

Tenant Screening and Housing Court: Causation, Strategies and Remedies

Consumer Debt in NY - #10YearsAfter:
Crisis, Progress, and the Work Ahead

June 12, 2018
Fordham Law School

James B. Fishman
Fishman Rozen, LLP
305 Broadway Suite 900
NY, NY 10007
nyctenantslaw.net
jfishman@fmlawoffices.net

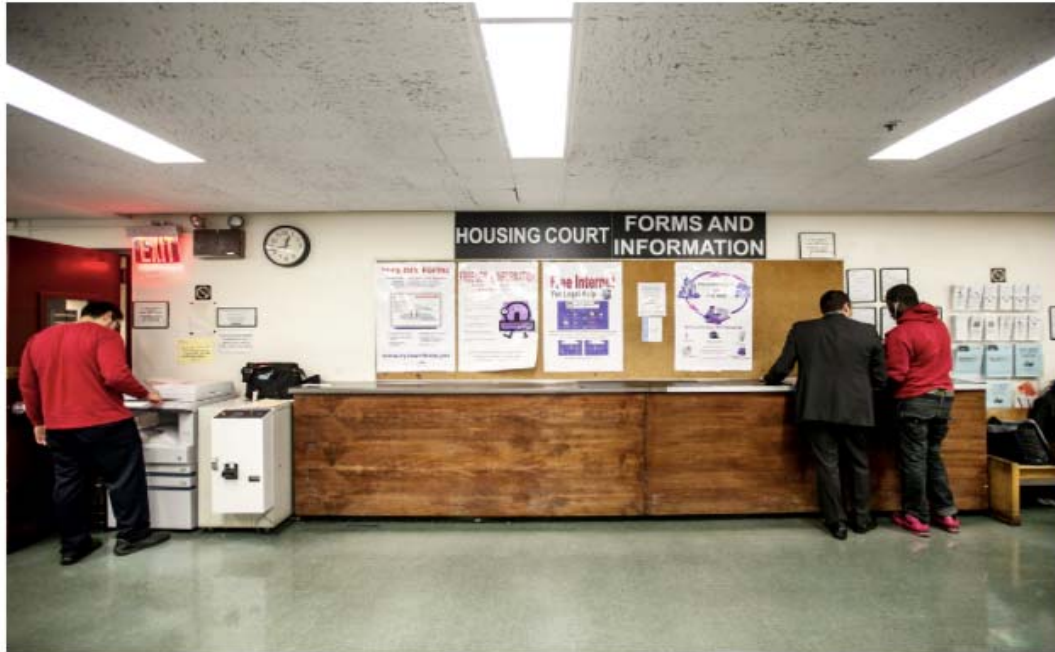
“The trend of gathering information about tenants, which began to raise eyebrows almost thirty years ago, has continued to grow in magnitude and concern. Today, landlords regularly purchase “tenant-screening reports” that chronicle landlord-tenant disputes and court filings, often regardless of their outcomes. ***Indeed, the tenant-screening industry has mushroomed in recent years. Informal estimates suggest that as many as 650 companies provide tenant-screening reports***, and a recent trend toward consolidation means that many of these companies provide reports with national scope. The ease with which these reports are obtained means that landlords increasingly rely on them at the first stage of their selection process to separate out potential bad apples. As one seller of these reports, Jake Harrington, told the New York Times, ***“It is the policy of 99% of our [landlord] customers in New York to flat out reject anybody with a landlord-tenant record, no matter what the reason is and no matter what the outcome is, because if their dispute has escalated to going to court, an owner will view them as a pain...”*** (Teri Karush Rogers, “Only the Strongest Survive,” *The New York Times*, 11/26/06, available at <http://www.nytimes.com/2006/11/26/realestate/26cov.html>)

Overview of Tenant Blacklisting

- Data companies such as Lexis obtain data about Housing Court cases from Housing Court Clerk's office public access computers and/or paper files;
- Tenant Screening Bureaus ("TSB's") purchase data from Lexis;
- TSB's use the information to create tenant screening reports when an applicant applies to rent an apartment which they sell to prospective landlords;
- Landlords purchase the reports and routinely deny applicants simply because they have been named in a Housing Court proceeding, regardless of the reason or outcome.

<https://www.nytimes.com/2014/10/19/nyregion/a-tenant-blacklist-culled-from-tedium.html>

On the List, and Not in a Good Way



Room 225 at the New York State Courthouse in Lower Manhattan, where employees of tenant-screening companies compile information from publicly available case files for use by landlords. Anthony Lanzilote for The New York Times

By Julie Satow

Oct. 16, 2014



TRADITIONAL CREDIT REPORTS

V.

TENANT SCREENING REPORTS

- **Traditional Credit Reports**
 - Experian, Trans Union & Equifax (“The Big 3”)
 - What is reported?
 - Tradelines
 - Public records information, including tax liens, Bankruptcies and court judgments
- **Tenant Screening Reports**
 - Hundreds of companies
 - History of all Housing Court cases for at least the past 7 years
 - Mostly used by prospective landlord’s in tenant selection process

HOW HOUSING COURT CASES APPEAR ON TENANT SCREENING REPORTS

What is reported & How is it reported?

- All new case filings and all events each day are reported in 3 digit codes in the OCA electronic data feed.
- From Housing Court public access computers or paper files.
- Computer to computer transfer
- Data can legally be reported for 7 years, but often much longer.

SOURCE OF INFORMATION IS PROBLEMATIC

DATA OBTAINED BY TSB'S FROM
HOUSING COURT IS:

INACCURATE

INCOMPLETE

MISLEADING

Resulting in Tenant Screening Reports that are:

Inaccurate

Incomplete

Misleading

"Garbage in/Garbage Out"

Judge Louis Kaplan

White v. First Advantage SafeRent (SDNY 6/16/06)

HEARING TRANSCRIPT:

White v. First American Registry, Inc. (6/16/06)

14 MR. MASCHMANN: Well, your Honor, my client doesn't
15 look at the actual physical court files, it relies on the
16 electronic transmission provided by UCS. And there may be
17 things done in the housing part by the Court and by the clerk that
18 are not recorded in the electronic transmission. And—

19 THE COURT: **So we're back to your business model.**

20 We're back to garbage in/garbage out.

21 MR. MASCHMANN: Well, your Honor, I don't believe it's
22 garbage. I believe the Court does its best to provide the most
23 accurate information it can in an electronic format that credit
24 reporting agencies and the public can utilize.

SETTLEMENT ORDER:

White v. First American Registry, Inc. (3/7/07)

Judge Lewis A. Kaplan, SDNY

...defendants have seized upon the ready and cheap availability of electronic records to create and market a product that can be, and probably is, used to victimize blameless individuals. The problem is compounded by the fact that the information available to defendants from the New York City Housing Court ('NYCHC') is sketchy in the best of cases and inaccurate and incomplete in the worst. Any failure by defendants to ensure that the information they provide is complete, accurate, and fair heightens the concern -- and there has been ample reason for heightened concern.

COMPANIES USING HOUSING COURT DATA

KNOWN COMPANIES

- eEvictionRecords.com
- CoreLogic Saferent
- LexisNexis Risk & Information Analytics Group
- National Tenant Network, Inc.
- On-site Manager, Inc.
- TransUnion RentPort, Inc.
- American Tenant Screening
- Microbilt
- Screening Reports, Inc.
- Contemporary Information Corporation
- Leasing Desk
- Screening Intelligence LLC
- E Renter

UNKNOWN COMPANIES

- Continuous resale of data to hundreds of other TSB's
- No actual knowledge of how many TSB's actually exist

Laws Governing Credit Reporting Agencies

- FAIR CREDIT REPORTING ACT (15 USC § 1681 et seq)
- NEW YORK FAIR CREDIT REPORTING ACT (GBL 380-a et seq)
- Both statutes require CRA's to use ***“reasonable procedures to assure maximum possible accuracy”*** of credit reports.

FCRA Accuracy Requirements

- Credit reports must not only be accurate, but complete and non-misleading concerning ***material*** information.
- ***Wenning v. On-Site Manager, Inc.***, 2016 U.S. Dist. LEXIS 81126, 2016 WL 3538379 (S.D.N.Y. June 22, 2016); calling a NYC Housing Court holdover proceeding a “FORCIBLE ENTRY/DETAINER” proceeding was a material misrepresentation.
- Absence of mitigating information could be incomplete if it’s reasonable to require it.

Wenning demonstrates an extreme example of Tenant Blacklisting's harms

- Both tenants negotiated John/Jane Doe filings, settled their cases with their LL's (non-prime and subletting) ***before*** holdovers brought and they both vacated as agreed. Yet, both, with otherwise pristine credit, were subsequently denied apartments ***solely*** because they had been sued in Housing Court. Both landlords had set their screening criteria to reject ***any*** applicant sued in Housing Court for ***any reason***.

Rental Report for [REDACTED], 5/12/2014 at West 45th Lottery

Rental Report for [REDACTED]

This report does not guarantee the accuracy or truthfulness of the information as to the subject of the investigation, but only that it is accurately copied from public records, and information generated as a result of identity theft, including evidence of criminal activity, may be inaccurately associated with the consumer who is the subject of the report. An applicant who is the subject of this report may obtain a free copy at any time by contacting On-Site Renter Relations. *El solicitante que es objeto de este informe puede obtener una copia gratuita por contactar On-Site Renter Relations.*

Identity	From Application	From Experian
Name:	[REDACTED]	[REDACTED]
SSN:	[REDACTED]	[REDACTED]
Birth Date:	2/**/1962	2/**/1962

Addresses	From Application	From Experian
	208 East 82nd Street New York, NY 10028 - US	CORSO PALLADIO 147 36100 (Applicant) Reported 2/2013 208 E 82ND ST. APT 35 NEW YORK, NY 10028-2731 (Applicant) Reported 9/2011

Employment	From Application	From Experian
Applicant:	Total annual income: [REDACTED]	[REDACTED] [REDACTED] MEMBERSHIP C

Criminal History				
From On-Site.com				
Requested For	Location Searched	Period Searched	Requested	Returned
[REDACTED]	Multi-State: AK, AL, AR, AZ, CA, CO, CT, DE, FL, GA, HI, IA, ID, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NM, NV, NY, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VT, WA, WI, WV, WY	5/12/2007 - 5/12/2014	5/12/2014	5/12/2014
Results No Records Found				

National Sex Offender Registry History		
From On-Site.com		
Requested For	Date Requested	Date Returned
[REDACTED]	5/12/2014	5/12/2014
Results No Records Found		

Housing Court Records

CORELOGIC SAFERENT
PO Box 509124
San Diego CA, 92150
1-888-333-2413

* NOTICE *
*THIS IS NOT A LETTER OF *
DENIAL. UNDER NEW YORK LAW,
WHEN PUBLIC RECORD INFORMA-
*TION IS REPORTED, THE *
*CONSUMER MUST BE NOTIFIED. *

JULY 22, 2015

[REDACTED]
27 W 16
NEW YORK, NY 10011

Dear [REDACTED],

CoreLogic SafeRent, a consumer reporting agency with its principal place of business located in Maryland, has reported the below information, as filed, from the public record to the party listed below. The reported record, as with all public records, is available to the public. Therefore, if the information does not pertain to you or contains any error, it is important that any inaccuracies be corrected.

If you believe the below information does not pertain to you or is inaccurate and wish to dispute it, please contact our Automated Consumer Relations Line toll free at 1-888-333-2413 and follow the instructions provided. If you have no dispute with the accuracy of the information but wish to have a 100 word statement attached to your file, please send your statement with a copy of this notice to: CoreLogic SafeRent, Attn: Consumer Relations; PO Box 509124, San Diego CA, CA 92150

Information Reported to:

Name: Hunter's Point South Commons-NHOP
Address: 1-50 50th Ave. & 1-55 Borden Ave.
LIC, NY 11101
Phone: 212-987-6445
Request Date: 07/21/2015
Source: NEW YORK MANHATTAN
Case Number: LT-079004-14/NY
File Date: 09-2014
Defendant: [REDACTED]
Address: 27 W 16TH ST
NEW YORK NY 10011
Plaintiff: FM UNITED
Disposition: *CASE FILED

Sincerely,
Consumer Relations Department

Effects



- Chills a tenant's right to withhold rent to obtain needed repairs in their apartment.
- Changes the way in which attorneys advise their clients.
- Prevents many qualified tenants from obtaining apartments in competitive rental markets.
- Deprives tenants of the ability to use the Housing Court to enforce their rights in a variety of contexts; non-regulated end of lease, subletting, breach of lease, primary residence and owner's use cases.

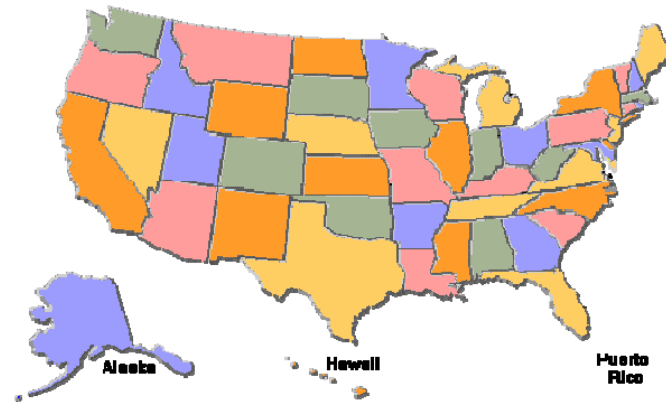
EXAMPLE

A tenant in a non-payment case is awarded a 90% rent abatement because of deplorable conditions in his/her apartment. TSB's will report the disposition of that case as a "judgment" against the tenant for the remaining 10% of the rent.

Blacklisting Harms Tenants Who Just Need Time to Move

- Tenants who simply need time to move, and want to take advantage of an RPAPL §753, stay must first be sued and then blacklisted making it only harder to secure new housing.

WIDESPREAD EFFECT



- The effects of tenant blacklisting are widespread and national in scope.
- National TSB's report on Housing Court cases throughout the country

PRE-LITIGATION STRATEGIES TO AVOID BLACKLISTING

KEEP IT OUT OF THE DATABASE!

AVOID BLACKLISTING:

- John/Jane Doe Agreements
- Pre-litigation document production
- Pre-litigation deposition agreements
- Pre-litigation settlements but without a judgment (See Wenning)
- Supreme Court injunctive relief (TRO)
 - ***Weisent v. Subaqua Corp.*** (Sup Ct N.Y. 2007)

Weisent v. Subaqua Corp.

**16 Misc.3d 1115(A), 847 N.Y.S.2d 899 (Table), 2007 WL 2140947
(Sup. Ct., NY Co.), 2007 N.Y. Slip Op. 51428(U)**

For some reason, it appears that OCA sells Housing Court eviction case data electronically to companies known as "tenant screening bureaus" ("TSBs"), who, in turn, use this data to prepare tenant screening reports which they then sell to other companies and to prospective landlords.

Thus, regardless of whether or not a tenant prevails in the Housing Court, his or her name may appear on the blacklist', making "the finding of a rental apartment potentially very difficult if not impossible", particularly for a tenant of relatively modest means.

(citations omitted). Therefore, based on the papers submitted and the oral argument held on the record on March 14, 2007, this Court finds that plaintiff has demonstrated she will suffer irreparable harm if the injunctive relief sought is not granted.

LITIGATION & SETTLEMENT STRATEGIES

TENANTS SHOULD NOT CONSENT TO A JUDGMENT WHEREVER POSSIBLE

Holdover Settlements with a Move-out:

- **Provide for a judgment only on default if possible**
- **Settlement stipulations should provide for vacatur of any judgment and discontinuance with prejudice upon compliance. Provides additional incentive to comply**
- **Get consent to expungement from landlord**
- **Get settlement “so ordered”**
- **Use typed settlement agreements wherever possible to avoid legibility issues**
- **Include no admission of fault or liability**
- **Court could provide printer terminals for typed stipulations**

CRAFTING A SETTLEMENT STIPULATION

Non-Payment Settlements

- Judgments-Potential negative impact on Big 3 Reports
- “Deemed Satisfied” is meaningless
- Satisfaction of Judgment is not helpful
- Require Landlord to separately file a vacatur of the judgment, or
- Separate document vacating judgment to be filed upon compliance with the agreement, or
- Or advise Tenant to return with an OSC if judgment not vacated and petition discontinued.
- Insure that all claimed rent arrears are addressed to avoid subsequent plenary action

SETTLEMENT AGREEMENT

LANGUAGE: MOVE OUT ON PAYOUT

- ***The proceeding shall remain off calendar, subject to restoration as provided herein. Upon execution of this agreement by the parties hereto the landlord's attorney shall execute the Notice of Withdrawal and Discontinuance in the proceeding, which is attached hereto as Exhibit A, and provide same to the tenant's attorney who shall hold it in escrow pursuant to the terms of this agreement. Upon the tenant's compliance with this agreement, as provided herein, such notice may be filed with the Court without further notice.***
- ***Confirm that tenant is released from all rent through vacate date.***

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Index No. L&T

/10

XYZ ESTATES, INC.,

Petitioners,

-against-

JANE TENANT,

Respondent.

**STIPULATION OF DISCONTINUANCE AND
WITHDRAWAL WITH PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED, by and between the parties,
represented by counsel, as follows:

1. The petitioner acknowledges that the allegations set forth in the termination notice and notice to cure are factually baseless and that it does not contend that the respondent engaged in the conduct alleged therein.
2. The petition is hereby withdrawn and discontinued with prejudice.
3. The petitioner hereby pays, and the respondent hereby accepts, the sum of ONE THOUSAND EIGHT HUNDRED SEVENTY FIVE DOLLARS (\$1875.00) in full satisfaction of the respondent's claim for attorney's fees in this proceeding.
4. The petitioner hereby consents to the expungement of any record of the proceeding from the database of any tenant screening bureau or credit reporting agency.

**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART
FM UNITED LLC,**

Index No. L&T 79004/14

Petitioner-Landlord,

**NOTICE OF
APPEARANCE AND
STIPULATION OF
DISCONTINUANCE
WITH PREJUDICE**

-against-

**XXXXXXXXXXXXXXXXXX
27 West 16th Street, Apt. 3A
New York, NY 10011,**

Respondent-Tenant.

PLEASE TAKE NOTICE that respondent XXXXXXXX hereby appears in this proceeding by FISHMAN ROZEN, LLP and demands that all papers be served upon the undersigned at the address set forth below.

IT IS HEREBY STIPULATED AND AGREED, by and between the parties, represented by counsel, as follows:

1. The proceeding is hereby discontinued **WITH** prejudice.
2. The petitioner consents to the deletion of any information regarding this proceeding from the database of any credit reporting agency.
3. Electronic signatures may be deemed original for purposes of this stipulation.

Dated: September 21, 2016
New York, New York

TODD NAHINS
BORAH, GOLDSTEIN, ALTSCHULER,
NAHINS & GOIDEL, P.C.
377 Broadway
New York, New York 10013
(212) 431-1300
Attorneys for Petitioner

JAMES B. FISHMAN
FISHMAN ROZEN, LLP
305 Broadway, Suite 900
New York, NY 10007
(212) 897-5840
Attorneys for Respondent

SO ORDERED _____
J.H.C.

CLEANING UP TENANT SCREENING REPORTS

EXPUNGEMENT

Where there are no provisions for expungement in the original settlement

Tenant must get either a stipulation from the landlord's attorney, or bring an OSC, to obtain vacatur of any judgment, possessory or money and discontinuance of the proceeding with prejudice. Landlord's consent to expungement is very helpful.

The stipulation should be "so ordered"

Tenant must write to as many of the known TSB's as possible and provide evidence of discontinuance and consent to expunge.

James B. Fishman
Jennifer A. Rozen*
Partners

Karishma Patel
Associate

Reuben Fuller-Bennett
Associate

*Also admitted in Massachusetts



Laurence H. Pearson
Kenneth N. Rosenfeld
Of Counsel

Michael Ward
Paralegal

Rhode Al Khani
Office Manager

September 19, 2016

Via email
Consumer.documents@lexisnexis.com

CheckPoint
PO Box 105295
Atlanta GA 30348

Re: MPLAZA LP v. XXXXX
Civil Court of the City of New York, County of New York: Housing Part
Order to Expunge Court Case No.: L&T 52386/16

To whom it may concern,

This office represents XXXX, the respondent/tenant in the above referenced proceeding (the "proceeding"). On June 7, 2016 the petition filed in the proceeding was withdrawn and the proceeding was discontinued with prejudice. In addition, the court order includes the landlord's consent to the deletion of all information pertaining to the proceeding from any tenant screening bureau.

Based upon the above, demand is hereby made that any and all references to this proceeding be deleted from your database **and that you confirm such action in writing.**

We trust that you will fully comply with both the Fair Credit Reporting Act as well as the New York Fair Credit Reporting Act with respect to any and all current and future reports concerning this proceeding. Maximum possible accuracy requires that any report includes the fact that the landlord consented to the expungement of this proceeding.

Very truly yours,

Michael Ward

Encl.

Future Remedies

- Post-*Wenning* Litigation to force TSB's to include mitigating information
- Heightened Awareness of Landlords, Landlord Attorneys and Housing Court Judges of the Blacklisting Harms
- Legislation: NYC Council Tenant Screening Bureau Licensing Law
 - Requires all TSB's to be licensed by DCA so tenants know the universe of TSBs operating in NYC;
 - Requires TSB's to include substantial mitigating information about Housing Court Cases;
 - Provides private right of action to tenants harmed by violations with actual and punitive damages and attorney's fees
 - Bar Landlords from denying housing based solely on a housing court record

Eviction/Landlord-Tenant Action

a. General Applicants

- i. The Marketing Agent may reject an applicant for a prior for-cause eviction, provided that a warrant of eviction was executed upon b.

The Marketing Agent must explicitly state in the Marketing Plan how credit score will be used in evaluating applicants and m

b.

MARKETING HANDBOOK, SECTION 5: DETAILED SELECTION POLICIES 5-6: Background Checks and Other Factors within the last four years and the tenant never restored to possession.

- ii. The Marketing Agent may also reject an applicant for a history of multiple landlord-tenant actions within the last four years, provided that the actions were commenced by the landlord and resulted in a j

Thank you

James B. Fishman
Fishman Rozen, LLP
305 Broadway Suite 900
New York, NY 10007
nyctenantslaw.net
jfishman@fmlawoffices.net