

There are three main parts to the Bill:

1. Tenants Liability for damage
2. Unlawful residential premises
3. Methamphetamine in rentals

The Bill will next be assigned to a Select Committee (a group of MP's from different political parties) to hear public submissions on the Bill. Following the Select Committee's recommendations it will be amended and receive its second reading and third reading before receiving royal assent from the Governor General and becoming law.

At any of the two readings in Parliament, the Bill may be voted down if Government cannot obtain support for it among MP's.

The following is a summary of the Bill's three main parts. The NZPIF is meeting this weekend and will be discussing the Bill and how we will react to it.

## **Tenant's liability for damage**

The RTA currently says that a tenant shall not intentionally or carelessly damage their rental. If any damage does occur, tenants have to prove to the Tenancy Tribunal that they didn't cause the damage intentionally or carelessly.

However this was overturned by the Courts through the Osaki case. This means that tenants are no longer liable for damage that they cause to a rental property.

This aspect of the Bill is Government's reaction to the consequences and unjustness of the Court ruling for rental property owners.

A general principle of the new Bill is that the tenant is still not liable for damage unless the damage was intentional by the tenant or a guest or if any insurance moneys that would have been payable is irrecoverable because of an act or omission by the tenant or their guest.

However the Bill does hold the tenant liable for damage that is caused by a careless act or omission by the tenant or their guest, but this is limited to either the landlord's excess or four weeks rent, whichever is the lower.

This limited liability is applicable for each incident of damage. For example if the tenant puts two holes in a wall on separate occasions, they will be liable for the repair cost up to twice the excess or 8 weeks rent, whichever is the lower.

The potential problem for rental property owners is if the insurance company and the Tenancy Tribunal differ on how many incidents of damage has occurred.

For example, there may be four stains on a carpet and it will cost \$3,000 to repair it. If the landlord's excess is \$750, this is less than four weeks rent and the insurer and tribunal agree that it is four incidents, then the tenant will be totally responsible for repairing the damage. However if the Tribunal believes that there is only one incident, then the tenant will only be liable for \$750 of the repair cost. The landlord will be responsible for the balance.

As outlined, the Bill is stating that the tenant's liability is limited but it still applies to each incident of damage. The tenant could therefore be responsible for a large cost to repair damage. Consequently tenants are still going to benefit from having contents insurance to protect themselves.

Previously insurers had the potential to seek costs from the person responsible for damage. However under the Bill, the property's insurer has no right or claim against the tenant, including no right of equitable or contractual subrogation. Because of this, insurers say their risk is increasing and premiums for rental properties may increase.

The landlord's insurance can be used by tenants. Therefore the Bill states that landlords must advise the tenant if the property is insured or not and provide a statement setting out details of the insurance policy that are relevant to the tenant's liability. They must do this within 14 days of receiving a request from the tenant and must notify the tenant of any changes to the insurance policy. Failure to do this is an unlawful act costing \$500.

Under the Bill it is also an unlawful act for a landlord to try and obtain more from the tenant than the Act allows. Damages of \$1,000 can be awarded to the tenant if this occurs.

An additional part of the Bill is that damages for a landlord not undertaking repairs under a works order is increased from \$3,000 to \$4,000.

Despite the limitations of the Bill, it is still an improvement on the current situation where tenants have no liability for accidental damage they cause.

## **Unlawful residential premises**

An earlier court ruling meant that if a property could not legally be used for residential purposes, then it could not be classed as a residential property. This meant that the Tenancy Tribunal could not have jurisdiction over these properties.

The Bill now gives the Tribunal full jurisdiction for premises occupied or intended to be occupied for residential purposes, regardless of whether the occupation would be unlawful. This allows the Tribunal to hear such cases.

The Tribunal may order the landlord to refund all rent the tenant paid for the whole period that the premises were unlawful residential premises.

Tenants can give two days notice to terminate a tenancy of an unlawful premise.

The NZPIF is concerned that the Bill may have an adverse affect on the many "granny flats" around the country, which may be in excellent condition but are not consented. We would not like to see owners of these rental properties not be able to rent them out without risk of prosecution.

We are also concerned to ensure that a tenant's actions cannot be used against a rental property owner. This may occur under the Bill if, for example, a tenant uses a garage as a bedroom and then claims it wasn't a legal residence.

## **Methamphetamine**

The Bill defines methamphetamine-contamination if it is proved to be present in any part of the premises at a level above any prescribed maximum acceptable level.

The landlord must not rent a property if they know that the premises are methamphetamine-contaminated or have not decontaminated in accordance with the prescribed decontamination process. This would be an unlawful act and damages could be awarded to the tenant.

Landlords have a right of entry to test the property for methamphetamine at any time between 8am and 7pm after giving at least 48 hours but not more than 14 days notice.

The landlord must notify the meth test results to the tenant within 7 days of receiving the results.

If tests establish that the premises are meth contaminated, the landlord can give no less than 7 days notice to terminate the tenancy and the tenant no less than 2 days notice. If the tenant is not responsible for the contamination the rent stops.

The key part of this section of the Bill is that it explicitly gives landlords the ability to conduct meth tests without requiring the tenant's approval. Previously it was possible for tenants to not give their permission, so this is a good thing to clarify.

Marlborough rental shortage caused by 'perfect storm'

OLIVER LEWIS

Last updated 16:25, May 9 2017

RICKY WILSON/FAIRFAX NZ

Former Marlborough Property Investors Association president Brian Kerr with a copy of a book he wrote providing guidance to landlords.

Landlords in Marlborough are selling up, fewer investors are stepping in and more and more people are coming to the region looking for a place to rent, a landlord says.

Property managers are having to turn away prospective tenants, and message boards throughout the region, online and in supermarkets, are full of people looking for houses.

Former Marlborough Property Investors Association president Brian Kerr, a landlord himself, described the conditions facing the Marlborough rental market as a perfect storm.

Higher lending criteria for investors, who need a 40 per cent deposit, was resulting in fewer new landlords, and a number of existing providers were exiting the market.

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- \* Could selling pensioner flats open up Marlborough's rental market?
- \* Overcrowded rental market in Marlborough about to feel quake pressure
- \* Housing shortage and high demand behind 'rental crisis' in Marlborough
- \* Rent hike ripple effect: Marlborough families struggle for places to live

Kerr said costly regulations - which he agreed with - around providing insulation, combined with less security for landlords were resulting in some owners selling up.

This was exacerbated by high house prices making it the perfect time to get out. Real Estate Institute of New Zealand figures put the median house price in March at \$380,000.

A landmark Court of Appeal case last year meant tenants could not be held liable for unintentional damage if the landlord was insured, something Kerr said made landlords less secure.

Fears of methamphetamine contamination were also an issue for landlords. Collectively, Kerr said these factors were resulting in more rental properties being sold.

"Investors are investing in property as one of many options, it's a risk and return calculation," Kerr said.

"There's definitely less houses available to rent in Marlborough than there was six months ago. I think in the next five years there will be a significant drop if things stay as they are.

"The media narrative about landlords has been very negative, but the fact is that landlords are providing, at virtually no cost to the Government, 30 per cent of the houses in New Zealand.

"The worry is if the environment doesn't become more positive for landlords you'll end up with fewer rental properties, and more people living in garages, cars, under bridges."

Mark Stevenson First National Real Estate senior property manager Mariette Knudsen agreed with Kerr that some landlords in Marlborough were cashing out of their properties.

"The impact of the nervousness with investors is we are significantly down on investment properties," she said.

"We see an acute shortage of available properties for tenants who are actually quite desperate."

Figures collected by the real estate company, from a variety of sources, showed there was 48 rentals available in Marlborough and Kaikoura at the beginning of May.

This was 20 properties down on the same period last year. However, Knudsen said there was still new investors entering the market, it was just not keeping pace with demand.

The property market went through numerous boom and bust cycles - Knudsen said they were once offering shopping carts full of groceries and a week's free rent to fill up tenancies.

She thought the market would eventually adjust, and more investors would step back in because of what she said was still a good investment in Marlborough.

- The Marlborough Express



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## PRINCIPAL TENANCY ADJUDICATOR

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23 September 2016

Hon Dr Nick Smith  
Minister of Building and Housing  
Parliament Office  
Private Bag 18888  
Parliament Buildings  
WELLINGTON 6160

Dear Minister Smith

**Re: *Holler & Rouse v Osaki* [2016] NZCA 130**

Thank you for making the time to attend the 2016 Tenancy Adjudicators Conference to speak to the adjudicators. The annual conference is the only time all the adjudicators are able to gather together in this way. Having you attend and speak about the issues currently facing the Tribunal was interesting for us all and generated discussion among adjudicators.

I would like to follow up the subject of our conversation during the conference lunch, when you inquired about the impact of the *Osaki* decision.

The decision has had what I suspect is an unanticipated far-reaching effect on the Tribunal's jurisdiction. While I note your comment at the conference that it seemed a good decision in terms of it preventing "double dipping" by insurance companies, with respect I think that is an issue that really only becomes relevant in the sorts of (relatively rare) situations that gave rise to the *Osaki* decision, that is, where the damage is in the hundreds of thousands of dollars. I have no doubt that, in such situations, protection of the tenant from exposure to liability for such significant costs is desirable for several reasons. However, the Court of Appeal did not draw, and likely could not have drawn, a distinction between damages of that scale and the kind of damage that is the core business of the Tribunal on a daily basis throughout the country. As a result, despite the clear words in sections 40(2)(a), 77 and 78 of the Residential Tenancies Act 1986, the Tribunal can no longer award damages against a tenant for careless damage if the landlord holds insurance for risk of that particular kind of damage. Nor, because of the interplay between section 271 of the Property Law Act 2007 and section 11(3) of the Residential Tenancies Act 1986, can the landlord be awarded the cost of the insurance "excess".

The Court of Appeal decision demonstrably hampers the day-to-day functioning of the Tribunal. The existence or otherwise of landlord insurance for each peril or risk (incident of damage) is a question that must be addressed and answered in every application by a landlord for

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compensation for damages. As landlords often are not aware of the Court of Appeal decision, we have been experiencing an increase in the length of time a hearing takes and in adjournments, to allow for explanation and the gathering of evidence about insurance. This issue is being addressed by Tenancy Services, who will now require the submission of the landlord's insurance policy as a pre-requisite for processing an application involving alleged tenant damage. That requirement will also eventually be incorporated into the application form.

Even with that operational change, the Tribunal's capacity to discharge its role as defined in the long title of the Act – "to determine expeditiously disputes arising between ... landlords and tenants" – will still be adversely affected. The nature of the inquiries required to establish whether or not any damages can be awarded make every application for damages a more drawn-out hearing, and often result in landlords not being awarded compensation for the kind of damage the Residential Tenancies Act clearly envisaged a tenant bearing the responsibility for. The reading in of Part 4 of the Property Law Act 2007 through section 142(2) of the Residential Tenancies Act has blurred the previously clear (statutory) distribution of the burden of proof, putting section 42(4) of the latter Act at odds with the effect of section 269(3)(a) of the former.

I have grave concerns about the ability of the Tribunal to maintain its current efficiencies and timeliness if this situation continues. More broadly, because of the level of landlord anger about this development, I also hold some concerns about the reputation of the Tribunal, which of course had no part in creating this situation.

Although mediation of tenancy disputes is not part of the Tribunal's jurisdiction, I work closely with MBIE and understand from the Resolution Services team that the decision is having a detrimental effect on the ability of the mediators at Tenancy Services to properly engage in mediated conflict resolution. The opportunity to have parties amicably resolve problems arising in a tenancy or from a terminated tenancy is hampered because of the restrictions the Court of Appeal decision imposes, because mediators cannot and do not make inquiries about evidence, such as matters of insurance. However, the *Osaki* decision prevents mediators from recording binding agreements for a tenant to pay for damages, even where that is the tenant's wish. From the Tribunal's perspective, that means a potential increase in matters sent straight to adjudication, with the inevitable increase in waiting times for hearings and a corresponding decrease in the number of disputes resolved by settlement.

I have no doubt that you have already received feedback from the perspective of landlords about the impact of the *Osaki* decision. Anecdotally, from the conversations I have had with property managers, the New Zealand Property Investors Federation and private landlords attending the MBIE Landlord education seminars, it appears that many think it appropriate for the tenants to be exonerated from liability in situations of damage or destruction on the scale seen in that case (in the region of \$200,000).

However, many of the landlord or property manager complaints directed to me or the adjudicators express the view that minor damage should remain the tenant's responsibility and the Tribunal should still be able to award compensation to the landlord in such circumstances. Unfortunately, the Court of Appeal decision does not afford the Tribunal any flexibility of approach in this regard.

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There is confusion in the minds of laypeople, landlords and tenants alike, over the contradiction between the clear words of sections 40(2)(a), 77 and 78 of the Residential Tenancies Act 1986, which enables the Tribunal to award damages or compensation, and the direction of the Court of Appeal that the provisions of the Property Law Act 2007 should prevail on the matter of tenant/lessee exoneration where the landlord has insurance. That confusion is understandable. The effect is that the clear words of the Residential Tenancies Act have been rendered less clear resulting in a situation many find difficult to understand.

A number of property managers have advised me that they are losing clients; that is, landlords whose properties they manage are selling up investment property portfolios and exiting the residential tenancy market, because the impact of this decision has changed the margins of their businesses to an extent that they consider to be unprofitable.

The *Osaki* decision also means that there is inconsistency of outcome for landlords and tenants depending on whether a landlord is insured for the particular risk. One anomaly arising from this is that tenants of Housing New Zealand Corporation, which does not hold insurance except for large scale catastrophic damage, remain liable for any careless or intentional damage, while tenants who might be considered to be in a better financial position are exonerated from liability by virtue of their landlord having insurance.

The Tribunal now operates daily with an unwieldy amalgam of legislation and binding judicial precedent that has effectively fettered a core principle of the Residential Tenancies Act 1986. From the Tribunal's perspective, assistance could be obtained through legislative amendment that clarifies the role of section 142(2) (upon which the Court of Appeal decision turned). Statutory clarification of the relationship between sections of the Act, which have enabled the Tribunal to successfully resolve landlord/tenant disputes in a timely manner for the last 29 years, and the provisions of the Property Law Act, would resolve many of the problems now confronting the Tribunal, MBIE mediation services and the parties to residential tenancy disputes.

I would be happy to discuss this further with the tenancy policy advisors within MBIE if that would be of any assistance.

Yours faithfully

Melissa Poole  
Principal Tenancy Adjudicator

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## In this section

# What Work and Income offer

There is assistance at WINZ that you may be entitled to, but not know about. If you need a bit of extra support getting into housing, here's some options to consider.

## Find out what you can get

This helpful [calculator](#) is completely anonymous and can help you work out what you may be entitled to from Work and Income.

## Bond Grant

WINZ can make a non-recoverable (you don't have to pay it back) contribution to your bond or rent in advance. They'll look at how much your bond or rent in advance is and you'll need to show you can afford the rent payments in the future. There are income or cash asset limits placed on who can qualify for bond grants.

## Letting fees assistance

Sometimes rental agencies will charge a 'letting fee' for securing a place to live. If you are having trouble paying this letting fee you can apply to Work and Income for assistance. You don't need to be receiving a benefit or pension to apply for financial assistance up to the cost of one week's rent, plus GST. You can only use letting fees assistance once a year,

but it doesn't need to be paid back. There are income or cash asset limits on who can qualify for letting fees assistance.

## **Rent in Advance**

Rent in Advance is a non-recoverable (you don't have to pay it back) payment towards your rent if your needs qualify you. There are income or cash asset limits on who can qualify for Rent in Advance.

## **Moving Assistance**

Moving Assistance is to help with the cost of moving. It is recoverable so you do have to pay this one back if you get it. There are income or cash asset limits on who can qualify for Moving Assistance.

## **Tenant References**

A good tenancy reference from a reputable landlord is a real advantage for anyone trying to secure a new place to live. If you're a social housing tenant with a good record you can get a Statement of Satisfactory Tenancy, a professional document that helps reassure landlords that you're a good person to have as a tenant.

## **Tenancy Costs Cover**

Tenancy Costs Cover is available if you need additional help to get into long-term rental housing. Tenancy Costs Cover provides security against discrimination and commits to paying any fees owed to the landlord at the end of a tenancy (maximum four weeks' rent). Tenancy Costs Cover is payable to the landlord but needs to be paid back by you. The Tenancy Costs Cover only covers the first 12 months of the tenancy and the cover will expire at the end of the 12 month period. There are no income or cash asset limits for Tenancy Costs Cover.

## **Transition to Alternative Housing Grant**

The Transition to Alternative Housing Grant payment is a one-off payment of \$3,000 to reduce the financial impact of moving from social housing into private rentals. There are no income or cash asset limits for the Transition to Alternative Housing Grant, but you will need to prove that you can continue to pay rent in the future.

## More help with Work and Income

Lifewise Hub host sessions on working with WINZ on Mondays from 11am-1pm.

### Lifewise

09 302 5390

[lifewise@lifewise.org.nz](mailto:lifewise@lifewise.org.nz)

453 K'rd, Auckland CBD

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# Tenancy Costs Cover

Tenancy Costs Cover is granted to a tenant so that if there are costs owing at the end of a tenancy that amount to more than the bond, these will be paid to the landlord by MSD.

## Who can get Tenancy Costs Cover?

Tenancy Costs Cover is available to people who would be able to get and stay in private rental housing long-term with additional help.

If you're to be considered for Tenancy Costs Cover you must:

- be having problems getting accommodation in the private rental market
- meet residency qualifications
- not already have Tenancy Costs Cover or a Tenancy Costs Cover debt
- be entering into a tenancy agreement under the Residential Tenancies Act 1986.

## What is covered by Tenancy Costs Cover?

Tenancy-related costs, such as for rent arrears or property damage, are covered by Tenancy Costs Cover up to the equivalent of four weeks rent.

## Claiming Tenancy Costs Cover

A claim can be made by the tenant or the landlord. It can only be paid if all of the conditions of cover have been met, including:

- the person granted Tenancy Costs Cover enters a tenancy within three months of the cover being granted
- the landlord confirms that they offered the tenancy because the cover had been granted
- a bond of four weeks rent has been paid and lodged with Tenancy Services at the Ministry of Business, Innovation and Employment
- a copy of the signed tenancy agreement and receipt for the bond is given to the Ministry of Social Development as soon as possible
- the tenancy ends within the first 12 months of the tenancy start date
- the claim is lodged within three months of the tenancy ending
- the costs claimed are tenancy-related and are in excess of the bond paid for the tenancy
- that the tenant agrees with the costs and has not paid them, or if the costs are endorsed by a Mediator's Order or Tenancy Tribunal Order
- all supporting documents are provided to the Ministry of Social Development.

**Other points to note:**

- Tenancy Costs Cover is not income or asset tested.
- Once the Tenancy Costs Cover has been granted and the tenancy agreement signed, any change of circumstances by the tenant will not affect the cover.
- Tenancy Costs Cover is valid only for the first 12 months of a tenancy.
- If a claim is paid, the tenant must pay it back.

**Find out more**

Call Work and Income on 0800 559 009  
or Senior Services on 0800 552 002.

If you're a Youth Service client,  
contact your Youth Service provider.



**Work and Income**

Te Hiranga Tangata

A service of the Ministry of Social Development

Nelson City Service Centre

22 Bridge Street, Nelson 7010

Private Bag 24, Nelson 7042

Fax 03-989 1984

08 March 2017

Dear landlord

We are pleased to let you know that [REDACTED] client number [REDACTED] has been granted Tenancy Costs Cover. This is extra assistance we give to clients to help them into the private rental market.

### Introducing the Tenancy Costs Cover

Tenancy Costs Cover allows you to claim costs from the Ministry of Social Development (MSD) if, at the end of the tenancy, the tenant owes you tenancy-related costs, for example rental arrears, over and above the bond they paid. As with a bond refund, the costs need to be agreed between the tenant and landlord or there must be a Mediator's Order or Tenancy Tribunal Order issued for the costs the tenant must pay. Claims will then be recovered from the tenant by MSD.

The Tenancy Costs Cover only applies to the person named in this letter and the specific address of their tenancy.

The terms and conditions relating to Tenancy Costs Cover are outlined below. Before offering a tenancy based on this cover we ask you to read the conditions carefully before signing the document and returning it to the Ministry.

This cover provides assurance that if you let housing to Wendy Eden within three months of the date of this letter, and fulfil the conditions of this grant, you'll receive payment for any tenancy-related costs in excess of the tenant's bond up to an amount equal to four weeks rent.

The Tenancy Costs Cover only applies to a residential tenancy that ends within 12 months from the tenancy start date. Claims must be made within three months of the tenancy ending.

If you want to let your property based on this Tenancy Costs Cover:

1. The tenancy must start within three months of the date of this letter.
2. The tenant under the tenancy agreement must be the person named above.
3. A bond equal to four weeks rent must be required under the tenancy agreement and paid by the tenant.
4. The bond must be lodged with Tenancy Services, Ministry of Business, Innovation and Employment.
5. You as the landlord must confirm that you have let the property on the basis of this Tenancy Costs Cover by signing and returning the acknowledgement at the end of this letter to MSD by posting or dropping it in to your nearest service centre.
6. You as the landlord must send a copy of the tenancy agreement and receipt for the bond to MSD as soon as possible.

[www.workandincome.govt.nz](http://www.workandincome.govt.nz)  
[www.seniors.msd.govt.nz](http://www.seniors.msd.govt.nz)

General Enquiries  
0800 559 009

NZ Superannuation  
0800 552 002

Community Services Card  
0800 999 999

Employers  
0800 778 008

Service Express  
0800 333 030

Deaf Fax Number  
0800 621 621

7. In the event of a claim under the Tenancy Costs Cover, all evidence to support the claim must be supplied to MSD by posting or dropping it in to your nearest service centre.

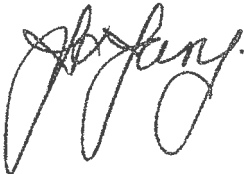
#### **Making a claim**

A claim under the Tenancy Costs Cover must be made within three months of the end of the tenancy.

If there are costs at the end of the tenancy you'll need to provide verification of the costs. This may be an agreement with the tenant/s, a Mediator's Order or Tenancy Tribunal Order.

If you have any questions please contact Work and Income on 0800 559 009.

Yours sincerely,



Jan Jary  
Service Centre Manager

#### **Landlord's Acknowledgement**

I \_\_\_\_\_ acknowledge that I understand the conditions above and confirm I have offered Wendy Eden a tenancy for \_\_\_\_\_ based on the Tenancy Costs Cover.

The tenancy commenced on \_\_\_\_\_ and the rent is \_\_\_\_\_ per week.

I attach a copy of the signed tenancy agreement and receipt for lodgement of the tenant's bond with Tenancy Services (Ministry of Business Innovation and Employment).

Landlord/Agent for property