TZEDEK DC
Legal Help for People in Debt

Suplemental Statement by John Blake, Staff Attorney, Tzedek DC to the Committee on Housing and Neighborhood Revitalization and Committee on Government Operations in Support of the "Eviction Record Sealing Authority Amendment Act of 2019" B23-0338 (November 12, 2020).

During the October 30, 2020, hearing, Chairperson Bonds asked questions related to the relationship between specialty consumer reports often referred to as "rental screening reports." Tzedek DC routintely assists clients with consumer credit reporting issues. Our experience on this issue may provide insight into how specialty consumer credit reports will be impacted by the sealing of eviction and other negative rental housing records.

The Fair Credit Reporting Act ("FCRA") provides a series of protections for consumers relating to the conduct of Consumer Reporting Agencies ("CRAs") that bear on the protections that Bill B23-0338 has the potential to provide. *See generally* 15 U.S.C. 1681 *et. seq.* Specifically, the FCRA governs all national consumer reporting agencies, including specialty CRAs that report a consumer's tenant history, eviction case history and criminal history to a housing provider seeking to make a decision about renting to that consumer.

Consumers are entitled to a copy of any consumer report used in an adverse action against them. Denial of housing, requiring a higher security deposit amount, or any other adverse action related to the decision to rent is covered under the Fair Credit Reporting Act. Consumers are entitled to accuracy in consumer reporting under the FCRA. Expunged or sealed records cannot be reported because once they have been sealed or expunged they are no longer considered accurate within the meaning of the FCRA.

Speciality consumer reports are often misleading. For example, they may only report that an eviction case was filed without any information about the case status or how it resolved even when the case was resolved favorably for the renter-consumer. At times, the only additional information included is the dollar amount alleged to be owed, but not any determination that the money was paid or that an actual determination was made against the tenant-consumer.

Unless the housing provider pulls the court docket and reviews the case, the provider will make the decision to rent or not only based on the information that an eviction case existed. Since specialty CRAs often provide a companion service of issuing a recommendation to the housing provider whether or not to rent to a tenant, the recommendation against renting is often based on this incomplete and misleading information.[1] Specialty CRAs often obtain information from other sources like data brokers and data scrapers, and fail to update reports regularly even when the status of an eviction case resolves favorably for the tenant-consumer. Some of these agreements between specialty CRAs and housing providers to screen prospective tenants do not

[1] *See, e.g.*, Lauren Kirchner and Mathew GoldStein, *How Automated Background Checks Freeze Out Renters*, N.Y. TIMES, May 28, 2020.

even provide the raw information used to make the recommendation, and simply result in a "thumbs down" or "thumbs up" response. The housing provider can request the data in the report after a recommendation has been provided about whether to rent to a tenant. For many tenants, this comes too late, as the housing provider in a high demand market is unlikely to hold up a rental decision and dig for more information when a recommendation has already been made.

Consumers have the ability to dispute inaccurate information on their consumer reports, and to file suit if consumer reporting agencies do not meet obligations under the FCRA. However, this relief is insufficient to provide the protections adressed in this bill. First, if the tenant successfully resolved an eviction case, the fact of the eviction case is still reported, is accurate, and is not a mistake that can be cleared, but negatively impacts the landlord's decision of whether or not to accept the prospective tenant. Second if the tenant-consumer is actually able to clear the mistake in the report, this process generally takes so long that the apartment is lost, because the housing provider in a high demand market is unlikely to delay a rental decision. Disputing consumer reporting is a cumbersome process, and often takes months or even years to achieve the desired effect. Third, without counsel, consumers often lack the means to exercise rights under the FCRA to obtain relief from inaccurate reporting beyond the intial dispute process.

The FCRA requires negative reporting of records to expire from a consumer report after a statutorily defined period of time. Court records can remain on a report for only seven years.[2] Money judgments are permitted to stay on consumer reports for as long as the judgement is enforceable. This typically means 12 years in the District, with the ability to renew for another 12 years before the first 12 years expires. D.C. Code § 15-101. The majority of records for landlord-tenant cases do not include a money judgment.

During the hearing, Chairperson Bonds inquired into whether the proposed period after which records should automatically be sealed should be lengthened to seven years, in line with the FCRA's requirements that negative consumer reporting expire after that period. We oppose increasing the period of time from three years to seven years or any longer period of time. Three years is a reasonable balance between a housing provider's interest in inquiring into the rental worthiness of a potential renter, as well as the public's interest in having court records publically available, and the weightiness of the harm that such records do to consumers in the District's rental housing market. For District consumers without a history of court judgments, *i.e*, if the eviction cases were resolved successfully for the renter, a seven year period would have little utility because the FCRA already ensures that specialty CRA's—used by most housing providers to check renters backgrounds and credit worthiness—are barred from reporting rental history information that is over seven years in the rental screening report.

[2] 15 U.S.C. § 1681c.

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Records of involvement with the eviction court system, whether those cases resulted in the tenant's favor or in actual eviction, have a deeply harmful impact on renters in the District's rental housing market. Landlords use these records to block tenants from access to rentals and stear tenants to lower quality units and away from certain parts of DC. Tenants with housing records will also often accept the actions of bad acting housing providers out of desperation, or tenants who are threatened with a lawsuit by an unscrupulous landlord may move and experience housing instability before a landlord even files a lawsuit, because the tenants know that the fact of an eviction case will likely be a black mark on their housing record. For a District consumer-renter, this seven year black mark on a record likely means one is forced to accept substandard housing conditions, is more susceptible to unlawful housing practices, or is frozen out of the rental housing market altogether. Residents should be given the chance to start over free from the residual, ongoing harms from the landlord-tenant court system.

As noted at the hearing, we generally support efforts to undertake sealing eviction housing cases when they are filed. Such an approach would address the issues specialty consumer reporting agencies and data scrapers present by ensuring the information is not available until a determination as to the merits of the filing is made in the court. California's eviction record sealing law provides an example of that approach.[3]

We are available to serve as a resource to the Committees as the details of the bill are examined over the course of the legislative process. We again thank you for taking up this important issue.

[3] Cal. R. Ct. 1161.2; 1167.1.