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## Residential Tenancies Amendment Bill (No 2)

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The Residential Tenancies Amendment Bill (No 2) was introduced on 23 May 2017 and public submissions to the Social Services Select Committee on the Bill closed on 22 August 2017.

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### Purpose of the Bill

The Bill proposes to address issues relating to:

- the obligations of landlords and tenants for damage or destruction to rental premises;
- methamphetamine manufacture and use in residential premises; and
- the application of the Tenancy Tribunal's jurisdiction in relation to premises not lawfully able to be used for residential premises.

### Limit on tenant liability resulting from careless damage

Amendments on the tenant liability front seek to swing the balance back in favour of landlords, following the recent *Osaki* Court of Appeal decision that tenants are immune from a claim for loss resulting from careless or negligent action by the tenant or a guest of the tenant, to the extent provided in sections 268 and 269 of the Property Law Act 2007.

Before *Osaki*, insurers had the ability to recover losses from the person who had caused the damage (including insurance excess payments). Following *Osaki*, however, the tenant is not liable for any costs of careless damage where the landlord is insured, nor for damage caused by certain events (including fire, flood or explosion), whether or not the tenant carelessly caused the events and whether or not the landlord is insured for those events. Nor are landlords able to recover the cost of insurance excess from tenants.

The Bill caps the tenant's liability in relation to "each incident of damage", in the case of a careless act or omission, at the value of the landlord's insurance excess. If the landlord is not insured, the tenant's liability is limited to the value of four weeks'

rent. Quite how the limitation of “each incident” will be construed will likely provide some room for disagreement, potentially increasing disputes in front of the Tenancy Tribunal as to whether the damage is careless or intentional.

Under the Bill, the landlord is obliged to disclose its insurance cover at the beginning of the tenancy and will be liable for exemplary damages if it fails to do so.

Additionally, the Bill limits the ability of insurance companies to enforce the rights of their clients and prevents insurance companies from taking account of a tenant’s payment for careless damage to the landlord when calculating premiums. As a result, insurers say their risk is increasing and premiums for rental properties may increase.

The other point to note on liability is that even if a bond to the value of four weeks’ rent is held, the liability limitation now introduced may operate to mean that the landlord may not be entitled to all of the bond in the case of a careless act or omission by the tenant, if the landlord’s insurance is less than four weeks’ rent. The likely outcome is that landlords will increase insurance excess to the equivalent level.

### **Methamphetamine manufacture and use in residential premises**

In a move that will be welcomed by landlords, the Bill allays concerns following a Ministry of Health funded report released in late 2016 that cast doubt on Ministry’s guidelines for the “unsafe” level of methamphetamine contamination in residential properties.

The Bill provides a right of entry for methamphetamine-testing without the tenant’s permission, an obligation to disclose the results to the tenant within 7 days of receiving them, and an effectively immediate right of termination for either party if the results reveal a particular level of methamphetamine contamination. Rent will cease to be payable if the tenant was not responsible for the contamination.

The long awaited New Zealand Standard (NZS 8510) released on 29 June 2017 assigns significance to contamination levels and documents appropriate remedial action. Regulations will be developed to prescribe a “maximum acceptable level” of methamphetamine contamination for residential premises, provide how testing must be carried out, and prescribe the decontamination process.

While it’s a shame the Regulations are not available for comment at the same time, at least the Bill is heading in the right direction on this costly issue.

### **Premises unlawful for residential use**

The 2013 High Court decision in *Anderson v FM Custodians Ltd* has meant that the jurisdiction of the Tenancy Tribunal was limited to making orders only in relation to “residential properties”.

In another measure bolstering the position of landlords, the Bill now clarifies the Tribunal’s jurisdiction to ensure it can hear cases that relate to premises “occupied

or intended to be occupied for residential purposes”, regardless of whether the occupation is lawful. The Tribunal will have full jurisdiction to order the landlord to refund all rental paid by the tenant for the full period of occupation. The proposed change will have a significant implication for landlords of properties with secondary dwellings (for example, “granny flats”) that don’t comply with the Building Act and/or the Resource Management Act.

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