Submission of the

New Zealand Property Investors' Federation Inc

to the

Social Services Select Committee

examining the

Residential Tenancies Amendment Bill

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SUMMARY

The New Zealand Property Investors' Federation welcomes the opportunity to input into the Residential Tenancies Amendment Bill.

The proposed legislation is well-intentioned and rightly clarifies and rebalances the rights, obligations and penalties imposed on landlords and tenants as many of the law's current provisions are inconsistent, iniquitous and weighted against landlords.

Landlords have a great deal of capital invested in the residential tenancy market and provide an invaluable service to the community. It is only reasonable that the law recognises the contribution of landlords and their need to be fairly protected.

Balanced and fair residential tenancy laws are essential if landlords are to continue providing rental dwellings and accommodation for people in New Zealand.

RECOMMENDATIONS

Clause 4 (2) Interpretation	That a new sub-clause be inserted: *"(g)* any other person who is a trustee of a trust and director of a company
Clause 9 Contents of tenancy agreement	That the proposed new sub-clause "(na)" be omitted
Clause 10 New section 13AB inserted "13AB Address for service	That the clause should enable and recognise the address for service given as a Lawyer or Accountants address be acceptable. Email addresses should not be permitted as an "address for service".
Clause 13 inserts new sections 16A and 16B	The Bill specifies that an agent can be a friend or family member That the change of landlord form should be temporary or allow Property Investor Associations to have ability to refund bonds. An agent can have all the necessary forms but would not file them unless an incident occurred.
Clause 14 New section 18A inserted 18A Landlord must not require security other than permitted bond	Delete 18A
Clause 15 amends section 19. Landlord's duties under the Act to pay bond monies also apply to partial bond payments	The Bill should amend the Act to enable a minimum of two and a maximum of 12 weeks (in line with the 90 day termination period), negotiated bond agreement between landlord and tenant

Clause 22 Tenant's goods not to be seized	Landlords should not be required to keep a former tenant's items after the tenancy has ended, unless suitable arrangements have been made, and should be entitled to dispose of it accordingly
Clause 23 New section 39 substituted - Responsibility for outgoings	That section 39 (1) and (2) of the principal Act be amended to reference service connection fees but excluding reconnection fees due to disconnection following a tenant failing to pay their account) and all charges for water supplied to or from the premises (including the cost of charges for standard meter readings) if the charge is identifiable to the premises and the period of occupation by the tenant be payable by the tenant.
Clause 24 Tenant's responsibilities	Damages should be $3,000 in line with landlord breaching a works order New sub-clauses be inserted 24(3A) (e) non-compliance with relevant and applicable body-corporate rules 24(3A) (f) gaining a tenancy through a false identity or information 24(3A) (g) wilfully damaging property 24(3A) (h) tampering with fitted smoke alarms 24(3A) (i) Tenants stopping their rent payments after they have given notice to end a tenancy
Clause 26 Assignment and subletting by tenant	Damages should be $3,000 in line with landlord breaching a works order
Clause 27 Landlord's responsibilities	Delete 45(1A)
Clause 28 Landlord's right of entry	The Bill define what constitutes "reasonable time" and we suggest that this be: times between 8am and 7pm. , The clause should also provide for the making of consent within 2 days subject to any reasonable conditions.
Clause 31 Termination by notice	s31(2) be amended by inserting an additional sub-clause, to read:

	(b) Owner of the premises includes a Trustee of a family trust and or a Director of a company
Clause 35 Termination on non-payment of rent, damage, or assault	Damages should be of the level of $2,000 in line with a landlord using force to enter a premise
Clause 40 New sections 60A to 60C inserted	Section 60A should include - during the last 21days of a fixed term tenancy either party can give 21days notice if no other agreement has been entered into.
	That Section 60C be further clarified as currently when resigning at the end of a fixed term the rent can increase. This implies 60 days notice must be given prior to the increase.

Clause 41 Abandonment of premises	Damages should be of the level of $3,000 in line with landlord breaching a works order
Clause 42 Abandoned goods	Clause 42 be amended to reflect Clause 25 ie abandoned goods pass to the landlord unless arrangements have been made.
Clause 58 New sections 86 and 87 substituted	There should be some terms guiding the CE's decision making
Clause 66 Costs	This clause must be included in standard tenancy agreements
Clause 69 amends section 109	The jurisdiction of the Tenancy Tribunal should be extended to include an Order of Examination and an Attachment order at the time of the hearing
Clause 79 Residential Tenancies Trust Account	Unclaimed and abandoned bond monies amounting to around $6million should be retained by Tenancy Services to assist and fund Tenant and Landlord education initiatives
Other amendments to the Principal Act	
Clause 17 Requiring key money prohibited	The clause be amended to enable property managers in the grant or assignment of the tenancy to charge any fee or other for services rendered

NEW ZEALAND PROPERTY INVESTORS' FEDERATION

This submission has been prepared by the New Zealand Property Investors' Federation Inc (the Federation) in response to the select committee invitation to provide feedback on the Residential Tenancies Amendment Bill.

Established in 1983, the Federation has twenty affiliated local associations situated throughout New Zealand. It is the national body representing the interests of over 7,000 property investors on all matters affecting rental-housing.

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

INDUSTRY BACKGROUND

To assist readers understand the extent of the economic and social importance of the private rental industry in New Zealand and the implications of residential tenancies legislation the following background points are offered.

What is the extent of the private rental industry?

- According to a recent survey[1] of property investors it was estimated that there are over 300,000 landlords in New Zealand. There are no corporate or institutional residential landlords.
- There are over 464,000 residential rental properties[2], housing over 600,000 tenants, and worth around $150 billion[3].
- Private landlords are the largest providers of rental accommodation in New Zealand.
- 81% of tenants rent from a private landlord or trust[4].
- Median weekly rent for all accommodation is $300[5]. The amount spent on rent each week is $64 million and annually this is $3.3 billion.
- Assuming a 20% equity rate on a $257,000[6] property , the amount spent on mortgage interest payments, at 8% interest, ($16,000pa) is $4.8 billion. ,
- Most property investors (57%) have been engaged in the business for 10 or more years[7], which dispels the myth that people are investing in property to make a "quick buck". Instead, property investors are using their rental income business as a mechanism for saving for retirement and are professional and committed long-term service/accommodation providers.

Who rents?

- Census information shows 366,000 New Zealand households pay rent, up from 272,000 in 1996 with an average tenancy of around a year-and-a-half, with the average just 16 months for those with private landlords[8].

[1] ANZ NZPIF Annual Survey 2007
[2] "Landlord group's code sets high standards" 5/9/08 NZ Herald
[3] NZ Herald 10/1/07
[4] Jo Goodhew MP, RTA Bill, First reading, Hansard 26/5/09
[5] Page 11, NZ Property Investor, April 2008
[6] The lower quartile figure from QV's Residential Property Sales Summary, Dec 2008
[7] ANZ NZPIF Annual Survey 2006
[8] Dept of Building & Housing Annual Report 06/07

- Renting in New Zealand is very low by OECD standards. In Canada 34.2% people rent, France 44%, The Netherlands 45%, Denmark 47%, Sweden 54% and Germany 55%[9]
- There is a growing demand for private rental market places and the number of people living in flats or apartments is likely to increase[10]
- Despite property price falls and reductions in interest rates, the cost of renting the NZ median priced home in May 2009 was $9255 cheaper per year than the cost of owning the same property[11]

What does the private sector offer?

- Private landlords provide rental accommodation to those seeking short or long-term housing options.
- Private rental housing owners are the most flexible and cost effective means of providing housing stock and accommodation to New Zealanders.

Is renting such a bad thing?

Renting is increasing in popularity for a multitude of reasons including:

- Life style choice
- Increasing numbers of young people wanting to travel or study,
- The idea of settling down has not appealed –
- Burden of student loan debt
- Raising a mortgage and the risk of interest rate rises does not appeal;
- Larger deposit requirements are a barrier.
- Higher cost of renting over home ownership
- Flexibility to move quickly if required

No responsibility for maintenance and repair issues

The private rental sector plays a very significant role housing New Zealanders and makes a huge contribution to the overall housing system, the economy, and downstream industries.

The private rental sector sustains a range of businesses including the financial, legal, accountancy, property managers, tradespersons, cleaners, gardeners, suppliers (of appliances, carpets, wall coverings, etc) and other professionals over decades.

With this critical contribution it is important to acknowledge that the rental housing market works well[12]. Good and reasonably priced rental accommodation provides a healthy living environment, positively affects New Zealand's standard of living and contributes directly to the productive sector and indirectly through assisting workers to be healthy.

[9] Sunday Star Times 23/3/08

[10] The Economic Impact of Immigration on Housing in New Zealand 1991 to 2016 At a Glance Published: June 2008 – Economic Impacts of Immigration Working Paper Series (Reported in the NZ Herald 7/6/08)

[11] Survey into the cost difference between owning a renting a home in New Zealand. Andrew King, May 2009

[12] "Supporting the effective operation of the rental housing market", Dept of Building & Housing Annual Report 06/07

PRELIMINARIES

It has been suggested by some commentators that renting and specifically more people renting is somehow a problem.

There is no basis for this viewpoint. To balance this perspective, renting is considerably cheaper than owning your own home. Renting carries fewer risks of events such as interest rate fluctuations and provides more accommodation flexibility.

The residential rental market is highly efficient and works well.

To this end, the Federation is supportive of the Bill. Its proposed legislative reforms are needed to bring the Residential Tenancies Act 1986 up to date with the modern rental market and modern needs.

Although the current Act is working reasonably well, there are a number of areas where it can be improved.

CLAUSE BY CLAUSE ANALYSIS

The proceeding commentary follows the headings and numbering sequence of the Bill.

Clause 4(2) Interpretation

The Federation believes that the definition concerning "**member of the landlord's or owner's family"** should also include trustee of a trust and director of a company.

Property is often owned through a third party such as family trust or Loss Attributing Qualifying Company (LAQC). Under the proposed amendment these people would be excluded.

Recommendation
That a new sub-clause be inserted: *"(g)* any other person who is a trustee of a trust and director of a company

Clause 9 Contents of tenancy agreement

The clause proposes that if the premises have had to be cleansed under a statutory order (e.g. because the premises have been contaminated due to methamphetamine or "P" manufacture) this be disclosed in the tenancy agreement.

The Federation believes this disclosure requirement is unnecessary. If a premise has been professionally cleansed to the satisfaction of a territorial authority, there is no risk or disadvantage to the prospective tenant. This may then create a further downside for the proposal. It may mean the landlord is not liable in any later tenancy issues as the territorial authority has issued an approval for habitation. In other words, the territorial authority would carry any future health implications.

Further, the proposed disclosure would unfairly penalise the landlord, a victim under these circumstances, doubly. Firstly, for the initial cost of the incident (eg

decontamination, lost rent, testing, certification, etc) and secondly the potential for not being able to re-tenant the rectified property or only for a reduced rental.

There are many different levels of initial contamination; however the proposed disclosure would be indiscriminate. A recent case publicised on TV3 news saw the tenant abandoning the property and seeking recompense from the owner when only a trace level of P was found on a light bulb, most likely placed there by the tenant themselves or an invited guest. Under the current proposal, this would then have to be notified on the Tenancy Agreement for an undisclosed period.

Following cleaning and being certified as safe and healthy to live in, then the owner can do nothing more. Rental property owners should not be penalised further, especially when they have no method of ever correcting what has occurred.

If a rental property has been certified safe and healthy to live in then it should not be necessary to insinuate a problem through a permanent notification on the tenancy agreement. If the regulations regarding certifying a property as fit and healthy for living in are inadequate, then these should be altered.

Recommendation That the proposed new sub-clause "(na)" be omitted.

Clause 10 New section 13AB inserted "13AB Address for service

Many landlords are highly vulnerable to the actions of disenchanted tenants. A tenant who has been evicted for not paying their rent may want to take out their frustration on a landlord. By knowing the home address of their landlord it is easier for them to locate the landlord and either assault them verbally or physically, or damage their home or other property.

A landlord should have the ability to protect their own peace, comfort and privacy by having the option to offer a different physical address for service than their private home.

The clause at 2(b) enables the specification of an email address for the purposes of "address for service". The Federation sees two major flaws with this, namely, if the email recipient changes address there is usually no redirection order for emails sent to the old address and there is no guarantee that the recipient is going to open them.

Recommendation The Federation recommends that the clause should enable and recognise the address for service given as a Lawyer or Accountants address be acceptable. And, email addresses should not be permitted as an "address for service".

Clause 13 inserts new sections 16A and 16B

New section 16A proposes landlords who are absent from New Zealand for longer than 21 days to appoint an agent and to notify the tenant of the agent's name, contact address, and address for service.

Property Investor Associations currently encourage members to provide an alternative contact person for tenants when they are out of the country. Many members form support groups between members that works very well.

We are eager to ensure that these arrangements are able to continue following the additions of section 16A and B to the Act. Consequently we want to make it explicit that an agent can be a friend or family member.

Recommendation The Bill specifies that an agent can be a friend or family member.

The new section also states that if a bond is held in respect of the tenancy, the chief executive must be notified of those particulars in the prescribed form. An agent appointed under this section has all the rights and obligations of the landlord regarding the tenancy.

It is highly unlikely that a tenant will give notice during the time that a landlord is out of the country. The Federation believes that this proposal will create an administrative burden for landlords and the Bond Centre, that will be unnecessary in the vast majority of cases.

An alternative arrangement could be to have both the landlord and the agent sign a form recording the appointment of the agent. In the event that the agent is required to arrange for a bond refund to the tenant, a copy of this form can be sent with the bond refund form so that the Bond Centre can verify the legitimacy of the refund.

Recommendation The Federation recommends that change of landlord form should be temporary or allow Property Investor Associations to have ability to refund bonds. An agent can have all the necessary forms but would not file them unless an incident occurred.

New section 16B

The Federation supports this section.

This is consistent with proposed revisions in the Unit Titles Bill. As part of section 25 (see below) compliance with body corporate rules should be part of "Tenant Responsibilities" and non-compliance be included as an "unlawful act".

The proposal that the body corporate rules are deemed to be and form part of the tenancy agreement is fair and sensible. Body corporate rules establish codes of conduct and practices for the better operation and regulation of the property for owners and residential tenants.

Tenants at all times must abide by the body corporate rules. In the event tenants are in breach of the rules, subject to appropriate notice from the landlord (or property manger) to the tenant the offence(s) should be considered an "unlawful act" and subject to exemplary damages.

Clause 14 New section 18A inserted

18A Landlord must not require security other than permitted bond.

The Federation believes that using a credit card facility agreed with and authorised by a tenant should be a legitimate form of Bond payment. Tenants often don't have the funds to provide a bond when signing a tenancy agreement and this would provide security for a landlord until the tenant can fully pay their bond in the regular manner.

Continuing the ability for landlords to be able to use a credit card facility until the Tenant is able to pay the bond would provide security for the landlord and make them more inclined to accept the tenant, thereby making it easier for the tenant to secure rental accommodation.

Recommendation Delete 18A

Clause 15 amends section 19. Landlord's duties under the Act to pay bond monies also apply to partial bond payments.

Section 19B should be amended so that the landlord must lodge the initial bond payment within 23 working days but if the balance of the bond is being paid off then the balance should not have to be lodged until all the balance is received. It is common for the tenant to pay 2-3 weeks at the start and pay the rest off at say $50 per week.

In reference to the principal act – bonds are currently restricted to be no more than 4 weeks' rent. There may be circumstances where a bond in excess of 4 weeks is desirable where a tenant has either a bad track record or is a flight risk such as an overseas resident in New Zealand temporarily.

A move to a bond in excess of a 4-week bond would assist Residential Tenancy Services income through additional interest earned on the funds.

Recommendation The Bill should amend the Act to enable a minimum of two and a maximum of 12 weeks (in line with the 90 day termination period), negotiated bond agreement between landlord and tenant.

Clause 22 Tenant's goods not to be seized

Recommendation Landlords should not be required to keep a former tenant's items after the tenancy has ended, unless suitable arrangements have been made, and should be entitled to dispose of it accordingly.

Clause 23 New section 39 substituted - Responsibility for outgoings

There has been a longstanding period of confusion over whether landlords or tenants have the responsibility for metered water and waste charges incurred. This problem is the prime reason for the complete re-write of Section 39.

Unfortunately the proposed changes to section 39 regarding outgoings have already been rendered out-of-date and will not solve the wastewater problem they were designed to address.

The wastewater problem has arisen following many local authorities separating water charges from rating charges[13,14,15]. It was deemed fair and ecologically prudent that water charges should be based on usage. The law was changed in 1996 so that subject to provisos; tenants could be charged for the water they used when it was charged on a metered basis, the premises have a separate water meter and the charge was included in the tenancy agreement.

It is noted that the average Auckland household spends $683 for water and wastewater services[16,17].

Some local authorities established standalone businesses who could choose how they charged customers for water use. A notable example was Metrowater, owned by Auckland City Council, whom divided its charges into sections, including a section for wastewater charges.

The Tenancy Tribunal ruled that as the Act stated that the tenant was responsible for all water supplied "to" the premises and as wastewater came "from" the premises, then wastewater was the responsibility of the landlord.

This point was argued for many years before a District Court[18] decision overturned the Tenancy Tribunal decision and allowed all water charges, including metered wastewater, to be the responsibility of the tenant.

It was considered that the Act was not flexible enough to accommodate the various ways suppliers charge for utilities and services since they were unbundled from the general rates bill. The resulting confusion can give rise to disputes and inconsistent Tribunal decisions.

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[13] 11 of the 73 territorial local authorities currently have metering systems that measure - and attach a price tag - to the amount of water that comes into homes and gets flushed down the drains.
Source: "Bill for water says lobby group" 5/4/09 Sunday Star Times

[14] "Which water company is ripping you off?" NBR 27/3/09

[15] "Calls to talk about metering Wellington's water" The Dominion Post Thursday, 27 November 2008. Wellington's leaders are backing debate on a user-pays water system to reduce Wellingtonians' reckless consumption of water. With Auckland now likely to be operated as one large city, the wastewater and outgoings problem will not be solved until Water and wastewater charges are treated in the same manner as other utilities.

[16] "Which water company is ripping you off?" NBR 27/3/09

[17] In Auckland City, Metrowater's residential wastewater charges are based on 75% of the total water supplied. For example, a customer using 1,000 litres of water would be charged for 750 litres of wastewater.

[18] *"Hubble"* decision Foote v Au Yeung 23 September 2003 the Auckland District Court

A solution to the wastewater problem has been attempted under the previous Residential Tenancies Act Amendment Bill (No 2) and the current Bill, which would apply to all outgoings. The suggestion is that the landlord is responsible for all outgoings that are incurred whether or not the premises are occupied, such as general rates, insurance, and, where applicable, body corporate levies. The landlord is also responsible for outgoings for common facilities.

The tenant is responsible for outgoings that are exclusively attributable to the tenant's occupation of the premises or the use of the facilities. Examples of the tenant's responsibility include charges for electricity and gas, telephone and Internet, and charges for water based on consumption.

This attempt to solve the problem has already been superseded by Manukau Water changing the way they charge for wastewater. Manukau Water has introduced a wastewater charge of $315 regardless of whether the premises are occupied or not.

Under the proposed changes to Section 39, this would make them payable by the landlord, which was clearly not intended.

With Auckland now likely to be operated as a "super city", it has been suggested that the Manukau model be adopted for all of Auckland.

Therefore, the wastewater and outgoings problem will not be solved until water and wastewater charges are treated in the same manner as other utilities.

The Federation therefore recommends that all utilities should be treated in the same way. Any utility (telephone, gas, electricity, water, wastewater, rubbish bags etc) that are charged on a usage basis be the responsibility of the tenant. This includes all line charges, which are a pro-rata payment for utility maintenance. Currently water is the only utility treated differently from other utilities. Why should water be treated differently from other utilities?

If a utility, such as gas, is supplied at a rental property and the tenant chooses not to use it, any rental fee for the meter which still applies is the responsibly of the tenant. By mutual agreement between the tenant and the landlord, the meter may be removed, however not without the approval of the landlord. This is fair, as the utility was there when the tenancy began. If this was an issue for the tenant then they should not have taken the tenancy. If they decide not to use a utility after a tenancy has commenced then this is their personal choice and the landlord should not be adversely affected.

The very first connection fee for a utility or service provided as part of the tenancy should be the responsibility of the landlord. If the utilities are disconnected then there is usually a reconnection fee. If the disconnection occurred during a tenancy because the tenant did not pay the invoice, then the reconnection fee is the responsibility of the tenant. If the utility is disconnected in-between tenancies, then the reconnection fee is the responsibility of the landlord.

The Federation submits that in an era of user-pays which rewards those who use less water and which has powerful long-term benefits for conservation[19], it would be consistent for the Bill to clarify and base wastewater and other water charges on how much is used or created by the tenant.

Moreover, for the law to foist what is a user-pays cost to landlords would be to ignore a legal precedent and contradict the findings in that case.

Finally, it is noted that in its 2003 minority report of the Social Services Committee, the National Party and Act Party "oppose the charging of landlords for waste water"[20].

Recommendation
That section 39 (1) and (2) of the principal Act be amended as below [text in **BOLD** indicate amendments]:

(1) Subject to subsection (2), all outgoings (including rates, insurance premiums **and service connection fees but excluding reconnection fees due to disconnection following a tenant failing to pay their account)**, from time to time payable in respect of the premises shall, as between the landlord and the tenant, be payable by the landlord.

(2) Subject to subsection (3), the following outgoings incurred during the tenancy shall, as between the landlord and the tenant, be payable by the tenant:

(a) all charges for electricity or gas supplied to the premises:

(b) **all charges for water supplied to or from the premises (including the cost of charges for standard meter readings) if the charge is identifiable to the premises and the period of occupation by the tenant:**

(c) all charges in respect of any telephone **or internet facility** connected to the premises:

Clause 24 Tenant's responsibilities

This clause is strongly supported. It reinforces the importance of balance and responsibility.

As drafted at 24(3A) (a) tenant's failure, without reasonable excuse, to quit the premises on the termination of the tenancy may have exemplary damages of $1,000 applied against them.

Recommendation
Damages should be $3,000 in line with landlord breaching a works order

As drafted at 24(3A) (b) using the premises for an unlawful purpose may have exemplary damages of $1,000 applied against them.

[19] Report of The Royal Commission on Auckland Governance, see para 26.58

[20] Residential Tenancies Amendment Bill, Report of the Social Services Committee, March 2003, pg 13

Recommendation
Damages should be $3,000 in line with landlord breaching a works order

As drafted at 24(3A) (c) harassment of other tenants or neighbours may have exemplary damages of $2,000 applied against them.

The Federation acknowledges that the vast majority of tenants treat their home and neighbours with respect however we welcome the new unlawful act of interfering with the peace and privacy of neighbours. Neighbours expect a quality of life without the nuisance of bad tenants and landlords are expected to act. In the extreme case, unruly or undesirable tenants need to be evicted immediately as per the legal precedent now set in the "Salt case" involving Housing NZ[21].

As drafted at 24(3A) (d) exceeding the maximum number of persons who may reside in the premises may have exemplary damages of $1,000 applied against them.

The Residential Tenancies Act currently allows landlords to specify a maximum number of residents, but this is often ignored by some tenants.

And offending tenants have been liable to pay damages only if the landlord could prove that overcrowding caused actual damage to the premises.

It beggars belief that landlords have to go to the Tenancy Tribunal and offer proof of the problems of overcrowding. Plain commonsense suggests more than the specified numbers of tenants in the property is problematic.

Making over-populating of a property an illegal act is a good move. The wear and tear on a property increases as the number of tenants increases and there are serious health and social issues for tenants through overcrowding.

On "over-populating" it is worthy to note that a Waitakere City landlord was severely fined for letting a property with occupancy levels far higher than was safe or sanitary. Clearly, the proposed breach by tenants is fair!

Recommendation
Damages should be $3,000 in line with landlord breaching a works order.

New unlawful acts
The Federation proposes further changes that would also make it an unlawful act(s) that can result in exemplary damages for, thus:

Recommendation
New sub-clauses be inserted

24(3A) (e) non-compliance with relevant and applicable body-corporate rules
24(3A) (f) gaining a tenancy through a false identity or information

[21] Housing NZ accused of bungling Salt eviction bid, 4/7/07, NZ Herald

24(3A) (g) wilfully damaging property
24(3A) (h) tampering with fitted smoke alarms
24(3A) (i) Tenants stopping their rent payments after they have given notice to end a tenancy

In all of the above situations there is intent shown on the part of the tenant. This is a substantial problem facing landlords – eg Often tenants interfere with the smoke alarms, which risks and counteracts the landlords initiative to protect his/her investment potentially resulting in loss of income and costs faced by the landlord. Ultimately, this affects good tenants through higher costs and rents. A severe penalty is needed to provide a measure of disincentive.

Recommendation
Damages to be $3000, the same as against landlords.

Clause 26 Assignment and subletting by tenant

Landlords do not unreasonably withhold consent however increasingly this is a problematic area for private sector landlords and it would be fair and proper to protect landlord interests.

As an interesting parallel and revealed from Parliamentary and other sources it is noted that even in the State housing area that subletting is rife and totally unacceptable[22] [23] [24]

Recommendation
Damages should be $3,000 in line with landlord breaching a works order

Clause 27 Landlord's responsibilities

The Federation has no objection with sanctions for those landlords who breach building, health and safety regulations, resulting in substandard housing and suggests that current legislation by way of jurisdictions including the Building Act, health/sanitary, fire safety regulations already protect against substandard housing issues. There is no compelling case for the duplication of such measures in the Act.

When substandard premises have been proven, the Courts have ample fines and penalties at their disposal to punish the breach. In recent cases the Courts imposed a fine of $49k on a Waitakere City landlord for letting sub-standard housing in Nov 2004 and an earlier case (in June 2001) a Henderson landlord was fined $40,000 for renting out a converted garage to a family of six for 4 years.

Of significance here are the increasing cases where destructive tenants, through their own behaviour and actions as opposed to the landlord's, render a property substandard.

[22] State house fraud not isolated - so how many? 18/10/06 National Party
[23] Family facing eviction from state house 'inherited' after mother dies, 19/10/06, NZ Herald
[24] Housing NZ strengthens fraud unit after paperwork gathers dust 4/10/07 NZ Herald

We are not aware of many landlords offering possession of a property in a substandard condition, because it then sets a poor standard that the landlord has impliedly agreed to

Regulations here would be duplicative and unnecessary and does not achieve anything further than existing legislation.

There is no compelling reason to duplicate the law when provisions are available under the Building Act 1991 and the Health & Safety Act.

Recommendation Delete 45(1A)

Clause 28 Landlord's right of entry

At the moment if a landlord wants to enter their property it is at the discretion of the tenant, and the proposed change would give landlords right to access the property if tenants do not agree.

A typical problem confronting landlords occurs when a property is placed on the market. Some tenants can place unreasonable conditions of entry.

Recommendation The Bill defines what constitutes "reasonable time" and we suggest that this be: times between 8am and 7pm. Additionally, the clause should provide for the making of consent within 2 days subject to any reasonable conditions (in the event to enable application and attendance at the Tenancy Tribunal to obtain an order).

Clause 31 Termination by notice

The clause reaffirms that the owner of a property who wants to occupy the property must give 42 days notice to the tenant.

To improve the drafting it is suggested that the term "owner" should include Trustee or beneficiary[25] of a family trust and Director of a company. In the last 8 years investors have been encouraged to structure the ownership of investment properties in Loss Attributing Qualifying Company's (LAQC's) or Family Trusts and they would be disadvantaged by the current definition.

Recommendation s31(2) be amended by inserting an additional sub-clause, to read: (b) Owner of the premises includes a Trustee of a family trust and or a Director of a company

[25] It is common for the children of the trustees to be beneficiaries

Clause 35 *Amendment to section 55;* Termination on non-payment of rent, damage, or assault

The Federation is very supportive of this clause which enables decisive action to be taken to deal with assaults, or threats of assault, by tenants' guests or associates.

Recommendation Damages should be of the level of $2,000 in line with a landlord using force to enter a premise

Clause 40 New sections 60A to 60C inserted

Recommendation Section 60A should include - during the last 21days of a fixed term tenancy either party can give 21days notice if no other agreement has been entered into. [As it reads now at 20 days before the end of a fixed term the landlord has missed the deadline and now has to give 90 days notice]. That Section 60C be further clarified as currently when resigning at the end of a fixed term the rent can increase. This implies 60 days notice must be given prior to the increase.

Clause 41 Abandonment of premises

The Federation welcomes this clause which declares that a tenant commits an unlawful act if, without reasonable excuse, he or she abandons the premises when the rent is in arrears the landlord can receive exemplary damages of up to $1,000.

Rent arrears are the main reason for applications to the Tenancy Tribunal and the leading problem for the entire industry. The clause is the first acknowledgement that a tenant who vacates the property owing rent must be accountable for his or her actions. Further, the clause rightly reinforces an important personal responsibility principle.

The Federation believes that exemplary damages should reflect the seriousness and frequency of this problem plus the cost to both landlords and the legal system.

Recommendation Damages should be of the level of $3,000 in line with landlord breaching a works order

Clause 42 Abandoned goods

It is unreasonable that in the event of an abandoned property, the landlord is held liable for any non-perishable possessions left behind. It places an unfair onus upon the landlord to find storage for property he was not responsible for bringing and delaying further the opportunity to re-let the premises.

For consistency with Clause 25 Tenant's Fixtures (the explanatory note to the bill states, that the tenants fixtures pass to the landlord if the tenant does not remove them at the end of the tenancy unless arrangements have been made) Clause 42 should reflect this. Further, the reference to tenant's fixtures and should also apply to the tenant's chattels.

Recommendation
Clause 42 be amended to reflect Clause 25 ie abandoned goods pass to the landlord unless arrangements have been made.

Part 2A

Boarding house tenancies

We have not yet received input on this issue from property investor members in the limited area that it applies.

On the face of it, it does appear reasonable to expect the Bill to incorporate boarding house issues.

However, we appreciate that there are practical and special issues relating to boarding houses and their clients not encountered by private residential investor landlords.

We reserve the right in this area to make further submissions on the section if information supplied by affected Federation members.

Clause 58 New sections 86 and 87 substituted

Current provision requires proceedings to be commenced in the Tenancy Tribunal office that is nearest to the premises to which the dispute relates. Under the substituted *section 86*, the appropriate office will be determined by the chief executive. The chief executive must determine the appropriate office by reference to areas for which each office is responsible. These determinations must be published in the *Gazette* and on the Internet.

Recommendation
This could potentially make it difficult where a tenant has left an area and the CE orders it to be heard at their new location. There should be some terms guiding the CE's decision making.

Clause 66 Costs

This clause entitles an applicant who has been wholly successful in his or her application to obtain a refund from the respondent of the filing fee paid for the application. If the applicant has been only partly successful, the Tribunal has discretion to order the respondent to refund the filing fee. The amendment also permits the Tribunal to award costs for any reasonable expenses or commissions incurred in attempting to recover an overdue payment owing under an order of the Tribunal if the tenancy agreement provides for the recovery of those expenses.

Recommendation
This clause must be included in standard tenancy agreements.

Clause 69 amends section 109

This increases the amounts that the Tenancy Tribunal may award as exemplary damages for certain unlawful acts and establishes awards for new unlawful acts.

Recommendation
The jurisdiction of the Tenancy Tribunal should be extended to include an Order of Examination and an Attachment order at the time of the hearing. Also clarification required that exemplary damages go to the landlord**.**

Clause 79 Residential Tenancies Trust Account

This amends section 127. All unclaimed bond money held by the chief executive must be paid to the Crown if it has not been collected 6 years after the termination of the relevant tenancy or 6 years after its refund has been approved.

According to the Department of Building and Housing 34,000 bonds with a value of $5.78 million remain unclaimed. This money (and the bonds themselves – amounting to $260million[26]) is held in the Crown's consolidated account earning interest. DBH then uses money from the investment to run its services including the Tenancy Tribunal, which addresses complaints between landlords and tenants and for its education programme.

The unclaimed bond monies should be retained by the DBH rather than appropriated by the Government's consolidated account. Interest received on unclaimed bond money should be allocated equally to landlord and tenant education for the betterment of the entire industry.
Part of these funds could be made available for educational events undertaken by not-for-profit incorporated societies at the DBH's discretion.

Recommendation

Unclaimed and abandoned monies amounting to over $6million[27] should be retained by the Department of building and Housing to assist and fund Tenant and Landlord education initiatives.

OTHER AMENDMENTS

Principal Act Section 17 Requiring key money prohibited

The service of finding and matching a tenant with a landlord is an important process and the Federation submits that it is unfair for only a solicitor or real estate agent property manager to charge a fee for services rendered relating to the grant or assignment of the tenancy.

[26] DBH Briefing for the Minister for Building and Construction, November 2008
[27] Government sitting on $5.7m in unclaimed rent bonds 9/9/08 NZ Herald

As property managers also perform services relating to the grant or assignment of a tenancy this profession should also be entitled to charge a letting fee associated with the tenancy.

Recommendation Section 17 (4) (c) be redrafted to read as: "Any sum required to be paid by the tenant to or at the direction of the landlord in respect of any fee or other charge for services rendered by any solicitor or real estate agent or property manager relating to the grant or assignment of the tenancy**".**

END

3 July 2009

Mr Matthew Louwrens
Social Services Select Committee Secretariat
Parliament Buildings
Wellington

By Fax: 04 499 0486

Dear Mr Louwrens

NZPIF SUBMISSION ON THE
RESIDENTIAL TENANCIES AMENDMENT BILL

Please find attached the written response of the New Zealand Property Investors' Federation Inc to the **Residential Tenancies Amendment Bill**.

The Federation is is happy to provide the Committee with any further information it may require and wishes to be heard in person before the Social Services Committee in support of this submission.

Yours sincerely

Martin Evans
President