



Report of Findings

Files: 6100-02760
6100-02761

Complaints under the *Personal Information Protection and Electronic Documents Act (the Act)*

1. The complainant, an employee of a tenant advocacy organization based in Toronto, alleged that the respondent organization was improperly collecting, using and disclosing tenants' personal information for a fee, including via a publicly accessible Web site, and that it was not appropriately protecting the personal information on the site.

Summary of Investigation

Collection, use and disclosure

2. The complainant alleged that the respondent was collecting tenants' personal information, using it and disclosing it without their knowledge or consent in the form of two lists: a "Delinquent Tenant List" and a "Bad Tenant List" via the respondent's Web site. The complainant alleged that the Bad Tenant List was "extracted from" the Delinquent Tenant List.
3. The respondent organization offers various paid services to landlords, including conducting tenant background checks, tracing and tracking tenants, and compiling and providing access to a database of "bad" tenants.
4. The respondent offers its services on a fee-for-service basis or as part of monthly or annual membership packages. Included in these packages are member agreements, application forms, lease forms and rental agreement forms.
5. Landlords are not obliged to use the respondent's services. It is entirely at their discretion whether they wish to become members or not. Once they do, and they wish to use certain services provided by the respondent, they are obliged to provide certain personal information of tenants for the purpose of receiving the services offered. The respondent does not collect personal information directly from tenants.
6. The respondent offers two types of memberships: Gold and Platinum. We reviewed the current membership agreement language.



7. Under the Gold Membership Agreement, the subscriber member (the landlord) agrees:

...to secure any and all consents required by applicable law before requesting information from LANDLORD'S SOURCE CENTRE.

...that background information pertaining to the tenant(s): credit history reports, court records, eviction search, bank confirmation, employment verification, and tenancy history information, as defined by applicable law, will be requested only when its intended use is as a factor in establishing eligibility for a new lease or extension of lease, rental agreement, collection of rent monies owing, trace or track tenants and employment alert and said information shall only used for the above-noted purposes.

...that personal information will only be requested for and used to determine tenant eligibility and that it will be held in strict confidence even after the termination of this agreement. As a GOLD Subscriber Member, I further agree that all information received from LANDLORD'S SOURCE CENTRE in furtherance of the above requests will be requested only for the Member's exclusive use and will be kept and held by the GOLD Subscriber member, its agents, assignees, executives and employees in strict confidence.

...to protect the privacy and security of the identifying information provided to me as part of my contract to use the website: www.landlordsinfo.com and LANDLORD'S SOURCE CENTRE. This information includes but is not limited to: Membership Number, Username, Password, Casework, Tenant Investigations, Update Tenant(s) Credit Report with Credit Bureau, and for all other online and or direct assistance Services, Products, Information accessible as a result of and privilege of my Gold Subscriber Membership.

8. A Gold Membership allows the member (the landlord) unlimited free listing of bad tenants on the Delinquent Tenant Database. This means that the Gold Member is allowed to view and list the names of bad tenants contained in the Delinquent Tenant Database.



9. The Platinum Membership Agreement contains virtually the same language addressing the landlord's obligations to obtain consent for certain purposes, as outlined in the Gold Membership. Platinum members have unlimited free "update tenants Credit Report with Credit Bureau" and unlimited free views and listing of Delinquent Tenants Information.

10. At the time of the complaints, the respondent was requiring its member landlords to collect information on their tenants and provide it to the respondent under the terms of at least one of the respondent's membership agreements, which provided:

[Landlord] agrees to notify [respondent] in writing, via Facsimile, or E-mail, or Regular Mail or by Courier of any and all Delinquent Tenants.

11. The current Gold Membership Agreement does not refer to the member providing information "for any and all Delinquent Tenants". Rather, it now states:

Disclosure of Information:

As part of my Membership, I recognize the need of the business to access and collect tenant information.

I (the member) agree to furnish, from time to time, or as requested, at anytime during the course of my Membership, information concerning potential tenants, current tenants and/or former tenants to LANDLORD's SOURCE CENTRE.

12. The Platinum Membership contains the same language. However, it also includes specific language outlining member obligations with respect to updating a tenant's credit report and adding a name to the Delinquent Tenant Database. With respect to updating a credit report, the member is obliged to provide acceptable proof of tenancy and delinquency to the Respondent within seven days of making the request for the report. Acceptable proof of delinquency includes:

- Court Order or Board Order
- Landlord's Affidavit clearly outlining the reason why said tenant should be listed on the Delinquent Tenant Database and, if relevant, why the tenant's Credit Report must be updated with the Credit Bureau
- NSF cheques copied on the front & back
- Rent statement for a period of not less than 6 months clearly showing rent paid, date paid and if relevant rent owing



- Letters from other tenants (this must be accompanied by an Affidavit from the Landlord clearly outlining the reason why said tenant should be listed on the Delinquent Tenant Database and if relevant why said tenant's Credit Report must be updated with the Credit Bureau).
13. According to the Platinum Membership Agreement, "the Member agrees to specifically instruct LANDLORD'S SOURCE CENTRE...which tenant or tenants are to be listed on the Delinquent Database or which tenant's credit report are to be updated with the Credit Bureau, particularly, if a tenant application has two or more tenants on it."
 14. The Platinum Membership Agreement states that the Delinquent Tenant Database "helps and services landlords throughout North America, Europe and the United Kingdom." A bad tenant is defined in the agreement as a tenant who owes landlords money as a result of rent arrears, damages or other matters relating to the rental or lease of property. The credit report update service is only available to Platinum Members. Such members agree to "notify LANDLORD'S SOURCE CENTRE in writing, via facsimile, e-mail, regular mail, by courier or online...of any and all delinquent tenants. The request must clearly state the landlord's name, address, telephone and a clear statement asking LANDLORD'S SOURCE CENTRE to list said tenant on the Delinquent Tenant Database and to update tenant's credit report with the Credit Bureau subject to PLATINUM Member providing proof of tenancy and proof of delinquency...." The Agreement notes that the final decision regarding the listing of a tenant in the database or updating a tenant's credit report lies with the respondent.
 15. Non-members may view the bad tenants list for a higher price than a Platinum or Gold member, and may list a bad tenant (no charge). They also may have a credit and background check conducted on a tenant. There is no apparent agreement in place from the respondent that sets out any consent obligations on a non-member. It is unclear whether they may use the sample standard consent forms that Platinum and Gold members may use.
 16. When the complaints were filed, the respondent also collected tenant personal information for the Bad Tenant List by other means, including via a form on its Web site. The form had fields for the tenant's name, social insurance number, date of birth, address, beginning of tenancy, date of last payment, amount owed by the tenant to the landlord, the rental/lease rate and frequency, the tenant's employer and any other information the landlord deemed relevant to the listing.



17. On the web form, it stated the following:

LANDLORDS by inputting your current or former tenant's information and submitting said information, you are agreeing that LANDLORD'S SOURCE CENTRE has permission to update said tenant's Credit History Reports with said delinquency and list said tenant's on LANDLORD SOURCE CENTRE Delinquent Tenant Database. All submissions will be verified prior to said tenant being listed on LANDLORD SOURCE CENTRE Delinquent Tenant Database and said tenant's Credit Report updated with the Credit Bureau where relevant.

18. The landlord then has a box to check agreeing that he/she is taking all responsibility for the listing (Bad Tenant's Info). It could not be confirmed whether this form is still available to landlords.
19. The respondent maintains multiple bad tenant lists based on geographic regions. A landlord may access the bad tenant list for a particular region or verify a name against the respondent's database.
20. As part of the membership packages, the respondent also offers its members a number of forms that they can use. One of these (for Ontario) is the Ontario Residential Property Application Form. We reviewed a copy of the form. It requests a number of pieces of personal information from the potential tenant, including social insurance number, date of birth, banking information. The consent language on the form is as follows:

I/[We] hereby apply for rental [lease] of the residential premises as indicated on page one of this application form. I/[We] give the landlord [landlord's agent, representative property management] permission to check my credit history, references and other relevant investigation to determine my residential rental history, court, financial history and my ability to pay rent and maintain the rental unit and rental premises. My signature below confirms that (I) agree to and I request all credit reporting services, banks, court, tribunals, employers, and personal references to disclose any pertinent information about me.

21. Another standard form that members may use is the rental agreement form. There is no specific reference on the form we reviewed to the fact that tenant personal information can be put onto a bad tenant's list kept by the respondent



and available on its web site in the event that rent is not paid or damage is done to the property. It does not indicate that personal information may be sent to the respondent for the purpose of updating the tenant's credit report with the credit bureau.

22. In late 2008, the respondent agreed to remove the bad tenant database and replace it with a "system that complies with the *Privacy Act* (sic)." It was to do so within 90 days.

Safeguards

23. On March 5, 2009, the *Toronto Star* reported that a database containing sensitive personal information was publicly accessible via the respondent's Web site. This article, however, had its beginnings in an email sent by the respondent to a tenant on November 10, 2008. The email included a link to the respondent's case file on the tenant, located on the respondent's Web site. The tenant forwarded the email to the Federation of Metro Tenants Association, where an employee discovered that by changing the identification number in the uniform resource locator, he was able to access over 1300 different case files dating back to May 2008.
24. The *Toronto Star* reported that the database included names, addresses and telephone numbers on 1,393 individuals.
25. The Office confirmed that the database in question (case update databank) contained personal information on hundreds of tenants across Ontario. The case files included tenants' names, addresses, telephone numbers and other potentially sensitive or stigmatizing information such as whether a tenant was on public assistance, known to use alcohol or drugs, had experienced relationship issues or owed money and the amount that was owing.

Application

26. In making our determinations, we applied paragraph 7(3)(b) and Principles 4.3, 4.3.3, 4.5, 4.7, 4.7.2, and 4.7.3 of Schedule I of the Act, *PIPEDA Case Summaries #182 and 188*.
27. Principle 4.3 states that the knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate. Principle 4.3.3 states that an organization shall not, as a condition of the supply of a product or service, require an individual to consent to the



collection, use, or disclosure of information beyond that required to fulfill the explicitly specified, and legitimate purposes.

28. Paragraph 7(3)(b) states that an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is for the purpose of collecting a debt owed by the individual to the organization.
29. Principle 4.5 states that personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfillment of those purposes.
30. Principle 4.7 states that personal information shall be protected by security safeguards appropriate to the sensitivity of the information. Principle 4.7.3(c) states that the methods of protection should include technological measures, for example, the use of passwords and encryption.

Findings

31. On July 20 and again on September 3, 2009, I issued a preliminary report of investigation, in which I noted that the Landlord's Source Centre's actions were not in compliance with various provisions of the Act, and I made recommendations to the Landlord's Source Centre, with the view of helping the organization meet its obligations.

32. What follows is the original text from the preliminary report:

Collection, use/disclosure

33. In this instance, the respondent is not directly collecting personal information of tenants from tenants, nor is it disclosing such information to tenants. Rather, members of the respondent collect personal information from tenants and disclose it to the respondent. Members also collect personal information about tenants from the respondent. It is clear that landlord members need to ensure that they have the correct consent for such collection, use and disclosure of their tenants' personal information. However, does the respondent have any obligations in this regard?

34. In my view, when it comes to personal information handling, an organization must demonstrate due diligence with respect to compliance with Principle 4.3. It may choose any means it wishes. In Case Summary 2003-82, our Office



considered that an organization could rely on a contractual document outlining the obligations of a third party to obtain consent to meet such compliance. However, I am also of the view that, at a minimum, demonstrating due diligence with respect to consent requires an organization, such as the respondent, to use appropriate contractual terms stipulating that its members are obtaining appropriate consents and to require proof that its members are in fact obtaining consent.

Credit checks

35. Among other advertised services, the respondent offers tenant background checks for its clients, which the respondent describes as including credit checks, eviction searches, banking and employment confirmation and tenancy history. The respondent also provides members with standard tenant application forms, which they can use for the purpose of obtaining information to run the background checks.
36. The respondent stipulates in its membership agreements that tenant's personal information provided to a landlord pursuant to a requested background check is intended to be used to assist in determining a tenant's eligibility to rent or lease, to collect rent owing, trace or track tenants and for "employment alerts".
37. Under the agreements, a landlord is required to obtain the consent of a tenant in order to conduct a background check. A landlord must notify the tenant of the purpose for which the tenant's personal information is being collected prior to or at the time of collection, namely, assessing a tenant's financial ability to meet proposed rent or lease obligations. This purpose is stated on the tenant application form the respondent provides its members, for their use, as part of their membership.
38. The membership agreements in place at the time the complaints were filed also required the landlord to provide such consent to the respondent *on request*. However, this language has since been removed from the current Gold and Platinum Membership agreements.
39. In Case Summary 188, the Office considered allegations against a credit bureau and found that since the agency's standard contract with its members set out the obligation on the members to obtain consent from individuals that it was reasonable for the agency to presume that these consents had been obtained. In this case, the contract (membership agreement) does require landlords to have the consent of applicants before requesting information from the respondent about the applicant's credit history and rental history. The standard



tenant application form outlines the purposes and contains consent language permitting the landlord to conduct the inquiry and permitting third parties, such as banks or references, to provide the information to the landlord. Nowhere on the standard application form is the respondent mentioned.

Bad Tenant List/Updating credit reports.

40. The respondent's delinquent tenant database and Bad Tenant List were compiled from personal information collected by the respondent's members (landlords) and provided to the respondent pursuant to a membership agreement. The respondent also collected information for inclusion on the Bad Tenant List through its Web site. Inclusion on the Bad Tenant List was at the discretion of the respondent.
41. The language of the Gold Membership agreement covers the disclosure of personal information of potential, current and former tenants though it does not explain the exact reason for such a disclosure. The Gold member may not report a bad tenant to the credit bureau (via the respondent); however, it may add a tenant's name to the Delinquent Tenant Database. The agreement does not include any obligation on the landlord to obtain the tenant's consent to such a disclosure.
42. The Platinum Membership agreement also contains the same language regarding disclosures; its membership privileges include the ability to report a bad tenant to the respondent in order to update the tenant's credit history and to include the individual's name on the Delinquent Tenant Database. The agreement discusses in detail the types of personal information the member must provide to the Respondent for such purposes. There is no obligation in the agreement for the member to obtain the tenant's consent to such disclosures.
43. The standard tenant application form and rental agreement form, which members may use and tenants would sign, do not cover the possibility of disclosing tenant personal information to the Respondent for any of these purposes.
44. Do any of the exceptions to consent apply in this instance? Paragraph 7(3)(b) allows an organization to disclose an individual's personal information without the knowledge or consent of the individual only if the disclosure is for the purpose of collecting a debt owed by the individual to the organization. However, it is unclear how placing an individual's name on a database of delinquent tenants assists in collecting a debt from the individual.



45. Thus, I am unable to conclude that the respondent is exercising due diligence with respect to obtaining the meaningful consent of tenants for the collection, use or disclosure of their personal information, as required by Principle 4.3. The reasons are as follows:

- None of the exceptions to Principle 4.3 apply;
- The standard consent form (the Ontario Resident Property Application Form) that the respondent provides to members to have signed by tenants is not adequate for the current uses made of it by the respondent organization and its members. Specifically, it does not contain language that clearly indicates the purposes and circumstances relative to the specific uses and disclosures of tenants' personal information by the respondent organization;
- The agreements that members must sign do not oblige them to obtain the consent of tenants for any disclosures of tenant personal information; neither is there a requirement for members to provide any evidence of having obtained tenant consent.

46. The respondent had agreed to remove the Bad Tenant List. However, in reviewing the current membership agreements, it would appear that the Delinquent Tenant Database is still available.

Safeguards

47. With respect to the case update database, which was publicly available on the respondent's Web site, it was not password protected and none of the case files were encrypted. Many contained sensitive personal information on tenants and their families, including financial and health information.

48. The database is a case management tool, used for the respondent's internal purposes and there is no need to have it on the Web. However, given that the respondent did so, it should have used robust security to protect the sensitive personal information in the database, in keeping with Principles 4.7, 4.7.3 and 4.7.3(c). It appears that this has since been corrected and that steps have been taken to protect the information on this database.

PRELIMINARY REPORT'S RECOMMENDATIONS

49. In my preliminary report of investigation, I made the following recommendations to the Landlord's Source Centre:



- Revise the membership agreement to make it clear that landlords must obtain meaningful tenant consent to disclose personal information to the respondent. The revised agreement should also contain the requirement that landlords provide written confirmation of obtaining tenant consent;
 - Revise the standard rental agreement/consent form to include a specific consent provision for disclosures to the respondent of tenant history personal information;
 - Confirm that the Bad Tenant List, or any other such compilation of personal information, has been dismantled;
 - Confirm that any and all other databases will be dismantled unless the respondent can show that meaningful consent of tenants had been obtained;
 - Confirm that the Delinquent Tenant Database has been appropriately protected.
50. I asked that I receive, within 30 days of the date of the report, the respondent's response in writing, outlining how it intended to implement these recommendations.
51. The first report was returned to this Office due to an incorrect address. We re-sent the report on September 3, 2009, to the respondent's new address. Thirty days elapsed without a response from the Landlord's Source Centre. Our subsequent and numerous telephone calls and messages to the organization regarding its response to these recommendations have gone unheeded. As of the issuing date of this final report of finding, the organization has not responded to our recommendations.
52. This Office examined the respondent's web site and found that the site still refers to the Bad Tenant List on the web page "Become a Member" under the section "Other Services". However, we were unable to directly access the list, which still appears to be available to members for a fee.

Conclusion

53. The organization has failed to show how it has met its obligations under Principle 4.3, relative to its obtaining consent for the personal information from the Delinquent Tenant Database (and the Bad Tenant List contained therein). Further, as stated in my preliminary report of findings, paragraph 7(3)(b) cannot be applied as an exception to consent in this case.



54. Since our preliminary report of investigation, the respondent has not shown cooperation when this Office attempted repeatedly to follow up on the report's recommendations. Our review of its web site could not determine if any of my recommendations regarding its content have been implemented in part or in whole since there are parts of the site that are password-protected and therefore unavailable to non-members. Since the respondent has refused to provide my Office with the information necessary to perform an informed assessment of the matter, I must deem the matter of consent to be well-founded (6100-02760).

55. As for the safeguarding of the case update databank (6100-02761), as noted in my preliminary report of investigation, steps were taken to protect the information contained therein, in accordance with Principle 4.7. Therefore, that matter is resolved.