

Submission of the
New Zealand Property Investors' Federation Inc
to the
Social Services Select Committee
examining the
Residential Tenancies (Damage Insurance) Bill
July 2006

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EXECUTIVE SUMMARY

- The Federation is **OPPOSED** to the Bill
 - No evidence has been presented that the issue is urgent, and hence needing legislative intervention
 - The proposed Bill foists significant costs and an unreasonable burden of proof on both private and public landlords
 - The proposed Bill is inconsistent with personal financial responsibility
 - All tenants would pay more to guard against the irresponsible actions of a minority
 - The proposed Bill should be withdrawn and its provisions debated as part of the wider Residential Tenancies Act review
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SUBMISSION

This submission has been prepared by the New Zealand Property Investors' Federation Inc in response to invitations to comment on the Residential Tenancies (Damage Insurance) Bill.

The Federation established in 1973, comprises twenty local associations situated throughout New Zealand, and is the national body representing the interests of over 4000 property investors.

According to government figures there are 480,000 rented properties and around 600,000 tenants in New Zealand.

The Federation represents, and promotes, its members' views on all matters affecting tenancy matters.

The Federation welcomes this opportunity to participate and comment on the bill.

The Federation is **OPPOSED** to the Bill and believes that the concerns raised should be properly and better addressed by the government's larger review of the Residential Tenancies Act.

DISCUSSION

The Federation is disappointed and surprised that the Bill was developed and promoted without input from, or consultation with, any landlord groups either private or public.

This flies in the face of the successful cooperation and partnership the Federation has established with the government, including the Ministers of Housing, Building Issues, and departmental officials.

During the Bill's first reading, its promoter noted that that the Bill had "*arisen out of a perceived unfairness in the application of the current Residential Tenancies Act 1986*".

There are many other “perceived unfairnesses” with the Act yet strangely they have not received any priority, political support or representation with its own amendment bill. To date, the Federation is not aware of any empirical research nor has it detected urgent or widespread tenant dissatisfaction with the current arrangements for changes as proposed by the Bill.

Moreover, the Federation is curious as to why the Bill, with government backing, is now being promulgated. Why has its objectives not been addressed within the wider purview of the Residential Tenancies Act review or the Residential Tenancies Amendment Bill?

It is further curious that the Bill’s sponsor cites a June 1999 legal case (*Harrison and Shields and others v Medical Assurance Society New Zealand Ltd*) as the incident driving the Bill. The Federation submits that given the age of the decision, and the conduct of the Act’s review that commenced over 3 years ago, promoters of the Bill should have raised this matter then.

Clearly, it seems only proper and appropriate that new single and highly selective issues that this bill raises should be dealt with in the context of the Act’s wide-ranging review rather than as an opportunistic standalone Bill.

Whilst the aim of the Bill, to supposedly protect flatmates from the liability of other flatmates is commendable, the Federation believes the overall proposal has been poorly thought through and is fraught with some major difficulties. It raises many far reaching consequences concerning individual responsibility, wider insurance issues, and the possibility that groups will find it harder to get rental accommodation.

Landlord Responsibilities

Clause 5 (1) – Landlord to insure tenant

There are significant shortcomings and serious risks to landlords. The bill proposes a new obligation on landlords to provide insurance for their tenants. This new obligation appears to be but one small step removed from perhaps a more onerous requirement such as making it compulsory for landlords to insure their tenants against rental default. The Federation trusts that this is not the ultimate policy objective.

A major and ongoing issue for property investors and landlords, both in the public and private sectors, is the huge financial exposure and frustration incurred in the poor recourse and recovery of monies for damage to the landlord’s property.

According to figures issued by Tenancy Services, amongst the biggest issues of concern for it and landlords are claims against tenants for damaged property.

Malicious and intentional damage to premises (e.g. floods, punched and kicked in walls, smashed windows, burns to carpet, etc) under the Bill has the potential to be classified as “accidental” or not the fault of the tenant or his/her guest – but the landlords’ responsibility.

In the recent report of the Social Services Select Committee (examining the 2004/2005 financial performance of Housing NZ Corporation) it noted that \$8million was incurred on repairs to damaged (caused accidentally or deliberately) state houses.

Figures revealed in a Parliamentary Question (Hansard 11 May 2006) indicate that damage caused to state houses by its tenants were in excess of \$12million and damage caused by their guests was over \$2million.

Whilst no figure is available for the private rental market, the Federation estimates the figure must be at least of the same order or more, given the higher number of privately owned properties.

Again, the frustration with the financial non-performance of former tenants is further exacerbated with the current inability, or difficulty, to recover monies from irresponsible former tenants who regularly and conveniently “disappear” without paying their debts. The proposed bill has the potential to magnify this problem.

Tenants generally have neither contents nor personal liability insurance, or they have inadequate cover. The Bill sends the wrong signal that tenants can abrogate their responsibilities [as per S40 (1), (2) and (4) of the Act], as landlords will be mandated to cover them.

Instead, the Federation proposes that the law should be amended to encourage tenants to ensure that their individual needs, and that of the property they are renting, are suitably protected. This would be a far more useful approach as the policy could also follow tenants around to their next accommodation.

The Federation can see no case for why landlords should be required to insure tenants rather than themselves. Put another way, an insurance premium and policy is entirely for the benefit of the tenant, and it is puzzling as to how this then should become the responsibility of the landlord.

To clarify, it should be the tenant’s obligation to obtain full and comprehensive contents and personal liability insurance with a reputable company. And this should be a mandatory requirement in the Act, under “Tenant Responsibilities” which already specifies a number of other compliance aspects related to damage to premises.

Correspondingly, the landlord (both private and the State) should not be liable, or carry risk, where they have no control except for fair wear and tear.

Clause 5 (2) – Landlord to prove damage was accidental

Importantly, any legislative change needs to clarify certain requirements of tenants, namely that at all times they need to be vigilant and do nothing to the property by their negligence or by the negligence of guests under their control or supervision.

The promoter of the bill has quoted the following the example as a case for the law change:

*"It will mean that if your flatmate falls asleep with a cigarette in their hand and the flat is damaged by a fire, you will not be liable for damages because you didn't cause the fire," she said.
"The person who caused the damage will be liable."*

The Federation believes that in many group-flating situations, which can involve individual tenants coming and going without the landlord's knowledge, the Bill would

allow remaining tenants to simply blame a departed or missing tenant for causing damage to the property in an attempt to escape their personal responsibilities.

This unfair situation means that, in many instances, the landlord must not only find the departed tenant but then prove in the Tenancy Tribunal (already overloaded with “20,000 to 23,000” cases per annum as reported in the Ministry of Justices’ Statement of Intent 2006 to 2007) that they were the ones who caused the damage in the first place, as well as determining whether the damage was accidental, deliberate and/or unlawful.

Compounding the problem for landlords, tenants could also blame their visitors and thus escape their responsibilities or liability.

Landlords have no control over tenants and/or their guests and this factor may well mean some risk. Consequently, landlords could become risk averse to renting to groups.

To avoid the above and related scenarios, and for the tenant’s own future protection and benefit, the Federation suggests that should any legislative change be necessary it should require tenants to take out full and proper insurance cover to guard against all eventualities. It should not be the responsibility of the landlord.

Finally, the Federation’s preference is for no legislative change as the law is sufficiently robust for an innocent tenant to get redress from his/her fellow tenant or visitor, or through the Courts, for any deliberate damage incurred to the landlord’s property.

Alternatively, standard tenancy agreements could be negotiated which specify that tenants must obtain full and comprehensive insurance cover protecting them against the careless act of their guests.

CONCLUSION AND RECOMMENDATION

The Federation is **OPPOSED** to the Bill and submits that the bill should be withdrawn.

Sensibly, the Bill’s proposals should be drawn to the attention of officials conducting the review of the Residential Tenancies Act, and the concerns it raises should be dealt with as part of the wider review of the principal Act.

As drafted, the Bill’s proposals are unfair to landlords (both public and private) and a far superior amendment would be for all tenants to be required to carry their own comprehensive contents and liability insurance cover.

This suggestion means that tenants protect themselves, and take personal responsibility, for their actions.

The Federation requests an opportunity to appear before the Select Committee to go through the key points raised in this submission and to answer any queries.

ENDS

Printed on NZPIF letterhead

And dispatch 20 (twenty) copies

14 July 2006

Georgina Beyer
Chairperson
Social Service Select Committee
Parliament Buildings
WELLINGTON

By email to: mere.tehuki@parliament.govt.nz

Dear Ms Beyer

Residential Tenancies (Damage Insurance) Bill

Please find attached twenty (20) copies of the submission of the New Zealand Property Investors' Federation to the Committee considering the Residential Tenancies (Damage Insurance) Bill.

The Federation wishes an opportunity to appear before the Committee and is available to answer any queries or provide additional information if so required.

Contact with the Federation should be directed to the undersigned.

Yours faithfully

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