The Renter’s Guide to Tenant Privacy Rights [1]

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   1. Federal Laws that Affect Renters

   a. The Fair Housing Act

   Federal law protects renters against certain forms of discrimination. The Fair Housing Act (FHA), part of the Civil Rights Act of 1968, prohibits discrimination on the basis of race, color, national origin, religion, sex, familial status or disability. (42 U.S.C. §§ 3601-3619) The FHA and Presidential Executive Orders [2] have been amended over the years to include protections such as one against age discrimination.

   b. The Fair Credit Reporting Act

   Federal law offers rights and protections when the landlord collects and uses your personal information through a credit check or more extensive tenant report, sometimes called a “background check.” The federal Fair Credit Reporting Act [3] (FCRA) gives you the right to notice if you are turned down for a rental based upon information in a credit or tenant report. (15 U.S.C. §1681 et seq.) In addition, you have the right to receive a copy of your report and to dispute inaccurate information. A landlord who uses a credit or tenant screening report must take steps to properly dispose of the report.

   2. State and Local Laws that Affect Renters

   State law may give a tenant the right to receive notice when the landlord wants to enter the space or send someone to make repairs. As a renter, you probably don’t want your landlord to have unlimited access to your space. For instance, your landlord will most likely try to rent to someone else when you decide to move out. However, you will not want either the landlord or potential renters knocking on your door at all hours of the day or night.

   State or local laws typically recognize the covenant, or promise, of “quiet enjoyment” of your unit. This promise is often incorporated into rental and lease agreements, and gives you the right to live undisturbed by intrusions from the outside world. Anything that penetrates your space, such as loud noise or cigarette smoke, may violate your right to “quiet enjoyment.” For more on your rights to privacy and “quiet enjoyment,” see Section 5 of this guide.

   State and local laws will govern most problems that arise between you and your landlord or you and a neighbor. Your
problems may be resolved in local counseling facilities, local small claims courts, or in state civil court.

**State and local law will govern most evictions.** If the landlord wants to evict you, your state likely has established procedures for doing so, with even more rules set out at the county or city level. Generally, the landlord must provide you written notice and give you a specified number of days to respond. The number of days may vary depending on the circumstances. State and local laws set standards for the court case a landlord files prior to evicting a tenant. These are known as “unlawful detainer [4]” cases, meaning that a person occupies a property without a legal right to do so.

3. Applying for a Rental

There are many ways to find a rental property. Newspapers, realtors, online services such as [Craigslist.org](http://www.craigslist.org), and prepaid rental services are just some of the resources you may turn to when looking for a place to rent.

If you are considering using a service where you pay a fee for a list of available rental properties, keep in mind that these may be regulated under state law. For example, in California prepaid rental services must be licensed by the [California Department of Real Estate](http://www.dre.ca.gov). State law addresses such things as the fees for services and conditions under which you are entitled to a refund. ([Cal. Bus. § Prof. Code § 10167](http://www.ca.gov))

a. Application Forms

If you’re interested in renting a home or apartment, the landlord or leasing agent will probably ask you to fill out a written application, either on paper or online. The rental application allows the prospective landlord to learn more about you and to make an initial decision about whether you are a suitable candidate for the property and can afford the rent.

**What is usually required in a rental application?**

- Current and past addresses of yourself, your employers, your personal references, and your landlords.
- Your Social Security number and driver’s license number.
- Bank account numbers, copies of bank statements, and/or recent pay stubs may be considered proof of income.
- You may be asked about your source of income, like what you do for a living. In California, all “verifiable” sources of income must be considered the same. ([Cal. Gov't Code §12955(p)(2)](http://www.ca.gov)). For example, your Social Security disability income should carry no less weight in accounting for your income than wages from an office job.
- Landlords may also want to know about the number of people expected to live in the unit and if there will be any pets.

**Is there anything a landlord can’t ask?** A potential landlord may not ask any questions that violate federal or state discrimination laws. These include questions about race, national origin, religion, sex, familial status or disability prohibited by federal law. In California, a prospective landlord cannot ask about race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, disability, or genetic information. See Cal. Gov't Code § 12955.


To learn more about laws in other states, see the [HUD website](http://www.hud.gov) [10].

b. Credit Reports

**Can a credit check be required in the application process?** Yes. Most landlords want to check your credit report to make decisions about whether you will be a reliable tenant. If you are looking for a rental, it is best to check your credit reports before the landlord does. You can order [free credit reports](http://www.annualcreditreport.com) [11] from the three national credit bureaus: Experian, TransUnion, and Equifax. If there’s an error, you can file a [dispute](http://www.annualcreditreport.com) [12] with the bureau rather than try to explain it at the last minute.

**Why do they need a credit check in addition to proof of income?**

Rental applications reveal information that allows a landlord to make preliminary judgments about your suitability as a tenant. A potential landlord may verify application information regarding your current employer, income, and living situation (including opinions of your current landlord). A credit check, on the other hand, provides the landlord with information that is only available...
from a credit history report, with negative information dating back seven years or ten years in the case of a bankruptcy.

A credit report includes the following:

- history of paying bills and loans on time or record of late payments;
- open accounts and level of indebtedness;
- collection actions;
- bankruptcies or tax liens; and
- civil court judgments, including “housing” court actions filed by a previous landlord that may have led to eviction.

A sample credit report [13] is available from Experian, one of the three national credit bureaus.

Do late rent payments show up on my credit report? Maybe. According to the national credit bureau, Experian, late rent payments [14] are not generally a part of your credit history unless the landlord or management company is a subscriber to the credit bureau. However, Experian advises that late payments may be revealed if the landlord refers the matter to a collection agency or if a civil court action, the first step toward eviction, is filed against you.

Will an eviction show up on my credit report? It will not, according to national credit bureau Experian [15]. However, Experian's site states that if the eviction resulted from nonpayment of rent, your credit report may show a collection action or a civil court judgment awarded to the landlord.

While eviction is not normally a line item in your credit report, landlords may gather information about you from other sources. As discussed in depth in Section 4 [16], prospective landlords may conduct more extensive checks that reveal information about your character, general reputation, personal characteristics or mode of living. Therefore, a potential landlord may learn of your eviction from a prior residence when a consumer reporting agency contacts references or previous landlords.

An eviction may also come to light through a tenant screening “specialty” report which generally includes information from commercial data bases that compile data from “unlawful detainer” court files.

For more about rent payments and your Experian credit report see Experian’s Credit Report Basics [17].

c. Tenant Reports

All three national credit bureaus, Experian, TransUnion, and Equifax, offer tenant screening products called “tenant reports.”

How is a tenant report different from a credit report? Your credit report includes information about creditworthiness, such as your record of paying bills on time. In addition, your credit report gives landlords an indication of whether past credit problems have ended in a bankruptcy or a state civil court proceeding for non-payment of rent, an action that usually leads to eviction.

A tenant report, on the other hand, may include not only credit information but such things as employment and criminal history, entries on sex offender or other public databases, driving records, and more. A tenant report may also include information gathered from personal interviews with your neighbors, former landlords, or associates.

The three national bureaus each offer a variety of tenant screening products. For example, TransUnion offers a product called SmartMove [18], an online tool with input by consumers and independent landlords. Once information has been compiled, TransUnion uses predictive analytics to determine your “risk level,” and recommends whether the landlord should accept you as a tenant.

With Experian’s product, Connect [19], a prospective tenant pays a fee to give the landlord online access to his or her credit report and score. Equifax [20] offers customized, web-based tenant screening that verifies consumer identity, credit worthiness, criminal history, rental history, and employment background.

Although many companies offer tenant screening products, some companies may offer tenant screening only locally or in designated sections of the country. Others offer online or web-based screening. Still others offer tenant screening nationwide. Large companies that offer tenant screening anywhere in the country include: LexisNexis Screening Solutions [21], and SafeRent, an arm of CoreLogic [22], which, among other features, has a national database of landlord-tenant court records.

Do you have to pay for a screening report? If so, how much does a report cost? It depends on the landlord and your state law. California law allows a landlord to charge you out-of-pocket expenses, and the cost adjusts yearly. (Cal. Civ. Code § 1950.6)
As of 2013, you may have to pay up to $49.50 for the landlord’s screening.

**Can you get a copy of your own tenant screening report?** Possibly. The Fair Credit Reporting Act (FCRA) gives you the right to obtain your file from a “specialty” reporting company, and tenant screening reports are considered “specialty” consumer reports. The large national tenant screening companies, such as LexisNexis and CoreLogic, allow individuals a means to obtain “file” disclosures on their websites.

However, many different companies are in the business of tenant screening. If the landlord does not tell you the name of the company he or she plans to use, you should ask. If you do not ask questions when a prospective landlord mentions screening, you may be screened without knowing the name of the company. This makes it more difficult to correct potential errors.

To learn more about tenant screening and other specialty reports that are subject to the FCRA, see PRC’s guide “[Other Consumer Reports: What You Should Know About “Specialty Reports”](#)[23].

For a list of some of the many “specialty” consumer reporting agencies, including tenant screening companies, see the Consumer Financial Protection Bureau [24] (CFPB) website. In November 2012, the CFPB warned [25] companies that they must provide consumers with easy access to their consumer reports.

For more on your right to FCRA notices, see the FTC’s publication *Using Consumer Reports: What Landlords Need to Know* [26].

**Can a screening company contact people who know me?** Yes. When a screening company compiles a report from personal interviews with friends, neighbors, former employers or landlords, it is called an Investigative Consumer Report. Under the FCRA, an Investigative Consumer Report reflects on your “character, general reputation, personal characteristics, or mode of living.” (15 U.S.C. § 1681a) The FCRA requires that you receive additional notices when a screening company draws information from personal interviews. This includes your right to notice of the “nature and scope” of the information to be sought.

For further discussion of Investigative Consumer Reports and the FCRA, see the FTC’s July 2011 report: *40 Years of Experience with the Fair Credit Reporting Act* [27]. (p. 62-64)

If you live in California, the term Investigative Consumer Report has a different meaning. California’s [Investigative Consumer Reporting Agencies Act](#)[28] covers not only information from personal interviews but also information from “any source” when reports are prepared for employment, rental, or insurance purposes. (Cal. Civ. Code § 1786)

In California, you have the right to request a copy of your report for at least two years after the consumer reporting agency provides your report to the landlord (or anyone else requesting the report). (Cal. Civ. Code § 1786.11) In addition, California law requires that you receive information about the tenant screening company before the landlord orders your report.

d. **Tenant “Scores”**

**Is there such a thing as a rental “score”?”** Yes. For example, TransUnion has a product called SmartMove [18], in which its tenant scoring model [29] allows users to accept or reject certain criteria. CoreLogic’s SafeRent [30] division markets what the company calls the RegistryScorePLUS [31], said to predict potential loss to landlords from unpaid rent, lease termination or property damage. Another tenant screening company, Rate-a-Renter.com [32], includes among its scoring elements, income to rent and income to debt ratios as well as criminal and eviction records. In all likelihood, many tenant screening companies create their own version of a rental score, with the credit score being at least one common element.

**Does the FCRA give you the right to get your “tenant score”?** No. The FCRA gives you the right to purchase your credit score. However, credit history is usually only one part of your overall “tenant” score. The only score you are entitled to receive is your credit score, which is based solely on the data included in your credit file.

To learn more about credit scores and your rights under the FCRA, see PRC’s guide *Your Credit Score: How it All Adds Up* [33].

e. **Tenant Blacklists**

**Is there a tenant blacklist?** Not officially. The word “blacklist” is often present on websites where landlords share information on individuals they consider problem tenants. In addition, the term “blacklist” has been used to reference lists of tenant names gathered from landlord-tenant court files.

Court records showing that a landlord brought an action against you may harm your chances of getting a rental in the future. Like most court records, landlord-tenant court proceedings are public records. This means the record is available for anyone to see.
Landlords can access these records in several ways. A landlord may physically go or send an agent to the local courthouse to check on a prospective tenant. Alternatively, the records may be available directly through the court’s website. The FCRA does not apply when a landlord or his employee directly accesses the court records.

However, the FCRA does cover screening companies, and tenant screening reports often include information compiled from landlord-tenant actions in local court. This means when a third-party screening company creates a report that includes landlord-tenant court records, you have the same rights under the FCRA as you do when a landlord checks your credit report.

The Unlawful Detainer Registry was a regional database of landlord-tenant court cases in California and other Western states. Now, third-party tenant screening companies (considered consumer reporting agencies under the FCRA) collect data from civil court actions that landlords bring against tenants and compile it to create unlawful detainer registries. Unlawful detainer actions, often arising from a tenant’s failure to pay rent, are usually the first step toward eviction.

Individuals used to personally visit local courthouses to obtain data from landlord-tenant court proceedings. Today, screening companies are more likely to purchase such data in bulk (largely as a result of digitization). Therefore, the norm is now national, rather than regional, databases of landlord-tenant court records with regional registries being purchased by national data brokers. For example, CoreLogic [34] acquired a number of regional companies in the late 1990s and created a national database of landlord-tenant or Unlawful Detainer [35] actions.

In addition to the names of the parties, an unlawful detainer registry may include information such as the fact that the case was filed and the outcome. Sometimes called a tenant “blacklist,” landlord-tenant court registries have been subject to numerous lawsuits.

As a result of lawsuits, judges have made it clear that commercial registries that compile lists of landlord-tenant court records are subject to the FCRA. Further, courts have made it clear that to meet “accuracy” and “completeness” standards of the FCRA, the registry may not omit information that would lead to a misleading or incomplete understanding of the circumstances of the case.

Significant court cases involving landlord tenant registries include:

- Schoendorf v. Unlawful Detainer Registry [36], 97 Cal. App. 4th 227(118 Cal. Rptr. 2d 313) (2002);
- Cisneros v. The U.D. Registry, Inc [37], 39 Cal. App. 4th 549 (1995);

**What can you do if a landlord posts your name on an online renter’s blacklist?**

Many websites exist where landlords can post information about former tenants. Whether these sites are "consumer reporting agencies" under the FCRA is subject to interpretation by federal regulatory agencies. A “consumer reporting agency” is:

[A]ny person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for purposes of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. (15 U.S.C. §1681(f))

The Consumer Financial Protection Bureau [39] (CFPB) has assumed primary oversight and enforcement of the FCRA. If you find that your name appears on one of these websites, you may complain to the CFPB.

For more on filing a complaint, see Section 6 of this guide.

**4. If You’ve Been Denied a Rental**

A landlord may deny you the rental or reject your application for any number of reasons. Or, the landlord may offer you the property subject to certain conditions you don’t consider fair. A poor credit history, a bankruptcy, a criminal history, unfavorable references, or prior eviction action may result in your rental application being rejected.

In certain situations, the FCRA gives you the right to receive notice when a landlord makes an adverse decision based on a consumer report, and to dispute inaccurate information. However, if negative information is accurate, the landlord may have a legitimate argument for turning you down. Even if the landlord does not find negative information, the landlord may simply consider you a less worthy candidate than someone who, for example, has a higher salary or a longer work history.

All objective things being equal, a landlord should not deny you a rental for simply being who you are. Federal law protects renters against certain forms of discrimination. The Fair Housing Act (FHA), part of the Civil Rights Act of 1968, prohibits discrimination on the basis of race, color, national origin, religion, sex, familial status, or disability. (42 U.S.C. §§ 3601-3619)
the years, Amendments and Presidential Executive Orders [2] have increased FHA protections to include, among other things, anti-age discrimination.

For more on the FHA, see HUD’s Fair Housing – It’s Your Right [40].

Do you have any rights if you are rejected based on a tenant or credit report? Yes. If the landlord rejects you because of any information in the report, the landlord must provide you with what the FCRA calls an “adverse action” notice. According to the FTC, the notice must include the following information:

- the name and contact for the company that supplied the report;
- a statement that the landlord, not the screening company, made the adverse decision; and
- notice of your right to dispute the accuracy of the report and to receive a free copy of your report within 60 days.

For more information, see the FTC publication, Using Consumer Reports: What Landlords Need to Know [26].

The Fair Credit Reporting Act (FCRA) gives you the right to receive written notice when you are turned down for a rental based on consumer report information. The FCRA also gives you the right to receive a copy of the report and dispute [12] inaccurate information. To dispute an error, you may submit information and a statement outlining your reasons for the dispute. After you file a dispute, the consumer reporting agency must conduct an investigation and delete erroneous information.

For more information on your rights under the FCRA, see Section 3 of this guide.

5. Your Privacy Rights as a Renter

a. A Landlord’s Right to Enter

As a renter, you are likely concerned about both your information privacy and your physical privacy. This typically means living free from the fear of unexpected visits from the landlord or his agents. You might expect the landlord to enter your space when you request repairs, or to show the unit if you are moving out. However, you would probably feel uneasy if you found out that people had been entering your home without your knowledge or consent.

Notice is an essential element of privacy. If your landlord gives you adequate advance notice that he or she wants to enter your space, you are less likely to feel that your privacy has been violated. While many state laws include a specific notice requirement, usually 24 to 48 hours, other state laws require only that notice be “reasonable.” Some states do not even have laws restricting a landlord’s unexpected visit. The U.S. Department of Housing and Urban Development has a “state information” page.

In California, 24 hours is generally considered “reasonable” notice. (Cal. Civ. Code § 1954(d) [41]) However, the notice requirement does not apply in the case of an emergency or if the property has been abandoned. (Cal. Civ. Code § 1954) When a property is for sale, the landlord must notify the tenant in writing that the landlord may contact the tenant in person or by telephone with 24 hours notice before showing the property to a potential buyer.

For more about a landlord’s right to enter in California, see the Department of Consumer Affairs' California Landlord Tenant's Handbook [9] (pp. 33-35).

b. Do landlords have to keep information private?

Some. When a landlord collects information in credit and tenant screening reports, it is subject to the FCRA and should not be used for any other purpose. In addition, when a landlord is no longer using the data, the FCRA requires when no longer of use, data subject to the FCRA must be disposed [42] of properly in accordance with FTC rules. Proper disposal is required for information included in either paper or electronic format. Landlords, as users of consumer reports, must follow the rules the same as consumer reporting agencies that issue reports. (15 U.S.C. § 1681w (a)(1))

6. Resources: Find Help or File a Complaint

Federal Agencies

Department of Housing and Urban Development (HUD)

To begin, contact a housing counselor in your area through HUD [43]. The HUD website also lists a toll free telephone number for around the clock advice: 888-995-HOPE (4673). HUD’s interactive help system may also provide you with more information: 800-569-4287.
For California renters, one HUD counseling organization, Project Sentinel [44], offers information on a variety of renter topics. For some situations, particularly eviction or unlawful detainer cases, the best advice will be available from an attorney familiar with state and local landlord tenant matters. To find an attorney, contact your local bar association. These services are easily found through directory assistance or an Internet search. Another resource is the National Association of Consumer Advocates [45], a consumer-oriented organization with listed attorneys in all areas of the country.

**Consumer Financial Protection Bureau**

- **Online:** [CFPB Complaint Form][39]
- **By phone:** (855) 411-CFPB (2372)
- **By mail:**
  Consumer Financial Protection Bureau
  P.O. Box 4503
  Iowa City, Iowa 52244

Complaints about violations of federal housing discrimination laws may be directed to the [HUD online complaint form][46]. (Scroll down for a list of HUD Regional Offices and toll-free numbers.) Within HUD Regions are a number of [local field offices][47].

Find your state and local housing and consumer protection agency through the website maintained by the [U.S. General Services Administration][48].

**Federal Laws**

- **Federal Fair Housing Act of 1968** [49], 42 U.S.C. §§ 3601-3619
- **Fair Credit Reporting Act** [3], 15 U.S.C. § 1681 et seq.
- **Dodd-Frank Wall Street Reform and Consumer Protection Act** [50], Pub.L. No 111-203 (July 2010)
- **Service Members Civil Relief Act, 50 U.S.C. §§501-597** [51]

**State Laws and Resources**

- **Rental Assistance by State** [52], published by HUD.gov
- **Landlord-Tenant Statutes, State by State** [53], published by Nolo.com
- **Unlawful Detainer Statutes by State** [54], published by unlawfuldetainer.org
- **State and Local Government Agencies** [48], published by the U.S. General Services Administration

**State Courts**

- **National Center for State Courts** [55]

**Other Resources**

- **National Tenant Resources** [56], published by TenantsUnion.org
- **Landlord-Tenant Law: An Overview** [57], by Cornell University Law School
- **Sentinel Project** [44], a HUD-approved California counseling agency

**Publications**

- U.S. Department of Housing and Urban Development, [Fair Housing Information for Housing Providers][58]
- Federal Trade Commission, [Using Consumer Reports: What Landlords Need to Know][26]
- Federal Trade Commission, [Forty Years of Experience With the Fair Credit Reporting Act][59], July 2011
- [Landlord and Tenant Privacy Rights][60], a publication of Nolo.com