales and Victoria and also from smaller agencies who managed tenancies for particular high-risk groups such as those recently released from jail. Tenants were recruited through referral and advertisement by various tenant advocacy groups in each state. Although some difficulties were encountered in recruiting some participants, by using different and appropriate strategies in different contexts we were successful in reaching participants from all key stakeholder groupings. In recruiting tenants, we sought participation specifically from tenants who (a) were considered 'at risk' by advocates and/or (b) considered themselves to be 'listed'. It is a matter of note that few tenants knew of themselves actually having listings on tenancy databases.

Interview Instrument

Interview guides were designed with a semi-structured format for both individual and focus group interviews. Whilst the focus in interviews was set squarely upon the uses and impacts of tenancy databases, interviews were structured to explore different stages of tenancy (acquiring a tenancy, maintaining a tenancy and finalising a tenancy) from different stakeholder perspectives. In discussing each stage, questions were asked about strategies to avoid risk and uses/experiences of tenancy databases at that stage. This approach emerged from two fundamental assumptions about rental tenancy as a social and economic arrangement that arose from our focus on risk management in rental tenancy:

- rental tenancy is a process involving different forms of risk-taking and risk-management by different parties, over time, and
- rental tenancy is accomplished through strategic relationships between tenant/s and landlord/agent.

Initial pilot face-to-face interviews and focus group interviews were conducted to test and fine-tune the interview instrument. These pilot interviews tested the three stage format to ensure it was sufficiently flexible to allow key issues to be explored from the perspective of property managers, tenants and tenant advocates. Each particular stage was comprehensively explored before moving to discuss the next stage. This aided comparison among different stakeholder perspectives. For example, a property manager could relate the professional procedures they followed when a prospective tenant made application for a tenancy, while the tenant could relate their strategy to acquire a tenancy.

Data Analysis

The first stage for analysis was the process of 'convergent analysis' undertaken during the period of data collection. All individual and focus group interviews were conducted with two researchers present, one as interviewer and the other as monitor and observer. Progressive debriefing after interviews served to identify emergent themes and questions for further inquiry. Changes to the interview protocol were made only with the agreement of the two research participants. This on-going

process of convergent analysis produced clear themes and a process for detailed post-hoc analysis. A third researcher was involved in the post-hoc analysis of taped interviews and all members of the research team were engaged in the determination and verification of principal themes for detailed analysis and reporting.

Tenancy databases

When Property Managers were denied access to the Credit Reference Association to authenticate a prospective tenant's credit, Tenancy databases evolved to 'fill the gap'. Private companies established electronic tenancy databases to assist real estate agents and property managers to screen prospective tenants. These tenancy databases are represented as a professional tool for minimising risk to property managers and to their landlord clients, through the capacity they provide to identify defaulting tenants and tenants seen to have poor rental histories. The information on tenancy databases is provided by subscribers (mainly property managers or agents) and used by property managers to screen prospective tenants. Most are open only to registered real estate agents or owner-managers with large property holdings, although databases for the use of other lessors are now starting to emerge in Australia (Guthrie, 2002).

Tenancy databases in comparative perspective

Tenancy databases are used by property managers and their agents in several countries. An extensive review of tenancy databases and tenant screening websites in the United States, Australia and the UK enabled a simplified model to be developed based on the functions and services offered. Essentially the types of tenancy database enterprises fall into two categories, those that collect, compile and manage primary data for their clients; and those that supply secondary data to their clients. Under these two categories further sub-categories were identified showing different levels of complexity of dealings. In total, five types were identified. These are tenancy databases that:

- Have the sole purpose of collecting and managing primary data about tenants for property managers
- Collect, compile and manage their own tenant data, and provide other non-data services to their subscribers
- provide tenancy databases services, other database services and non-data services
- provides tenancy databases, other databases and other services relating to tenant screening to their clients through the use of secondary data subscription
- provide information from non-tenancy related databases

Databases are increasingly being used as an essential tool in managing risk. For a fee, agents and managers obtain information regarding prospective tenants from these databases, and on the basis of this information, individuals can be refused accommodation. The technology used by tenancy databases increases the speed and scope of the database. Internet access to tenancy database records allows subscribers to check the rental history of a tenant applicant instantaneously and across Australia and, in some cases, internationally. The outcome of an instantaneous check on an electronic database is that tenants can be immediately labelled 'bad' (or if not identified on the database as 'not bad').

Property Managers

Australian property owners and their agents interviewed as part of the research project viewed tenancy databases as an essential (if not completely effective) professional tenancy management tool. They use tenancy database information to reduce owners' risk of exposure to rent default or damage to their rental property. Whilst professional property managers routinely use the data provided on tenancy databases, they also express doubts and concerns about the accuracy and comprehensiveness of the information provided, since tenancy databases rely on subscribers for data entry and they are aware that listing practices vary considerably across the industry.

Importantly, although the accuracy and appropriateness of personal information stored on databases are partially addressed through privacy laws and fair trading laws, because databases screen prospective rather than current tenants, their operations are not captured by State residential tenancy laws (except in Queensland where recent amendments to the Residential Tenancies Act specifically address the operation and uses of tenancy databases). In October 2003, the New South Wales government made a commitment to follow suit.

Clearly tenancy databases can have a powerful impact on a person's ability to access private rental accommodation. The power relationships between property manager and prospective tenant involved in their use do favour of the manager. The research study reveals that several informal uses of databases have developed, including property managers 'warning' tenants they might be listed as a way of getting them to comply with tenancy agreement conditions prior to issuing notices of breaches under tenancy legislation. Property managers asserted that this kind of approach enables them to overcome what they see as inordinate time delays and rent recovery problems through implementing tenancy breach procedures. From a social justice perspective, some such informal practices may be seen as infringements of tenants' rights, but public

regulation of these practices would be unacceptable to property managers and would appear likely to lead to property managers developing other informal strategies to protect their interests.

Tenants' perspectives

From tenants' perspectives, tenancy databases are seen to impact on them in two quite different ways. First, they are one of a number of avenues by which tenants can demonstrate a satisfactory tenancy history. Not being listed, or having been removed from a listing, is an indicator (along with getting a full bond refund, references from previous landlords, and so on) that helps construct a satisfactory personal rental history.

But, on the other hand, whereas tenancy databases are considered by property managers as tools of professional practice to assess and minimise tenancy risk, tenants talked about databases in relation to broader issues of power and identity. The interview data shows quite clearly that tenancy databases impacted on the way that these tenants approached each stage of a tenancy. There was a clear realisation amongst tenants that a listing excluded them from the formal rental tenancy market.

Tenants consider that property managers are gatekeepers who have a disproportionate and relatively unregulated amount of power that can be used to exclude potential tenants from the market. For tenants, tenancy databases are yet another tool available to property managers that further supports the presence of a clear power discrepancy in the field of rental tenancy. They see that the odds are constantly and explicitly stacked against them. Being listed is potentially disastrous for obtaining a tenancy and may negate other positive indicators. Because of this, tenants [and tenant advocates] are concerned about issues of fairness, transparency and accountability in record keeping and about their rights to access their information. Some listings are seen to be unfair or vexatious, or are incomplete, out of date or inaccurate.

Many of the tenants who were interviewed and particularly those who knew they were listed, learnt about the existence of tenancy databases and the consequences of being listed on one, only after they, or someone they knew, had been informed that their name was on such a list. Several tenants only became aware of tenancy databases and their listing after repeatedly having tenancy applications rejected.

Many tenants, particularly those who had not had their beliefs about being listed verified, talked about 'blacklists'. Their beliefs about 'blacklists' are based largely on informal information networks and are, for the most part, based on speculation, hearsay and rumour. The tenants viewed 'blacklists' as the principal way that tenants were excluded from the rental tenancy market; they understood these as lists put together by professional property managers employed by real estate agencies and used both to screen applicants who approached their agency and to provide information (to verify rental histories, supply tenant references and, most particularly, to provide information about tenants' breaches and misdemeanours) to other agents.

Tenants held strong beliefs that this information could exclude those people on the 'blacklist' from gaining a tenancy. Tenants suggested that this information is distributed via networks between property managers in a particular geographical area or through real estate chains. These 'blacklists' were believed by tenants to be relatively informal and/or localised. Tenants believed that there was little or no form of redress and that tenants' particulars were noted and distributed at the discretion of property managers.

The way tenants talked of 'blacklists', and their lack knowledge about commercially operated tenancy databases, reflect their position in the field of rental tenancy. It is consistent with their feelings of disenfranchisement within the field. As identified previously, tenancy databases sell information about tenants to subscribers. The operators are marketing a resource and a tool for minimising risk to property managers and owners through minimising uncertainty in the processes of screening, recommending and selecting tenants. The product they sell is information recorded about database subjects, extracted from the circumstances of subjects' lives and delivered to customers in an easily accessible format. Across the Australian States tenancy laws regulate the relationships between tenants and landlords. However, the respective rights and responsibilities of tenants and database operators and subscribers is far less regulated. For example, until the recent Privacy legislation changes database operators were not obligated to inform tenants of what particular information constituted their listing. Even under these conditions the onus is on the tenant to make the enquiry. It is only now in Queensland that property managers are obliged to inform tenants of the content of their listing made on a tenancy database. Consequently tenants tend to be excluded from the flow of information that is vitally important to their position within the rental tenancy market.

Tenants, particularly those who knew they were listed, were concerned about the accessing, verifying and correcting the information. Yet for the most part they did not know how or if they could ever repair their tenancy record. Some tenants did not know the exact reason for their listing, they were not sure what details were contained in their listing and they were also unsure of where and how to get this information. Mostly, tenants did not know who to contact if they believed that their listing was 'unfair', 'retaliatory' or 'incorrect'. Those who did had been discouraged by the costs involved or the requirements to make a written request for information about their record. Furthermore, seeking information, at considerable cost, about a

personal record over which they believed they had little recourse to change, was not an action that tenants felt able to pursue at a time when their need for accommodation was urgent. Strategically, tenants usually turned their attention to their most urgent need, which was actually finding accommodation.

Tenant Advocates

The tenant advocate's central concern and role in the field of rental tenancy is the protection of tenants' 'rights'. As such, developing a comprehensive knowledge of tenancy databases has become an important part of their practice. Tenant advocates were unified in expressing their concerns about breaches of tenants' privacy and freedom of information rights. Their accounts of specific cases and of their efforts to advise and/or achieve redress for tenants adversely affected by database listing revealed the complexity of the field of landlord-tenant relations and the intractability of some listing practices to statutory forms of redress. The practices of tenant advocates are enabled, mediated and controlled by legislation that designates tenant's rights within the law. Within this context, the tenant advocates interviewed for the project identified a number of concerns about the operation, uses and effects of commercial tenancy databases.

The first set of issues focuses on the ability of legislation, which mediates and regulates their practice, to deal with concerns about tenants' rights. Tenants' advocates perceive there are issues that arise as a consequence of the increased use of databases. A point that needs to be made here, is that tenancy legislation is essentially about the rights of people in relation to a tenancy. Tenancy databases may act as a barrier to people gaining a tenancy at all. Tenants' advocates are concerned with people who have a tenancy as well as those who are seeking to gain one. They may have to seek redress for their clients through privacy legislation, for example, rather than through tenancy legislation.

Tenants' advocates are fielding an increasing number of enquiries from tenants related to the use of tenancy databases. Requests for assistance fit mainly into two broad categories. First, there are those people who have been listed or threatened with being 'listed' recently and are urgently seeking advice about ways to exit or retain tenure and/or need urgent assistance to find a place to live. The focus for them is on finding accommodation. They do not necessarily see addressing their listing as their first priority. Tenant advocates reported the difficulties that they and their clients faced in trying to 'balance' strategies to claim and protect consumer rights to fairness and justice in regard to database listings with strategies to achieve access to appropriate, affordable accommodation for these clients. The fact that many tenancy database practices fall outside statutory frameworks means that tenant advocates cannot use legal process or reference to rental tenancy legislation to achieve justice for their clients.

Second, tenants may contact advocacy groups after they have been listed and have experienced difficulties in obtaining accommodation and want to get their tenancy record sorted out. In such cases tenants may have several different concerns about their database record including its accuracy (whether or not a breach or offence has occurred and/or has been recorded accurately), currency (whether or not a record has been updated, especially where past breaches have since been remedied) and fairness (especially with respect to the severity of any breach or offence and the consequent impacts). Here, too, issues about the power and scope of legal mechanisms and statutory processes available to tenant advocates to address tenants' concerns emerge.

Tenants' advocates raised questions about the suitability of legislation. They indicated, quite clearly, the difficulty of advocating for tenants to obtain redress of incorrect, false or retaliatory listings when the information is stored and distributed by private companies. Database operators do not make the listing process open or transparent. The existing legal mechanisms do not adequately regulate the practices of tenancy databases. Tenant advocates have been frustrated by the absence of regulation and statutory process that could enable redress and provide tenants with a legal capacity to challenge and change or remove their record from the database. Advocates strongly expressed the view that the lack of legal recourse available to tenants reinforces the power of property managers across the whole field of rental tenancy:

The second set of issues raised suggests that databases accentuate existing inequalities in the field of the rental tenancy and push already vulnerable tenants into less regulated and more volatile areas of the rental market. Tenant advocates suggested that the power and popularity of databases highlights a much broader problem for some low-income tenants in the rental housing sector. Tenancy databases will, despite their inaccuracies and unreliability, identify tenants whose tenancies have been disrupted through their own serious behavioural and other problems. These tenants present a 'high risk' to themselves as well as to the providers of rental accommodation, in both the public and private sectors. As the stock of community and public housing is reduced these people have fewer housing options available to them.

Tenants' advocates were unanimous in their view that a database listing has a detrimental effect on a tenant's position in the field of rental tenancy. They also agreed that listings, for the most part, started tenants on 'pathways' to less secure housing. They suggested that a listing 'forces' tenants into less secure situations. Listed tenants usually have no other choice but to put in place various informal arrangements with friends, partners or family to cope with their exclusion from the formal rental tenancy market. Some tenants have been forced to accept inappropriate accommodation in hostels, boarding houses or

caravan parks where a database listing did not exclude them but was used as a mechanism of control. Tenant advocates were aware also, of cases where people had become homeless because of a tenancy database listing and where listed tenants had experienced discrimination and exploitation.

They also, very clearly impact upon tenant advocates' capacities to represent their clients - both with regard to securing suitable housing and obtaining redress for negative impacts of tenancy database uses upon their tenant clients. Their plight is a policy problem for low-cost housing providers rather than for tenancy database regulators, even though it is the use of tenancy databases that spotlights them.

Vulnerable tenants

Alternative strategies for finding accommodation included seeking to rent directly from an owner manager – a 'private landlord'. Tenants believed that private landlords were far less likely to subscribe to tenancy databases or to have access to 'blacklists'. They thought that private landlords, on the whole, were relatively lax in their screening processes. This presented tenants with a better opportunity to gain a tenancy. Tenants suggested that owner managers were also more likely to be open to negotiation and that gaining a tenancy might just be a matter of 'getting along' with a particular owner.

Another way tenants negotiated their exclusion from the formal rental tenancy market was through informal arrangements with partners, friends and family. This, for the most part, involved moving into a pre-existing tenancy that is formally held under another name or through other people. For some this involved moving into share house accommodation where they were not obligated to place their name on a lease or formal tenancy agreement. Others moved in with partners who had a tenancy arrangement. Some suggested changing their names, or getting parents or friends to sign a lease for them. These opportunities were not open to all people and, in any case, were often forced choices that might ultimately lead to further insecurity and vulnerability. Some tenants made an active decision to completely remove themselves from the rental tenancy market - for these, particularly younger tenants, moving back into the family home was considered the only option available. One tenant, aware of their listing on a tenancy database described how they had moved back to their parents' home to save money for a deposit to buy a home instead of dealing with the constant insecurity and ambiguity present in the segment of the rental market they had been relegated to.

Issues in the broader rental tenancy market also play a role in pushing these tenants further away from stable living arrangements in the formal rental sector. Low-cost housing close to services, especially in the major capital cities, is scarce and in high demand. Tenants with a database listing find themselves completely excluded from a market that is already highly competitive.

For the most part, a listing moved people into less secure and less stable tenancies. They were then more likely to depend on other people - friends, family or acquaintances - to certify any formal tenancy arrangements or to provide them with a place to live. None of the tenants preferred their current living arrangements. For some tenants the stopgap measures provided short-term security, with many questioning the long-term stability and appropriateness of their existing living arrangements.

Summary

Clearly, tenancy databases have a powerful impact upon a person's chances of obtaining and maintaining appropriate housing in the private rental sector. Tenants identified as 'high risk' through their listing on a tenancy database are in an extremely vulnerable position. This research reveals that tenants can be forced into the more volatile and less secure informal rental market: sharing accommodation, informally sub-letting, relying on parents or friends, and so on. It is clear that many of these 'high risk' tenants require non-housing social support in addition to housing. In this sense, through their impact in reducing financial risk to the property owner tenancy databases add to wider social risks associated with homelessness.