



JONESFEE

Sheehan v Watson and the
insurance provisions of the
Property Law Act 2007



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The Law Change

- PLA prevented landlords from suing tenants where tenants' negligence causes damage to leased property
- Change proposed in June 1994 to defeat case law
- Prior law contrary to expectations of landlords and tenants?
- In practice, defeats landlord's insurer's subrogated rights
- Intentional damage/criminal conduct not caught by PLA



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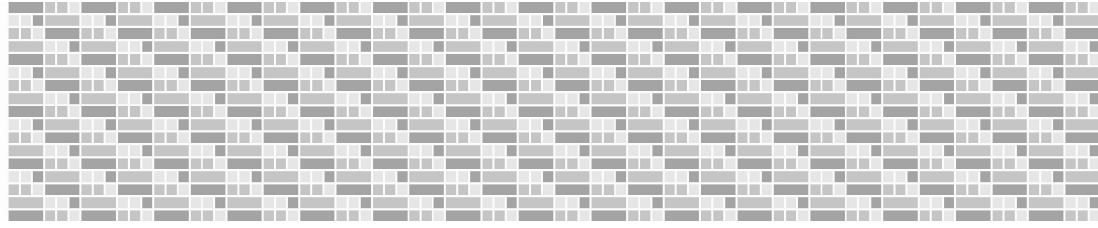
Section 268

- (1) Sections 269 and 270 apply if, on or after 1 January 2008, leased premises, or the whole or any part of the land on which the leased premises are situated, are destroyed or damaged by 1 or more of the following events:
 - (a) fire, flood, explosion, lightning, storm, earthquake, or volcanic activity;
 - (b) the occurrence of any other peril against the risk of which the lessor is insured or has covenanted with the lessee to be insured.
- (2) Section 269 applies even though an event that gives rise to the destruction or damage is caused or contributed to by the negligence of the lessee or the lessee's agent.
- (3) In this section and sections 269 and 270, **lessee's agent** means a person for whose acts or omissions the lessee is responsible.



Section 269: Exoneration of lessee if lessor is insured

- (1) If this section applies, the lessor must not require the lessee –
- (a) to meet the cost of making good the destruction or damage; or
 - (b) to indemnify the lessor against the cost of making good the destruction or damage; or
 - (c) to pay damages in respect of the destruction or damage

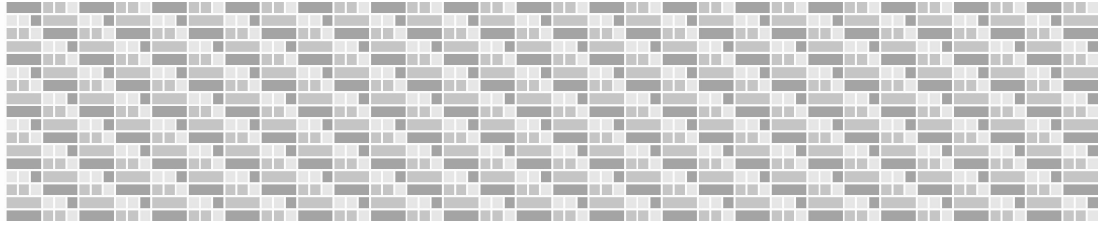


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The Argument

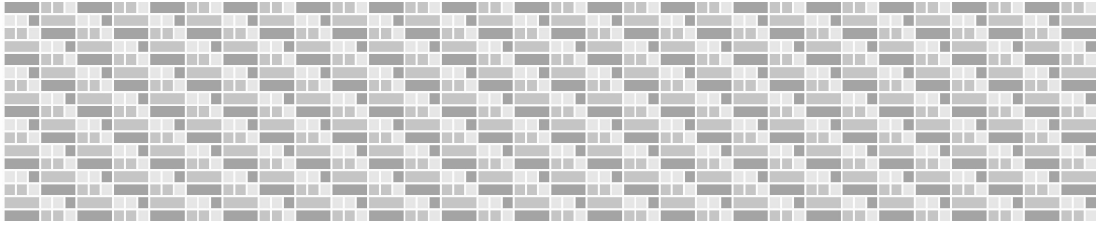
- Section 268(2) specifically mentions “lessee or lessee’s agent” – BUT section 269 mentions “lessee” only
- Defendants virtually conceded Act didn’t expressly exclude lessee’s employees from claims
- Drafting oversight?
- So “black letter” interpretation against purposive interpretation





The Argument Applied

- One man bands
- Fonterra
- Application to less commercially aware class = employees
- Commercial nonsense, frustrating the Law Commission's intention





Alternative Approach

- If wrong approach, then inadvertent failure to include “lessee’s agent”
- Case within “extreme category” where words can be read into statute to avoid frustration of Parliament’s purpose
- So read words “or its employees” into section 269
- Lease terms not considered



Duty of Care

- Did employees owe landlord a duty of care?
- Settled law that a person performing potentially dangerous activities owes a duty
- But did policy reasons negate a duty?
- Yes, but some of the rationale questionable

