

Report on Tenants Liability for Damage

Prepared by the NZ Property Investors' Federation

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Summary

The NZ Property Investors' Federation (NZPIF) has received more communications from rental property owners over the Osaki case than any other issue affecting rental properties. Rental property owners are extremely concerned at the ramifications of tenants not being held responsible for any unintentional damage that they cause.

Previous to the Osaki case, tenants were held responsible for any damage they caused. They could protect themselves by taking out relatively cheap contents insurance or cheaper third party liability insurance. There are now specialty tenant insurance policies.

If a tenant didn't have insurance, the landlord would often claim on their own insurance policy and agree with the tenant that the tenant would cover the excess.

The Osaki case was a large claim of over \$216,000. The Courts have a view that it is unfair for a landlords insurance company to seek recompense from a tenant after they have repaired the property for the landlord. The NZPIF has sympathy for the courts point of view.

However the ruling means that tenants are now no longer responsible for any damage they unintentionally cause, even if they are careless.

Under commercial leases, the tenant pays for the landlords insurance separate to rent and the insurer takes the tenants situation into consideration when determining the cost of premiums. Therefore the commercial tenant has an interest in taking care of the property, unlike a residential tenant.

The Property Law Act (PLA) allows the excess to be paid by commercial tenants, not the landlord. However the Tenancy Tribunal has specifically disallowed residential tenants being held liable for the excess through damage that they have caused.

Because residential tenants are not responsible for any damage they cause or for the cost of the excess, unlike a commercial landlord a residential landlord bears the full cost of a residential tenants damage. Unlike commercial tenants, there is no incentive for residential tenants to take care of their property.

To keep costs low and because they are covering themselves for major damage, residential landlords often choose a high excess level. While the Osaki case involved a high degree of damage, most damage by residential tenants is below the level of the excess. Insurers also treat different damages as separate occurrences and apply multiple excesses to them. This means that multiple small amounts of damage can be an enormous cost to residential landlords.

The Osaki case has transferred the responsibility for damage caused by a tenant, away from the tenant and onto the landlord. There is no longer any need for tenants to be careful in how they treat a residential rental property.

The Court has held that Government intended for this to be the case, otherwise they wouldn't have included section 142(2) in the RTA amendments of 2010.

Comment

The NZPIF understands the Courts desire to protect tenants from large costs in repairing damage they have caused. However it appears that the Courts have not considered the costs to landlords in absolving tenants from the costs in repairing smaller items of damage they have caused.

The NZPIF believes that tenants should be held responsible for damage that they cause. It is unreasonable for property owners to be forced into paying for damage they did not cause and had no way of preventing.

It is unjust for courts and the Tenancy Tribunal to look to the PLA for absolving tenants from unintentional damage but choosing not to follow the PLA with regard to tenants paying the excess where they themselves caused the damage.

We believe that if the court ruling is not corrected, landlords will be forced to lower their insurance excess to zero so they are covered for damage that their tenants may cause. Naturally the increase in premiums will be added to the rental price.

This means that tenants who have contents insurance will effectively be paying twice to insure themselves against damage they may cause.

If the court ruling is not corrected, Landlords will have to be far more selective in who they accept as tenants. Tenants who are perceived as riskier, pet owners, families with young children and young adults for instance, will find it even more difficult to find rental accommodation and are likely to have to pay more.

Landlords will be more likely to increase rental prices if their tenants cause damage to the property that the landlord is forced to pay for.

Recommendations

We recommend that the RTA section 142(2) be amended so that it cannot be interpreted by Courts that the PLA overrides the RTA and reaffirms the original and long standing presumption that residential tenants are responsible for any damage they cause.

We recommend that a consequence for tenant be inserted into the RTA to confirm that they are responsible for the cost of restoring damage that they have caused.

The Tribunal should include reckless behaviour in addition to intentional behaviour as a reason for a tenant not being allowed to rely on their landlords insurance.

We recommend that Government look to other measures to protect tenants from large amounts of damage that they may cause. Some potential options are:

- Develop a requirement for landlords to advise tenants of their responsibility to pay for damage they cause and that insurance policies are available to protect them.
- The Tribunal allows tenants to pay for the excess when a landlords insurance is used to repair a property after damage caused by a tenant.
- Tenants are only able to use their landlords insurance policy for combined damage they cause which is higher than, say, \$10,000, plus they are responsible for the excess.
- Require landlords to take out insurance on behalf of their tenants to protect themselves from damage that they cause. The premium would depend on how insurers assess the risk of individual tenants. As the cost of premiums would vary, the cost should be treated as exclusively attributable to the tenants occupation of the rental property.

We look forward to discussing this with you next week.

Kind reagrds

A handwritten signature in blue ink that reads "Andrew King". The signature is written in a cursive style with a large, sweeping flourish at the end.

Andrew King

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