



Free Phone 0800 111007
Free Fax 0800 222007
on-line tenant checking www.tinz.net.nz
debt collection www.cia.co.nz
P.O. Box 106472, Auckland City, 1143,
New Zealand
Email : admin@cia.co.nz

Nationwide Debt Recovery Specialists

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[Re charging of collection costs to tenants.](#)

We have received any number of calls from property managers and landlords in regard to adding the costs of our collection to Tenancy Tribunal ordered debt, when they have incorporated that provision within their written tenancy agreement, based on advice given by solicitors who regularly advise the industry.

We started adding our collection costs to debts on which we have received instructions since 1/5/02. However this has proved fairly unworkable and you can see why when you consider the following comments.

1. We have reviewed Section 32 of the Residential Tenancies Act on many occasions and we contend, that as private collection company, collection costs are a penalty for breaching a condition or term of a tenancy it contravenes this section of the Act to add such costs. The section says that “no accelerated damages” can be added to a debt for any breach of a tenancy agreement. We are of the opinion that collection costs are accelerated damages and hence why the Tenancy Tribunal don’t award such costs either.
2. There are also major problems when it comes to enforcement (collection) via the District Court system as there is no provision under the District Courts Act, nor the District Court Rules, for the addition of private debt collection company’s costs to a Tenancy Tribunal Order. We are only allowed to recover Court filing fees and a set amount for solicitors attending hearings per a Ministry of Justice set schedule.
3. When it comes to the Fair Trading Act and laws of Contract we don’t believe we have formed the contract with the errant tenant(s) to add our charges – you, the creditor (landlord/property manager), does. We would then have to send you an invoice for our fees, even on our results only option, for every debt for which we gain an offer of repayment, where normally we deduct our commission from recoveries as we receive them from the debtor/tenant. The process of issuing so many invoices is impractical when you are managing as many debtors as we do. It would also add significantly to our costs and therefore we would have to recover them by charging more.
4. We have suggested that landlords/property managers incorporate, in their application to a Tenancy Tribunal for termination and determination of the amount of rent/damages/cleaning owed, and our costs (as you know what they are going to be if you know which option you are going to choose from our schedule of fees), however, we have had feedback that the Tribunal has refused, having referred back to both Section 32 of the Residential Tenancies Act and the

fact that not every debt is going to have collection costs added as the tenant may pay on your subsequent approach straight after the hearing.

More importantly our job is to recover the Tribunal ordered debt from each errant tenant not to argue with the tenant as to whether they will pay our charges on top. We are there to execute a Court order for a certain amount of debt - we are not there to "negotiate" with them as to whether they are going to pay the debt as ordered by a Tribunal. The simple fact is a Court believes they owe you a set amount and have granted you a Court order for that and we are not there to argue whether the Court was right or not as they had their opportunity to put their side of the matter to the Court and they either didn't take up the opportunity to present it or it was discounted by the Court as not being valid. So what's the point of putting in another variable (our collection costs) for "discussion".

However all that aside we started adding our collection costs to all debts from creditors who are known to us have clauses in the their tenancy agreements which allow for the addition of our collection charges since 1/5/02. We have noted that since we started the policy of adding collection costs to debts that there has been a marked increase, perhaps by almost 30%, in tenants saying they would prefer to go via enforcement rather than pay our costs and that is only logical from the point of view of a tenant. They are going to save a lot of money when one looks at a simple example

e.g. the average tenancy debt across 25,000 tenancy debts on our books is \$2100 turns into a \$2979.68 debt under our option 2 or \$3029.17 under our option 3. However if the debt is taken back for enforcement via the District Court the awarded costs are only Court filing fees of \$90 for order for examination, \$256 for solicitor's costs and solicitor's appearance of \$128 which makes a total debt to repay of = \$2574.

So what tenant in their right mind would accept a debt collection company costs on top of the debt?

We have been monitoring the situation and it is clear that if they refuse to make a voluntary offer to repay and we have to use the Court system we can expect to add 12-15 months for the enforcement system to work so that we can recover our costs of tracing and field calls. On average we also have to re-trace debtors 2.7 more times throughout the enforcement process.

[If you want to see an example how debt collection charges are added to a debt under our option 3 see as follows.](#)

To ensure that a creditor (landlord/property manager) recovers the full amount of their debt we simply can not add \$100 + GST and then 25% +GST as the following basic maths shows

Incorrect Calculations

$\$1000 + \$100 = \$1112.50 + (25\% + \text{GST} = \$250 + \$31.25 \text{ GST}) = \1393.75

Now if we were to show what happens as we recover the money

C.I.A. retains the 25% plus GST from the payments which should total \$1393.73 (as above) leaving a balance of \$1001.75 as being paid to the landlord. You say that's good but don't forget you paid \$112.50 to register the debt so you have only got \$889.25 out of the \$1000 original debt to collect.

The correct calculations are as follows

Debt divided by $(100 - (25\% + \text{GST})) + \$100 = \$XXXX$ divided by $(100 - 28\%) + \$112.50$

Your debt was, therefore, \$1000 divided by .72 , and then add + \$112.50. = \$1501.39

Now we would show the recovery as

C.I.A. retains the 25% plus GST from the payments which should total \$1501.39 (as above) leaving a balance of \$1079.12 as being paid to the landlord. That's better but not perfect as the debt was \$1000 plus the \$112.50 registration fee = \$1112.50 you really wanted us to collect.

And you thought it was easy to simply add our costs to the debt!

Now why do you think we want to get into a battle with your previous tenant over adding collection costswould you?