



Holler v Osaki:

Tenant's liability for damage to residential properties

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| Specific advice should always be obtained before relying on any aspect of the content of this presentation or associated materials.

Holler v Osaki [2016] NZCA 130

- Exoneration provisions – ss 268 and 269 Property Law Act 2007 (Part 4)
- s 142 Residential Tenancies Act 1986:

(1) Nothing in Part 4 of the Property Law Act 2007 applies to a tenancy to which this Act applies.

(2) However, the Tribunal, in exercising its jurisdiction in accordance with section 85 of this Act, may look to Part 4 of the Property Law Act 2007 as a source of the general principles of law relating to a matter provided for in that Part (which relates to leases of land).

Tenancy Tribunal Practice Note

- Landlord must prove that damage was caused
- Tenants must prove that damage was not due to a deliberate or careless act by them
- If tenants cannot prove that, look at the cause of the damage:
 - Fire, flood, explosion, lightning, storm, earthquake
 - s 269(1)(a) PLA – no liability, regardless of whether landlord insured;
 - Any other peril which the landlord is insured – s 268(1)(b) PLA

Tenancy Tribunal Practice Note

- If the cause of the damage is as above, the tenant will be exonerated unless the landlord can establish that the damage:
 - Was intentional;
 - Was the result of an act at the property which constitutes an imprisonable offence; or
 - Prevents insurance moneys being recovered that would otherwise have been recoverable.

Tekoa Trust v Stewart

- Tenancy agreement prohibited dogs at the property
- Tenant had dogs at the property, and dogs damaged the carpet
- Tribunal determined that, despite the fact that the tenant deliberately breached the tenancy agreement, the landlord had not established that the tenant intended to damage the carpet, and as such, the tenant was exonerated