

# Tenant Screening Services or Tenant Blacklisting?

BY SIMSON L. GARFINKEL

Ruth Cisneros is trapped in her apartment by a computer she has never seen. Seven years ago, Cisneros' landlord of three months wanted her out. "I don't want you here and that's that," Cisneros said the landlord told her.

The landlord sued to have Cisneros evicted, but the judge dismissed the suit as groundless. At the end of the year, Cisneros' landlord had a change of heart and renewed the lease. Twice more the cycle repeated. The only real effect of the suits was to put a notation in a private company's computer that somebody had filed three times to get Cisneros evicted.

The problem is that nearly all of Southern California's landlords use that computer to help evaluate rental applications. If somebody has ever tried to evict you, you don't get the apartment. Often you don't even get a phone call back.

In March 1987, Cisneros applied to live in the Promenade Apartments. Her application was rejected because the computer, operated by the UD Registry Inc., provided the Promenade with a record of the three eviction attempts. Even a letter from Cisneros' new landlord saying that she was a model tenant wasn't enough to counteract the judgement of the computer.

California state law forbids companies from reporting eviction actions in which the tenant is victorious. But the owner of the computer, Harvey Saltz, said having a suit dismissed is not the same as having the tenant win in court. Cisneros, along with eight other people, have filed suit against UDR for damages resulting from faulty reporting. The case is still pending.

Computerized tenant screening services (TSSs) like UDR now operate in many cities. TSS operators say they provide an indispensable tool that allows landlords to distinguish "good" tenants from "bad" ones. Landlords say screening is their only defense against destructive tenants who know how to use the courts to avoid paying rent. As for Cisneros, Saltz said that none

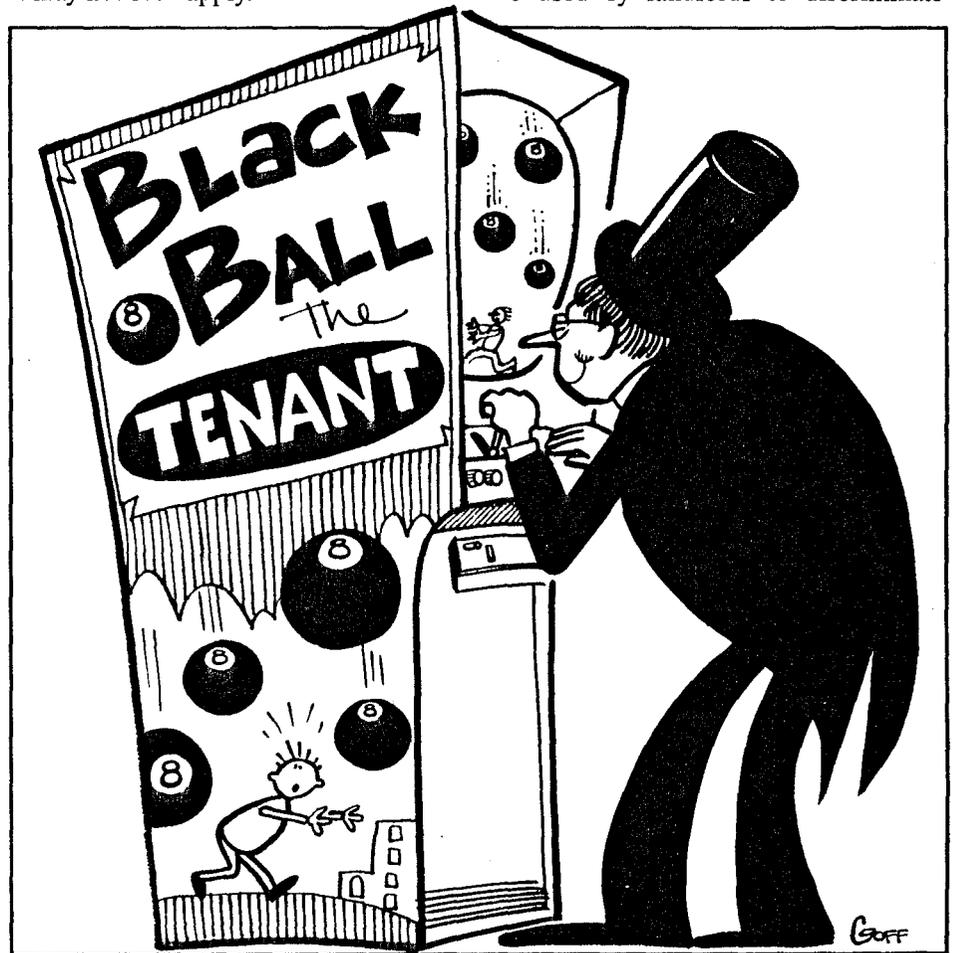
of her allegations are true and that nothing he has done is illegal.

Attempts to regulate TSSs have failed in several states and in Congress. As for the federal Fair Credit Reporting Act — the law that Congress passed in 1970 to stymie abuses in the credit reporting industry — few of its terms are applicable to TSSs, and the agency which polices the law says that it may not even apply.

applicant's credit and eviction history is displayed on the operator's computer screen within fifteen seconds. "People get all of the information before they hang up the phone," said Saltz.

"We give the little guys access to big brother," said Neil Van Sant, co-owner of Ties Landlord Information Exchange (Howell, New Jersey). Much of the information reported by TSSs has always been available, but until now it has always been too cumbersome for landlords to search the records. Screening services change that.

The theory is that if a person has a history of being a problem tenant the behavior pattern is likely to continue. But some of the information reported, like successfully defending a rent strike in court, can only be used by landlords to discriminate



## Big Brother is Watching

Most services charge between \$10 and \$30 for a report. This charge can be passed on to tenants as an "application fee." The search is initiated by a telephone call from a landlord. The landlord tells the operator the name, social security number, driver's license number, and last known address of the applicant. In the case of UDR, the

against a tenant who knows his rights. "It's not a credit check it's an organization check," said Phyllis Salowe-Kaye, president of the New Jersey Tenants Organization.

A screening service's main source of information comes from workers who travel to housing courts and record eviction filings and settlements. But the collection

procedures and the amount of information recorded varies from service to service.

The Registry's (operating in the Washington, Baltimore, and Philadelphia area) Philadelphia data collection system consists of 13 Kaypro 2000 portable computers which its employees take into housing court every day to copy the full text of the latest filings. At night, the portable computers call the Registry's IBM System 38 and upload the day's eviction proceedings. If a tenant has an eviction action filed against him on Monday, a subscriber will know about it on Tuesday.

By contrast, Landlords Credit Data Services has three people who travel to the courts in Rhode Island, Connecticut, New Hampshire, Vermont and Massachusetts. The only information that Landlords Credit uses is the name and town of the parties involved, the name of the courthouse and the judgment. That means if a tenant withholds \$1500 in rent because a landlord didn't provide heat, and a judge settles the dispute for \$300, the computer reports a \$300 judgment for the landlord.

Many screening services also maintain a file of statements by landlords about former tenants. The so-called "fly-by-night file" is designed to prevent tenants who have caused problems for one landlord from harming another.

RentCheck (Denver, Colorado) operates a national fly-by-night file. RentCheck's data comes from two sources: landlords' reports of financial loss and the TeleCheck (RentCheck's parent company) data-base of bounced checks. If a landlord notifies RentCheck that the delinquent tenant has paid what he owes, the tenant's name is purged from the database. "Our system is based entirely on the fact that somebody owes a landlord money," said Larry O'Neill, a spokesman for RentCheck.

But just because a person is in the computer doesn't mean that the person caused a financial loss, it merely means that a landlord reported one. The TeleCheck system has proof — a bounced check. But RentCheck makes no attempt to verify reports from subscribers — landlords don't even have to provide photocopies of receipts from alleged repairs. No mechanism guarantees that a landlord's loss was as large as claimed or that it even happened.

Other fly-by-night files include lifestyle information, such as suspected drug use. Landlords Credit maintains a database of every name that has appeared in a New England newspaper in connection with drugs and violent crimes. The owner of another TSS said he occasionally tele-

phones friends who work in out-of-state police departments to check for arrest records on apartment applicants. The owner, who asked that his name not be used, said that personal connections were important when checking out-of-state applicants.

### A Case of Mistaken Identity

Collecting the information is easy compared to the task of matching the name on a court docket with the name of a prospective tenant. Since court records do not include the defendant's social security number or date of birth, said Eviction Data Services' David Covillion, common names can lead to false matches.

In the event of a mismatch, Covillion said, it is the responsibility of the tenant to prove that he is not the person that is in the database. "All the tenant needs to do is go to the phone company and get a bill or something to prove that they were not living there at the time," he said. Even though the tenant has already lost the apartment, Covillion said, it's not the end of the world. "The turnover rate is very high. People move all the time."

That wasn't the case with Alice Arias, a 43-year old disabled mother of four sons. Arias spent eight years on a waiting list for a federally subsidized housing complex in Los Angeles. When her turn finally came, a tenancy check by UDR reported that "Alice Arias" — a different Alice Arias — had been previously evicted for nonpayment of rent. "We have the same name and we both lived in Monebellow. I lived on Bradley. She lived on Bradeley." The other Arias, who lived with her four daughters, was evicted and ordered to pay \$1400 to her former landlord.

Arias — the one with four sons — wrote a letter to UDR asking them to fix their records. "I sent in my social security number, my driver's license, my previous address where I had lived, and I never got a response," she said. From 1984 until 1986, Arias lived in a motel room with her possessions in public storage. She saw over a hundred apartments and was turned down at each because of the report from UDR.

Meanwhile, Arias' \$455-a-month disability check couldn't cover the \$600-a-month motel room and \$100-a-month storage costs. "I got behind one payment. They sold my furniture for \$312. They sold my TV, bedroom set, living room set, washer, all my appliances." She lost over \$10,000 worth of belongings.

Arias is a common name. It is easy to understand how UDR's computer could

confuse two Alice Arias', both with four children, both on welfare, both living on streets with similar names. Indeed, UDR's computer is programmed to make matches even when spellings on names, streets or driver's license numbers are slightly off, Saltz said, to catch the problem tenant who slightly changes her name to avert UDR's scrutiny. It also catches the typographical errors Saltz's workers make when they type the information in the courthouse.

### Resisting Regulation

TSS operators say that they have a right to obtain and report court records because they are public information. They also say that there is no reason for the public to complain since the services are operating under the terms set forth by Congress in the Fair Credit Reporting Act (FCRA).

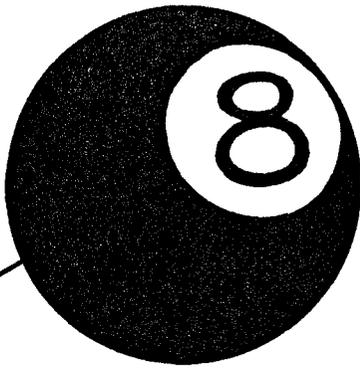
The FCRA allows a person to be rejected for credit, insurance or employment because of a credit report, but requires that in such cases the name of the agency that prepared the report be provided to the consumer. The consumer then has the right to obtain a copy of the report from the agency and force the agency to reinvestigate the information. If there is still disagreement, the consumer may enter a short explanation into his file. Information more than seven years old may not be reported. (Bankruptcies may be reported for ten years.)

But according to David Grimes, an attorney at the Federal Trade Commission, the FTC hasn't decided if TSSs are subject to the FCRA. The FCRA was written before TSSs became popular, so the law doesn't specifically mention them.

California is the only state that specifically regulates TSSs. One of the main contentions of the suit filed against UDR is that the company has ignored this law. Whether it has or not is very difficult to determine, because the company will not allow Cisneros, Arias or their lawyers to visually inspect its records. Denying visual inspection is also a violation of the law, said Judith K. Reeves, one of the suit's lawyers.

### Unjustly Blacklisted

Even allowing a TSS to report cases in which the landlord is victorious may not be fair because tenants can lose their case for a variety of reasons that have nothing to do with how good a tenant they are. "Roughly a third to half of all cases brought are default judgments. The tenant didn't appear: they arrived a few minutes late, they overslept, they were sick in the



hospital or had children problems, or they had moved out and believed the problem was settled," said Frank Brodhead, a staff member of the Philadelphia Tenant Action Group.

Some housing advocates say that simply reporting the filing is enough. "Once a landlord hears that another landlord had an eviction action filed (against the applicant), they don't want to hear anything else. . . They just don't rent to you," said Paul Lee, of the Legal Aid Foundation of Los Angeles.

Screening services magnify the damage done by clerical mistakes in the courthouse by repeating them to the people who are most likely to act upon negative information. One TSS owner said that a tenant had been denied an apartment because he was listed by the court with an outstanding warrant for failure to pay damages. "The guy called up screaming," said Susan Singer of Apartment Owners Information Exchange (Plainfield, New Jersey). The man had paid the money, she said, but the court had not updated its files.

In theory, a landlord is required by the screening services to report the name and how to contact a screening service if the service was responsible for the application being rejected. But in practice there is no way to enforce this requirement.

"Contracting rental properties is done person to person or over the phone," said Mary Lee at the Western Center on Law and Poverty. "There is no penalty or mechanism to regulate landlords in as pervasive a way as credit agencies or creditors are regulated," she said. A rejected applicant has no way of knowing if the person who was accepted got in because of a better screening service report or merely because of the landlord's whim.

Nearly all tenant screening services contacted for this article refused to divulge the number of records in their database and the number of landlords or apartment units that are using them. Owners claimed that this information is "confidential," or "classified." Although TSSs may have competitive reasons for withholding such

statistics, such an action also limits the service's public accountability, and makes it impossible to determine the impact that TSSs are having in the housing markets.

### A Growing Industry

The larger tenant screening services are now expanding into new areas. UDR is moving into Northern California, Saltz said. The Registry has just expanded from Washington, DC to Philadelphia. As housing courts computerize, TSS operators say that they will make arrangements to get eviction filings and rulings in machine readable form, eliminating the need to hire people to retype each case.

Without regulation, competitive pressures among screening services will result with more and more information being made part of the records. A service that includes the names of tenants who call city agencies responsible for housing code enforcement is more valuable than one without such information. Likewise, a service which lists membership in tenant associations has an added value. Nothing currently prevents a TSS from reporting such information if it is lawfully obtained. The more specific information about tenants a database has, the more attractive it is to landlords who want to know everything about their tenants before they sign a lease.

The biggest problem in regulating tenant screening services is that few lawmakers know of their existence before they enter a market. Once a TSS becomes established, it becomes a special interest — with a powerful client base behind it — which lobbies against regulation.

In December 1986, a Massachusetts bill to regulate screening services failed to pass the state legislature by a tie-vote, largely because of pressure exerted by the owner and clients of one screening service. The Massachusetts bill is similar to one proposed by U.S. Congressman Charles Schumer (D-NY) in 1985. Both would forbid tenant screening services from reporting membership in tenant organizations, requests for repairs, lawful withholdings of rent, court cases in which the tenant is the prevailing party, and court cases more than one year old.

But unless courts begin to provide identifying information — such as social security number or date of birth — on their records, the risk of mismatch will continue.

### Rules for Fair Play

Landlords have a right to know the rental history of applicants for an apartment. But

many landlords are hesitant to rent to a tenant who had a history of being in housing court, for whatever reason. Even if the matching system is perfect, it is not necessarily fair.

The right or ability to report public information is at the basis of our notions of a free and open society. But part of the decision-making process that originally made eviction filings public information included a calculation of the difficulty involved in looking up the eviction history of a particular individual. The advent of computerized tenant screening services changes that calculation.

In the absence of housing reform, basic regulation of tenant screening services is needed in order to prevent discrimination of innocent parties.

Consumer reporting agencies should be barred from reporting eviction filings, because they often amount to unsubstantiated accusations. Likewise, information regarding membership in tenant organizations or calls for maintenance should not be allowed in the database.

Tenant screening services should be required to provide their databases — minus identifying information — upon request to interested parties at the cost of duplication, in order to allow the contents to be checked for compliance with the law. They should be required to make public disclosures regarding the size of their databases, the number and size of their clients, and the frequency of database searches.

The computers that maintain the database should automatically send a letter to a person whenever a record on them is entered into the database and whenever their name is searched upon. Information in the database should be expunged after three years. And the fly-by-night files, since they are another form of undocumented accusations, should be abolished.

Landlords and screening service operators should be both civilly and criminally liable for misuse of the data in their systems. Operators should be liable for reporting errors.

The experience of Massachusetts shows that if lawmakers wait for tenant screening services to become a problem before attempting to regulate them, the services will build a powerful constituency which can effectively prevent the passage of regulation. In the absence of nationwide regulation, the state legislatures must act, and they must act now. ■

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