

# LEGISLATIVE COUNCIL BRIEF

## LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2001

### INTRODUCTION

A At the meeting of the Executive Council on 29 May 2001, the Council ADVISED and the Chief Executive ORDERED that the Landlord and Tenant (Consolidation) (Amendment) Bill 2001 (the Bill), at Annex A, should be introduced into the Legislative Council.

### BACKGROUND AND ARGUMENT

#### Background

2. The Landlord and Tenant (Consolidation) Ordinance (LTO) was enacted in 1973 by consolidating all previous legislation relating to rent control and landlord and tenant matters. It consists of seven parts -

- (a) Parts I and II, which expired on 31 December 1998, dealt respectively with rent increase control and security of tenure of pre-war and certain post-war domestic tenancies;
- (b) Part III deals with distress for rent;
- (c) Part IV provides for security of tenure for most domestic tenancies and those domestic tenancies which used to be protected by Parts I and II;
- (d) Part V provides for notice of termination of tenancies of mostly non-domestic premises; and
- (e) Parts VI and VII are concerned with the recovery of small tenements and miscellaneous matters respectively.

3. After completing a review of the LTO, we proposed

amendments to the LTO in the Landlord and Tenant (Consolidation) (Amendment) Bill 1999. The Amendment Bill was introduced into the Legislative Council in December 1999 but was not scrutinised by the Legislative Council before the 1999/2000 legislative session ended in July 2000. Meanwhile, a Government Working Group on the Review of Statutory Procedures for Repossession of Domestic Premises and Recovery of Rent (the Working Group) was formed in September 1999 in response to public concern over the lengthy and complicated statutory procedures for repossession of rented premises. The Working Group submitted its recommendations in August 2000, and they were endorsed by the Government subsequently. Those recommendations requiring legislative amendments are also included in the Landlord and Tenant (Consolidation) (Amendment) Bill 2001 in addition to the proposals in the 1999 Amendment Bill.

### **Proposed amendments**

4. We propose to amend the LTO to simplify tenancy renewal procedures, improve the basis of calculating compensation for the tenant and sub-tenant occupying small premises repossessed by the landlord for redevelopment and increase penalties for harassment of the tenant and unlawful eviction. Amendments are also proposed to streamline the statutory repossession procedures, to ensure that the provisions of the LTO are consistent with the human rights provisions in the Basic Law, and to improve the operation of the LTO.

### **Tenancy renewal procedures under Part IV of Landlord and Tenant (Consolidation) Ordinance**

5. Part IV of the LTO covers most domestic tenancies and provides security of tenure to the tenant. The existing statutory procedures for renewing a tenancy under Part IV are complicated. Many tenants, especially those living in small flats and cubicles, have difficulty in following these complex renewal procedures.

6. Part IV provides the mechanism for a landlord to terminate a tenancy and a tenant to request for a new tenancy through application to the Lands Tribunal if they fail to reach agreement. There are strict time limits on the exchange of statutory documents between the landlord and

the tenant. The Lands Tribunal has also indicated that the complicated procedures and strict time limits stipulated under Part IV are preventing it from determining applications for new tenancy solely on their merits. Flow-charts illustrating the current tenancy renewal procedures and our proposed changes are at Annex B.

**B**

7. In order to streamline the tenancy renewal procedures so as to better facilitate the landlord and the tenant in reaching agreement and to give the Lands Tribunal the discretion in handling tenancy renewal applications involving notices not served or submitted within statutory time limits, we propose that -

- (a) The lead time for the landlord to serve a notice of termination of tenancy on the tenant (Form CR101) and for the tenant to make a request for a new tenancy (Form CR103) should be shortened, from “not more than seven or less than six months” to “not more than four or less than three months” before the date of termination or beginning of a new tenancy. The existing prolonged notice period prevents the landlord and the tenant from taking into account the rapidly changing circumstances nearer to the expiry of the existing tenancy.
- (b) The provision for the landlord to serve a notice to the tenant requiring the tenant to make an application to the Lands Tribunal in two months for granting a new tenancy (Form CR105) should be removed. Service of such a notice is considered redundant.
- (c) Provisions should be made to provide for the landlord and the tenant to apply to the Commissioner of Rating and Valuation for rental information of comparable premises at a fee. This will facilitate agreement between the landlord and the tenant on the level of rent for renewal of a tenancy without recourse to legal proceedings at the Lands Tribunal.
- (d) The landlord should be allowed to change or add grounds of opposition to a tenancy renewal application made by the tenant to the Lands Tribunal owing to change of

circumstances arising after the service of notice of termination or opposition (Form CR 101 or Form CR 104). The Lands Tribunal can then determine the case on its full merits.

- (e) The Lands Tribunal should be empowered to hear cases in which the landlord or the tenant fails to observe statutory time limits in serving or submitting notices with good cause.

### **Penalties on harassment of tenant and unlawful eviction**

8. Under Part IV of the LTO, harassment of the tenant and unlawful eviction are offences liable on conviction to a fine of \$500,000. On a subsequent conviction, such act is liable to imprisonment for 12 months in addition to the fine. Legislative Councillors and the public have expressed concern in the past over the use of unlawful means to evict the tenant in order to recover premises for redevelopment or self-possession, and have suggested that heavier penalties should be imposed on such offences.

9. In order to deter such offences, we propose to impose heavier penalties – a fine of \$500,000 and imprisonment for 12 months on first conviction; and a fine of \$1 million and imprisonment for three years on a subsequent conviction. In order to facilitate prosecution, we also propose to amend the LTO to require the prosecution to prove that the defendant knows or has reasonable cause to believe that his / her act is likely to cause the tenant to give up occupation of the premises, rather than to prove the intent of the defendant.

### **Compensation for the tenant and sub-tenant upon redevelopment**

10. When premises are repossessed for redevelopment, the statutory compensation payable by the landlord to the tenant and sub-tenant under Part IV of the LTO is calculated according to a sliding scale of compensation levels as follows -

<u>Rateable Value (RV)</u>	<u>Multiplier</u>
For the first \$30,000 of the RV (where RV does not exceed \$30,000)	7
For the second \$30,000 of the RV (where RV exceeds \$30,000 but does not exceed \$60,000)	5
For the third \$30,000 of the RV (where RV exceeds \$60,000 but does not exceed \$90,000)	3
For the remainder of the RV (where RV exceeds \$90,000)	1

11. Where premises are partitioned and sub-let, compensation is calculated in accordance with the rateable value of the whole flat and then apportioned among the tenant and sub-tenant. Owing to the higher rateable value and lower compensation multiplier for the whole flat (as compared with that for a part or sub-let portion within the flat), the apportioned compensation to each tenant or sub-tenant is much reduced. This method of calculation is not consistent with the spirit that the tenant and sub-tenant occupying smaller areas should receive more assistance to alleviate hardship arising from relocation.

12. We propose to remedy this by changing the method of calculating compensation to make reference to the rateable value of the actual portion of the flat which the tenant or sub-tenant occupies. An example illustrating the existing and proposed methods of calculation and compensation is given at Annex C.

C

### **Facilitating private settlement in redevelopment cases**

13. The process of redevelopment can be expedited if vacant possession can be obtained through voluntary surrender of premises by the tenant at an agreed level of compensation without the need to initiate any legal proceedings. However, in many cases, the tenant does not have any idea of the amount of statutory compensation which he / she may obtain. To facilitate negotiation between the two parties on a mutually acceptable amount of compensation, we propose to allow the Commissioner of Rating and Valuation to issue, on application at a fee, a certificate of the rateable value of the premises concerned and the amount of statutory compensation payable.

## **Mandatory relief period following granting of an order of possession for non-payment of rent**

14. At present, the courts grant a mandatory relief period of a minimum of 28 days following the granting of an order of possession to allow the tenant a final opportunity to settle the rent in arrears before the order of possession is executed in accordance with Section 21F(3) of the High Court Ordinance (Cap. 4), Section 69(3) of the District Court Ordinance (Cap. 336) or Section 8(9) of the Lands Tribunal Ordinance (Cap. 17). In practice, the tenant is usually in arrears of rent for several months before court procedures are initiated and before judgement is delivered.

15. To minimise the abuse of the relief period by habitually defaulting tenants, we propose to shorten the mandatory relief period from the existing minimum of 28 days to a minimum of 7 days. To allow greater flexibility in future, we also propose to empower the Secretary for Housing to amend the duration of the relief period by notice in the Gazette.

### **‘Orders in default’ procedure in Lands Tribunal**

16. Under Rule 15 of the Lands Tribunal Rules, a landlord can apply for an order of possession, ejectment, rent, mesne profits or any other liquidated demand where no notice of opposition by a tenant is filed. However, unlike the procedures in the High Court and the District Court, such application to the Lands Tribunal must be supported by an affidavit.

17. To simplify the repossession procedures of rented premises and to put the default judgement procedure of the Lands Tribunal in line with those of the High Court and of the District Court, we propose to dispense with the requirement of filing affidavits in all cases. For an application involving a claim for mesne profits which are unliquidated damages sought by the landlord for the illegal occupation of his premises and which should reflect market rent, we propose to require the landlord to file evidence (which may include affidavit, statement or expert report) to support such claim.

## **Ensuring compliance with human rights provisions in Basic Law**

18. Part V of the LTO provides for notice of termination of tenancies of mostly non-domestic premises and specifies a list of tenancies to which Part V will not apply. In case of dispute over whether a fixed term tenancy not exceeding one year should be excluded from Part V, the Commissioner of Rating and Valuation's decision will be final. As this does not provide parties aggrieved by the determination of the Commissioner any channel of appeal and in order to ensure consistency with the human rights provisions in the Basic Law<sup>(1)</sup>, we propose to provide for an avenue of appeal to the Lands Tribunal.

19. Part III of the LTO stipulates that a person shall be deemed to be guilty of an offence for fraudulently removing movable properties under distraint or liable to be seized for distress for rent. Under Part IV, a landlord may serve a notice of termination (Form CR101) or oppose an application for a new tenancy by a tenant (Form CR104) on grounds of self-occupation or intention to rebuild and, if the landlord successfully opposes the grant of a new tenancy, he / she will be restricted from letting or assigning the repossessed premises for 24 months, contravention of which is a criminal offence. It is currently stipulated that even when such an application for a new tenancy made to the Lands Tribunal does not proceed and the tenant agrees to give up possession of the premises, the landlord shall be deemed to be restricted in the same manner as if he / she has successfully opposed an application. We propose to amend the relevant provisions under Part III and IV by removing the deeming provisions to ensure consistency with the human rights provisions in the Basic Law<sup>(2)</sup>.

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Note <sup>(1)</sup> : 'Right of fair and public hearing' as provided for under Article 14(1) of the International Covenant on Civil and Political Rights as applied by Article 39 of the Basic Law to Hong Kong and section 8 (Article 10) of the Hong Kong Bill of Rights Ordinance.

Note <sup>(2)</sup> : 'Presumption of innocence' as provided for under Article 14(2) of the International Covenant on Civil and Political Rights as applied by Article 39 of the Basic Law to Hong Kong and section 8 (Article 11) of the Hong Kong Bill of Rights Ordinance.

## **Repealing transitional provisions under Part V in respect of business premises used partly for human habitation**

20. When business premises were excluded from the operation of Part I of the LTO in 1984, a number of provisions were introduced under Part V to give protection to those tenancies of pre-war business premises which were used partly for human habitation since 1979. With the passage of time, the number of such business premises has become very few and the Lands Tribunal has rarely handled any such cases in the past five years. We propose to repeal these provisions so that all tenancies of business premises will be subject to control under Part V.

## **Improving operation of Landlord and Tenant (Consolidation) Ordinance**

21. We propose that the power to amend the Fourth and Fifth Schedules of the LTO (which stipulate fees and specified forms for distress for rent) be transferred from the Chief Executive to the Secretary for Housing. We propose to include provisions to specify forms for making various applications to the Commissioner of Rating and Valuation, and to provide for forfeiture of a tenancy under Part IV if the tenant fails to pay rent within 15 days of the due date. We propose to prescribe a fee for obtaining information on rateable values of premises for purposes specified under various Parts of the Ordinance. We also propose to empower the Financial Secretary to determine various fees by notice in the Gazette.

## **Technical amendments**

22. Other technical amendments include provisions to increase the specified level of rateable value as stipulated under certain provisions for determining the applicability of such provisions under Parts III and VI to the premises concerned. Under Part III, a landlord may apply for a warrant for repossession of deserted premises with rateable value below \$30,000 in respect of which the rent is in arrears for two months and there is insufficient distress left for recovery of the rent. Under Part VI, a landlord may apply to the District Court for repossession of premises with rateable value below \$30,000 in case of illegal occupation. We



propose to increase the specified level of rateable value from \$30,000 to \$100,000 to cover most domestic units sized below 75m<sup>2</sup>.

### **Consequential and other amendments**

23. With the proposed jurisdiction of the Lands Tribunal in dealing with appeals against the Commissioner of Rating and Valuation's decision on exclusion of a tenancy from Part V, the expiry of Parts I and II on 31 December 1998, as well as the need to remove obsolete references such as 'tenancy tribunal', we propose to make a number of consequential and related amendments to the High Court Ordinance, Lands Tribunal Ordinance, Lands Tribunal Rules, Rating Ordinance, District Court Ordinance, Government Rent (Assessment and Collection) Ordinance, Hop Yat Church of the Church of Christ in China Incorporation Ordinance and The Methodist Church, Hong Kong, Incorporation Ordinance.

### **THE BILL**

24. The main provisions of the Bill are -

- (a) Clauses 3, 34 and 38 provide for the issue of certain certificates by the Commissioner of Rating and Valuation at a fee to be determined by the Financial Secretary by notice in the Gazette. Clauses 9, 10(b), 20(a) and 21 clarify that fees for various existing services are determined by the Financial Secretary by notice in the Gazette;
- (b) Clauses 5, 35 and 36 increase the ceiling of rateable value of premises which may be repossessed by means of procedures stipulated under Parts III (Distress for rent) or VI (Small tenants recovery) from \$30,000 to \$100,000 to cover most domestic units sized below 75m<sup>2</sup>;
- (c) Clauses 6 and 20(b) remove the 'deemed to be' reference from section 111 and repeal section 119H(7) containing the deeming provision as such a provision may be inconsistent with the human rights provisions in the Basic Law;

- (d) Clause 7 transfers the statutory powers under section 114 to amend the Fourth (Fees to be levied in distrains for rent) and Fifth (Affidavit in support of application for warrant of distress) Schedules from the Chief Executive to the Secretary for Housing;
- (e) Clauses 8 and 37 empower the Commissioner of Rating and Valuation to specify the forms to be used under Part III (Distress for rent) and Part VI (Small tenements recovery)
- (f) Clauses 12 and 13 shorten the statutory periods by 3 months for the service of notices by landlord terminating a tenancy or by a tenant requesting a new tenancy. Clause 16 empowers the Lands Tribunal to entertain an application for a new tenancy lodged outside the time limits specified under section 119D(2) or (3). Clause 17 empowers a landlord to oppose an application for a new tenancy under section 117(1) on any of the grounds specified in section 119E(1) notwithstanding that he / she has not stated such grounds in his / her notice served previously under section 119 or 119A(6);
- (g) Clause 14 empowers the Commissioner of Rating and Valuation to provide tenancy information of comparable premises to the landlord and the tenant on application at a fee;
- (h) Clause 15 empowers the Lands Tribunal to determine the terms of a new tenancy where the landlord and tenant are unable to reach agreement;
- (i) Clause 18(b) amends section 119F(4) to change the method of calculation of compensation payable to affected tenants and sub-tenants where the premises are to be repossessed by the landlord for rebuilding;
- (j) Clause 19 empowers the Commissioner of Rating and

Valuation to issue certificates at a fee stating the rateable value of premises and the amount of statutory compensation payable to the tenant under section 119F(4) as if the landlord has successfully opposed the grant of a new tenancy by the Lands Tribunal on the ground of an intention to rebuild;

- (k) Clause 25 clarifies the Commissioner of Rating and Valuation's power to disclose information to specified persons including the landlord and the tenant;
- (l) Clause 27 repeals and replaces provisions dealing with harassment and unlawful eviction of the tenant (whether by the landlord or others), imposes heavier penalties for such offences and removes the requirement for the prosecution to prove the intent of the defendant;
- (m) Clauses 28, 30, 31 and 32 repeal transitional provisions under Part V (Tenancy (notice of termination)) so that all tenancies in business premises will be subject to the same provisions in respect of the notice of termination;
- (n) Clause 29 provides for an appeal to the Lands Tribunal against the Commissioner of Rating and Valuation's decision under section 121(3) as to whether a non-domestic tenancy should be excluded from Part V;
- (o) Clause 38 and Sections 2, 3, 4, 7, 8 and 9 of the Schedule to the Bill provide for transitional provisions under the LTO and consequential and related amendments to various Ordinances;
- (p) Sections 1 and 12 of the Schedule provide for the shortening of the mandatory relief period from the existing minimum of 28 days to a minimum of 7 days and empower the Secretary for Housing to amend the duration of the mandatory relief period by notice in the Gazette; and
- (q) Section 6 of the Schedule streamlines the default judgement

procedure in the Lands Tribunal by dispensing with the requirement of filing affidavits. Landlords are required to file evidence to prove the amount of mesne profits claimed.

## **PUBLIC CONSULTATION**

25. The Legislative Council Panel on Housing was consulted in early November 1999 and November 2000 on the majority of the proposals, and Members expressed support in principle. Professional organisations including the Hong Kong Bar Association, the Law Society of Hong Kong and the Hong Kong Institute of Surveyors were also consulted in January 2001. Their views have been considered and incorporated into the Bill, where appropriate.

## **BASIC LAW IMPLICATIONS**

26. The Department of Justice has advised that the proposed Bill is consistent with those provisions of the Basic Law carrying no human rights implications.

## **HUMAN RIGHTS IMPLICATIONS**

27. The Department of Justice has advised that the Bill is consistent with the human rights provisions of the Basic Law.

## **BINDING EFFECT OF THE LEGISLATION**

28. The amendments will not affect the current binding effect of the LTO (Cap. 7), High Court Ordinance (Cap. 4), Lands Tribunal Ordinance (Cap. 17), Lands Tribunal Rules (Cap. 17 sub. leg.), Rating Ordinance (Cap. 116), District Court Ordinance (Cap. 336), Government Rent (Assessment and Collection) Ordinance (Cap. 515), Hop Yat Church of the Church of Christ in China Incorporation Ordinance (Cap. 1027) and The Methodist Church, Hong Kong, Incorporation Ordinance (Cap. 1133).

## **FINANCIAL AND STAFFING IMPLICATIONS**

29. Non-recurrent expenditure of about \$1 million (mainly in terms of non-recurrent staff costs) will be required to enhance existing computer systems to cope with the additional work. This amount will be absorbed through internal redeployment within the Rating and Valuation Department. The estimated revenue to be generated from the proposed charging of fees is around \$1 million per annum.

## **ECONOMIC IMPLICATIONS**

30. The Bill does not have any major economic implications. The Bill will facilitate landlords and tenants in settling tenancy matters.

## **LEGISLATIVE TIMETABLE**

31. The legislative timetable will be -

Publication in the Gazette	8 June 2001
First Reading and commencement of Second Reading debate	20 June 2001
Resumption of Second Reading debate, Committee Stage and Third Reading	to be notified

## **PUBLICITY**

32. A press release will be issued. A spokesman will be available for answering media enquiries. A briefing session for the media will be arranged.

Housing Bureau  
Government Secretariat  
June 2001

File Reference: HB(CR) 7/5/1

**LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2001**

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A BILL

To

Amend the Landlord and Tenant (Consolidation) Ordinance.

Enacted by the Legislative Council.

**1. Short title and commencement**

(1) This Ordinance may be cited as the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Housing by notice published in the Gazette.

**2. Interpretation**

Section 75 of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) is amended by adding -

""Commissioner" (署長) means the Commissioner of Rating and Valuation;".

**3. Certificate as to rateable value**

Section 75A is amended -

(a) by renumbering it as section 75A(1);

(b) by adding -

"(2) A person may apply to the Commissioner for a certificate under subsection (1).

(3) An application under subsection (2) shall -

- (a) be made by sending a notice in the specified form to the Commissioner; and
  - (b) be accompanied by such fee as may be determined by the Financial Secretary by notice published in the Gazette.
- (4) The Commissioner shall comply with an application under subsection (2)."

**4. Time for making distress**

Section 86 is amended by repealing "sunrise and before sunset" and substituting "9 a.m. and before 5 p.m."

**5. Case of deserted premises, where no distress left**

Section 101(1) is amended by repealing "\$30,000" and substituting "\$100,000".

**6. Fraudulent removal of property by tenant**

Section 111 is amended by repealing "deemed to be".

**7. Power to amend Schedules**

Section 114 is amended by repealing "Chief Executive" and substituting "Secretary for Housing".

**8. Section added**

The following is added immediately after section 114 -

**"114A. Forms**

- (1) The Commissioner may specify the forms to be used under this Part.
- (2) The Commissioner may publish in the Gazette any form specified by him under subsection (1).
- (3) The Commissioner may in his discretion accept any notice or application served on him which is not in the specified form."

**9. Determining the nature of a tenancy**

Section 115A(5)(b) is amended by adding "by notice published in the Gazette" after "Secretary".

**10. Application of this Part**

Section 116(4A) is amended -

- (a) by adding "in the specified form and" after "shall be";
- (b) by adding "by notice published in the Gazette" after "Secretary".

**11. Continuation of tenancies and grant of new tenancies**

Section 117 is amended by adding -

- "(3) In the absence of any express covenant for the payment of rent and condition for forfeiture, there shall be implied in every tenancy a covenant to pay the rent on the due date and a condition for forfeiture for non-payment within 15 days of the due date."

**12. Termination of tenancy by the landlord**

Section 119 is amended -

- (a) in subsection (2), by repealing "7 nor less than 6" and substituting "4 nor less than 3";
- (b) in subsection (4), by repealing "2 months" and substituting "1 month".

**13. Tenant's request for a new tenancy**

Section 119A is amended -

- (a) in subsection (2), by repealing "7 nor less than 6" and substituting "4 nor less than 3";
- (b) in subsection (6), by repealing "2 months" and substituting "1 month".

**14. Section added**

The following is added -

**"119AA. Request to Commissioner for tenancy information**

- (1) Where -
  - (a) a landlord has given notice under section 119 to terminate a tenancy; or
  - (b) a tenant has made a request under section 119A for a new tenancy,

then, in either case, the landlord or tenant concerned may, upon payment of such fee as may be determined by the Financial Secretary by notice published in the Gazette, make an application in the specified form to the Commissioner to be supplied with tenancy information in relation to premises of the kind comprised in the tenancy.

(2) The Commissioner shall comply with an application made under subsection (1).

(3) In this section -

"tenancy information" (租賃資料), in relation to any premises, includes -

- (a) the address, age and size of;
- (b) the rent payable for; and
- (c) the terms (including commencement date) of any tenancy in respect of,

any other premises which are comparable, so far as is practicable, to the first-mentioned premises."

## **15. Renewal of tenancies by agreement**

Section 119C(2) is repealed and the following substituted -

"(2) Where the landlord and tenant agree for the grant to the tenant of a future tenancy but are unable to agree -

- (a) only on the rent payable; or
- (b) on the terms of the future tenancy (which may include the rent payable),

then -

- (i) where paragraph (a) is applicable, the parties may refer the rent for determination under section 119K and that section shall apply accordingly (except that the tenant may, within 1 month of the determination, serve a notice on the landlord declining to accept the future tenancy, in which case the current tenancy shall continue for such period, not

exceeding 2 months from the date of delivery of the notice to the landlord, as the tenant shall state in the notice);

- (ii) where paragraph (b) is applicable, the parties may refer the terms for determination by the Tribunal which, in determining those terms, shall have regard to the terms of the current tenancy and to all relevant circumstances (except that the tenant may, within 1 month of the determination, serve a notice on the landlord declining to accept the future tenancy, in which case the current tenancy shall continue for such period, not exceeding 2 months from the date of delivery of the notice to the landlord, as the tenant shall state in the notice).".

**16. Order by Tribunal for grant  
of a new tenancy**

Section 119D is amended -

- (a) in subsection (2), by repealing "Where" and substituting "Subject to subsection (4), where";
- (b) in subsection (3) -
  - (i) in paragraph (a) -
    - (A) by repealing "No" and substituting "Subject to subsection (4), no";
    - (B) in subparagraph (i), by repealing "2 months" and substituting "1 month";
    - (C) by repealing subparagraph (ii);

(ii) by repealing paragraph (b);

(c) by adding -

"(4) The Tribunal may for good cause entertain an application under section 117(1) notwithstanding that subsection (2) or (3) has not been complied with in respect of the application."

**17. Opposition by landlord to application for new tenancy**

Section 119E(1) is amended by repealing "such of the following grounds as may be" and substituting "any of the following grounds, whether or not they were".

**18. Additional provisions regarding opposition on ground of intention to rebuild**

Section 119F is amended -

(a) in subsection (2)(a), by adding "and other accommodation" after "dwellings" where it twice appears;

(b) in subsection (4) -

(i) by repealing paragraph (b) and substituting -

"(b) Where any part of premises (including all the premises) is let or sublet, compensation payable under this subsection to the tenant or sub-tenant shall be calculated on the same

basis as is specified in paragraph (a) as if any reference in that paragraph to "premises" were a reference to that part of the premises which -

- (i) in the case of the tenant, is the subject of the tenancy and not the subject of the sub-tenancy;
- (ii) in the case of the sub-tenant, is the subject of the sub-tenancy and not the subject of any other sub-tenancy.";

(ii) in paragraph (c) -

- (A) by repealing "premises or any part of premises is" and substituting "any part of premises (including all the premises) is let or";
- (B) by adding "tenant or" before "sub-tenant" where it twice appears;
- (C) by adding ", and to specify what amount of the rateable value of the



premises is attributable to that part," before "and such";

(iii) in paragraph (d) -

(A) in the definition of "rateable value", by adding "(and without prejudice to the operation of paragraph (g))" after "means";

(B) by adding -

"premise" (處所) means the subject matter of a tenancy (but without prejudice to the operation of paragraph (b));";

(iv) by adding -

"(g) Where -

(i) any part of premises (including all the premises) is let or sublet; or

(ii) a tenancy is of premises consisting of 2 or more dwellings,

then the rateable value or values, as the case requires, of the premises may be determined by the apportionment (where subparagraph (i) is

applicable) or aggregation (where subparagraph (ii) is applicable) of the rateable value or values concerned, or any combination thereof.";

(c) in subsection (5), by adding -

"(ba) In paragraph (b) (ii) (and without prejudice to the operation of paragraph (b) (i)), "premises" (處所) means the premises -

(i) the subject of successful opposition to the grant of a new tenancy on the ground mentioned in paragraph (c) of section 119E(1); and

(ii) in the state they were at the time of such opposition.".

## 19. Section added

The following is added -

### **"119FB. Certificate stating rateable value and compensation payable under section 119F(4) in respect of premises**

(1) A person may apply to the Commissioner for a certificate stating -

(a) the rateable value of any premises; and

(b) the compensation that would be payable under section 119F(4) if there were successful opposition to the grant of a new tenancy on

the ground mentioned in paragraph (c) of section 119E(1).

- (2) An application under subsection (1) shall -
  - (a) be made by sending a notice in the specified form to the Commissioner; and
  - (b) be accompanied by such fee as may be determined by the Financial Secretary by notice published in the Gazette.
- (3) The Commissioner shall comply with an application under subsection (1).
- (4) Where -
  - (a) any part of premises (including all the premises) is let or sublet; or
  - (b) a tenancy is of premises consisting of 2 or more dwellings,

then the rateable value or values, as the case requires, of the premises may be determined by the apportionment (where paragraph (a) is applicable) or aggregation (where paragraph (b) is applicable) of the rateable value or values concerned, or any combination thereof.

- (5) For the purposes of this section -

"dwelling" (住宅) has the same meaning it is assigned in section 119F(6);

"premises" (處所) has the same meaning it is assigned in section 119F(4) (d);

"rateable value" (應課差餉租值) means (and without prejudice to the operation of subsection (4)) -

- (a) in the case of premises being a tenement that was -
  - (i) at the date of the opposition concerned under section 119E(1)(c) stated in the application under subsection (1) concerned;
  - (ii) if no such date is so stated, at the date of the application under subsection (1) concerned,  
  
included in the valuation list in force under section 14 of the Rating Ordinance (Cap. 116), the rateable value of those premises contained in that list on that date (disregarding any amendment or alteration to that list made after that date, even if retrospective);
- (b) in any other case, the rateable value or values, as the case requires, that would have been contained in that list on that date had the premises been included in that list, a certificate signed by the Commissioner as regards the premises for the purposes of this section being final and binding as to such value or values."

## **20. Penalties**

Section 119H is amended -

- (a) in subsection (2)(a), by adding "by notice published in the Gazette" after "determine";

- (b) by repealing subsection (7).

## **21. Endorsement of tenancy agreement**

Section 119L(1A)(b) is amended by repealing "a fee of \$500" and substituting "such fee as may be determined by the Financial Secretary by notice published in the Gazette".

## **22. Interim continuation of tenancies pending determination by Tribunal**

Section 119N is amended by adding -

"(3) During the period from the date on which a tenancy referred to in subsection (1) would, but for that subsection as read with subsection (2), have come to an end until the termination of the tenancy at the expiration of the period of 3 months referred to in subsection (1), the tenant shall be liable to pay the rent -

- (a) agreed between the landlord and tenant; or
- (b) in default of such agreement, as determined by the Tribunal, or by a valuation surveyor appointed by the Tribunal, to be a prevailing market rent.

(4) Section 119K(2) and (3) shall, with all necessary modifications, apply to and in relation to subsection (3) as it applies to and in relation to section 119K(1)."

## **23. Sub-tenancies**

Section 119P(5)(b) and (6) is amended by adding "made" after "had been".

**24. Proceedings**

Section 119S is amended -

- (a) in subsection (2), by repealing "51(8)" and substituting "115A(10)";
- (b) by repealing subsection (3).

**25. Exercise of powers of Commissioner**

Section 119T is amended by adding -

"(1A) The Commissioner may disclose any information obtained under this Part to any specified person where in his opinion the disclosure will enable or assist the person to perform a function or exercise a power (including a right) imposed or conferred on the person by -

- (a) this Ordinance;
- (b) the Rating Ordinance (Cap. 116); or
- (c) the Government Rent (Assessment and Collection) Ordinance (Cap. 515).

(1B) In subsection (1A), "specified person" (指明人士) means -

- (a) the Tribunal or a court or magistrate;
- (b) a public officer acting in his capacity as a public officer; or
- (c) a landlord or tenant acting in his capacity as a landlord or tenant, as the case may be, under section 119AA."

**26. Section added**

The following is added -

**"119TA. Use of returned requisition  
as evidence**

(1) A returned requisition shall, in any proceedings before the Tribunal, a magistrate, the District Court or the Court of Appeal, be admissible as evidence of the facts stated in the returned requisition; and any document purporting to be a returned requisition shall in any such proceedings be presumed, unless the contrary is shown -

- (a) to be such a returned requisition;
- (b) to have been made by the person by whom it purports to have been made; and
- (c) if it purports to have been made by a person in a capacity specified in the returned requisition, to have been made by him in that capacity.

(2) In subsection (1), "returned requisition" (已交回的申報表) means either -

- (a) a notice under section 119L(1) lodged with the Commissioner; or
- (b) a requisition -
  - (i) served under section 119T(1)(a) on a person;
  - (ii) served under section 5(1)(a) of the Rating Ordinance (Cap. 116) on the owner or occupier of a tenement; or
  - (iii) served under section 31(1)(a) of the Government Rent (Assessment and Collection) Ordinance (Cap. 515) on

the lessee of an applicable lease or the owner or occupier of a tenement,

and returned by him to the Commissioner containing or purporting to contain all or any of the particulars required to be given by him to the Commissioner."

**27. Section substituted**

Section 119V is repealed and the following substituted -

**"119V. Harassment**

(1) Any person who unlawfully deprives a tenant or sub-tenant of occupation of any premises commits an offence and is liable on conviction on indictment by the court -

- (a) on a first conviction, to a fine of \$500,000 and to imprisonment for 12 months;
- (b) on a second or subsequent conviction, to a fine of \$1,000,000 and to imprisonment for 3 years.

(2) Subject to subsection (3), any person who, in relation to any premises

- (a) either -
  - (i) does any act calculated to interfere with the peace or comfort of the tenant or sub-tenant or members of his household; or
  - (ii) persistently withdraws or withholds services reasonably required for



occupation of the premises as a dwelling; and

- (b) knows, or has reasonable cause to believe, that that conduct is likely to cause the tenant or sub-tenant -
  - (i) to give up occupation of the premises; or
  - (ii) to refrain from exercising any right or pursuing any remedy in respect of the premises,

commits an offence and is liable on conviction on indictment by the court -

- (i) on a first conviction, to a fine of \$500,000 and to imprisonment for 12 months;
- (ii) on a second or subsequent conviction, to a fine of \$1,000,000 and to imprisonment for 3 years.

(3) A person does not commit an offence under subsection (2) if he proves that he had reasonable grounds for doing the act, or withdrawing or withholding the services, concerned.

(4) Where a person is convicted of an offence under subsection (1) or (2), the court, in addition to passing sentence, may order the person convicted to -

- (a) pay to the tenant or sub-tenant such sum as it thinks fit by way of compensation for damage, loss or inconvenience suffered by the tenant

or sub-tenant by reason of the conduct constituting the offence;

- (b) forfeit to the Government a sum not exceeding the equivalent of the difference at the date of the contravention between the market value of the premises with vacant possession and the market value of the premises with the former tenant or sub-tenant in possession.

- (5) In this section -

"premises" (處所) includes part of any premises."

## **28. Interpretation**

Section 120A is amended by repealing the definitions of "business premises", "current rent", "domestic premises" and "prevailing market rent".

## **29. Application**

Section 121 is amended -

- (a) by repealing subsection (4) and substituting -

"(4) A dispute as to whether a tenancy is excluded under subsection (3) shall be determined by the Commissioner in a summary manner on application in writing to him and the Commissioner shall cause notice of the determination to be served on the person who made the application.";

- (b) by adding -

"(6) Any person aggrieved by a determination under subsection (4) may, within 1 month of the service of the notice of the determination, appeal to the Tribunal against the determination and the Tribunal may make such order thereon as it thinks fit."

**30. Minimum length of notice to determine tenancy**

Section 122 is amended -

- (a) in subsections (2) and (3), by repealing ", subject to sections 124A to 124C,";
- (b) by repealing subsection (4) and substituting -

"(4) When but for subsection (1) a tenancy would have terminated, the tenancy shall continue at the same rent until a notice of termination expires upon such of the covenants, conditions and other terms of the original tenancy as are appropriate to a month to month tenancy, together with, in the absence of any express covenant for the payment of rent and condition of forfeiture, the covenant and condition implied in every tenancy by section 126."

**31. Sections repealed**

Sections 124A, 124B and 124C are repealed.

**32. Tribunal may determine disputes**

Section 127A(b) is repealed.

**33. Interpretation**

Section 128 is amended by adding -

""Commissioner" (署長) means the Commissioner of Rating and Valuation;".

**34. Certificate as to rateable value**

Section 128A is amended -

(a) by renumbering it as section 128A(1);

(b) by adding -

"(2) A person may apply to the Commissioner for a certificate under subsection (1).

(3) An application under subsection (2) shall -

(a) be made by sending a notice in the specified form to the Commissioner; and

(b) be accompanied by such fee as may be determined by the Financial Secretary by notice published in the Gazette.

(4) The Commissioner shall comply with an application under subsection (2).".

**35. Summoning of tenant of premises with a rateable value not exceeding \$100,000 unlawfully holding over**

Section 129 is amended by repealing "\$30,000" and substituting "\$100,000".

**36. Recovery of land in case of illegal encroachment or inclosure with a rateable value not exceeding \$100,000**

Section 132 is amended by repealing "\$30,000" and substituting "\$100,000".

**37. Section added**

The following is added -

**"135A. Forms**

(1) The Commissioner may specify the forms to be used under this Part.

(2) The Commissioner may publish in the Gazette any form specified by him under subsection (1).

(3) The Commissioner may in his discretion accept any notice or application served on him which is not in the specified form."

**38. Section added**

The following is added -

**"144. Provisions transitional, etc. to  
the enactment of the Landlord and  
Tenant (Consolidation) (Amendment)  
Ordinance 2001**

(1) A person may apply to the Commissioner for a certificate under section 50(10) or 53A(4)(d) as in force before the expiry of Part II.

(2) An application under subsection (1) shall -

(a) be made by sending a notice in the specified form to the Commissioner; and

(b) be accompanied by such fee as may be determined by the Financial Secretary by notice published in the Gazette.

(3) The Commissioner shall comply with an application under subsection (1).

(4) Section 119 shall apply to a notice given under that section before the commencement of section 12 of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2001 ( of 2001) as if that section 12 had never commenced.

(5) Section 119A shall apply to a request for a new tenancy in accordance with that section made before the commencement of section 13 of the Landlord and Tenant (Consolidation)(Amendment) Ordinance 2001 ( of 2001) as if that section 13 had never commenced.

(6) Section 119F(4) -

(a) as amended by the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2001 ( of 2001) shall apply in the case of a landlord who opposes, in accordance with rule 69 of the Lands Tribunal Rules (Cap. 17 sub.

leg.), the grant of a new tenancy on or after the commencement of section 18(b) of that Ordinance;

- (b) as in force before that commencement shall apply in the case of a landlord who so opposes the grant of a new tenancy before that commencement.

(7) Notwithstanding section 74B as in force before the expiry of Part II, section 119F(4) -

- (a) as amended by the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2001 ( of 2001) shall apply in the case of a landlord who has applied, in accordance with rule 68 of the Lands Tribunal Rules (Cap. 17 sub. leg.), for an order for possession of premises on the ground specified in section 53(2)(c), as in force before that expiry, on or after the commencement of section 18(b) of that Ordinance;
- (b) as in force before that commencement shall apply in the case of a landlord who so applies for an order for possession of premises on the ground specified in section 53(2)(c), as in force before that expiry, before that commencement.

(8) For the avoidance of doubt, it is hereby declared that, subject to the other provisions of this section, section 23 of the Interpretation and General Clauses

Ordinance (Cap. 1) applies to the expiry of any Part of this Ordinance (including the expiry of any provision or provisions of any such Part) as it applies to the repeal in whole or in part of any Ordinance."

**39. Consequential and other amendments**

The enactments specified in the Schedule are amended as set out in the Schedule.

SCHEDULE

[s. 39]

CONSEQUENTIAL AND OTHER AMENDMENTS

**High Court Ordinance**

**1. Relief against forfeiture by action  
for non-payment of rent**

Section 21F of the High Court Ordinance (Cap. 4) is amended -

- (a) in subsection (3), by repealing "4 weeks" and substituting "7 days";
- (b) by adding -

"(3A) The Secretary for Housing may, by notice published in the Gazette, amend the number of days specified in subsection (3) by substituting another number therefor."



## **Lands Tribunal Ordinance**

### **2. Jurisdiction of the Tribunal**

Section 8 of the Lands Tribunal Ordinance (Cap. 17) is amended -

- (a) in subsection (7), by adding "(including surrender under the former section 52A, or under section 117, of that Ordinance)" after "surrender";
- (b) in subsection (8) -
  - (i) by repealing "and for" and substituting "for";
  - (ii) by adding ", and for the disposal of any property left in the premises concerned by the tenant or sub-tenant" after "sub-tenancy".

### **3. Practice and procedure of Tribunal**

Section 10(2) is amended -

- (a) in paragraph (c), by repealing "and" at the end;
- (b) in paragraph (d) -
  - (i) by repealing subparagraph (i) and substituting -
    - "(i) for the giving of any notice (and whether or not the notice relates to any proceedings);";
  - (ii) in subparagraph (ii), by repealing "or";
  - (iii) in subparagraph (iii), by repealing the full stop and substituting "; and";

(c) by adding -

"(e) for good cause, abridge any period specified in section 119(2), 119A(2) or 119D(3)(a)(i) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7)."

#### 4. **Review of decision**

Section 11A is amended by adding -

"(5) The Tribunal shall not exercise its power of review in respect of a decision -

- (a) subject to subsection (6), if the decision has already been the subject of a review or the decision is a decision setting aside, reversing, varying or confirming under this section another decision of the Tribunal; or
- (b) subsequent to the commencement of proceedings by any party with a view to questioning the decision, by way of appeal or otherwise, unless such proceedings have been abandoned.

(6) Subsection (5)(a) shall not apply in the case of a decision of the Tribunal under the former section 4(7)(a) or 53A(2), or under section 119F(2), of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7)."

#### 5. **Costs**

Section 12(1) is amended by repealing everything after "set out" and substituting -

"in the Schedules to Order 62 of -

- (a) the Rules of the High Court (Cap. 4 sub. leg.); or
- (b) the Rules of the District Court (Cap. 336 sub. leg.)."

### **Lands Tribunal Rules**

#### **6. Orders in default**

Rule 15(1), (2), (3) and (4) of the Lands Tribunal Rules (Cap. 17 sub. leg.) is repealed and the following substituted -

"(1) In the case of an application for an order for -

- (a) possession or for ejectment; or
- (b) rent, mesne profits or any other liquidated demand,

where no notice of opposition has been filed by the respondent or any other respondents, if any, the applicant may -

- (i) apply for an order against the respondent in terms of the first-mentioned application and for costs; and
- (ii) proceed with the action against the other respondents, if any.

(2) An application for an order to be made in default of opposition pursuant to subrule (1) shall be -

- (a) made in writing to the Registrar; and
- (b) where the application relates to mesne profits (whether in whole or in part), accompanied by

evidence proving the amount of those profits claimed.

(3) Upon an application under subrule (1) and upon assessing the evidence, if any, accompanying the application, the Registrar may, subject to subrule (4A), cause an order to be entered in favour of the applicant in terms of the application with costs, if any, by endorsing the originating application to that effect.

(4) Where there is more than one respondent, an order under this rule for possession shall not be enforced against any respondent unless and until an order or orders for possession has or have, as the case may be, been entered against all the respondents.

(4A) The Registrar may, where he thinks fit, refer any application under subrule (1) to the President or a presiding officer who may make such order thereon as the justice of the application may require."

#### 7. **Subheading amended**

The subheading before rule 74 is amended by repealing "**(Part II)**" and substituting "**(Parts II and V)**".

#### 8. **Notice of appeal**

Rule 74 is amended by adding -

"(3A) Proceedings under section 121(6) of the Ordinance shall be commenced by the appellant filing with the Registrar a notice of appeal substantially in conformity with Form 36."

9. **Forms**

The Schedule is amended by adding -

"FORM 36

[r. 74(3A)]

NOTICE OF APPEAL TO LANDS TRIBUNAL AGAINST DETERMINATION  
OF COMMISSIONER OF RATING AND VALUATION ON WHETHER A  
TENANCY IS EXCLUDED FROM PART V OF THE LANDLORD  
AND TENANT (CONSOLIDATION) ORDINANCE

Pursuant to section 121(6)

Name, address and status of appellant:

Name, address and status of respondent:

The appellant hereby appeals against the determination of the Commissioner of Rating and Valuation upon an application pursuant to section 121(4) to determine whether a tenancy is excluded from Part V under section 121(3). The tenancy concerned is in respect of the premises known as

.....

(description of premises)

A copy of the notice issued by the Commissioner of Rating and Valuation setting out the determination appealed against is attached.

The grounds of appeal are: (here state briefly the grounds of appeal)

The appellant also applies for an order for costs.

Address for the service of the appellant:

Dated this ..... day of .....

.....

(to be signed by or on behalf  
of the Appellant)

- To:
1. The Registrar, Lands Tribunal.
  2. The Respondent.
  3. Commissioner of Rating and Valuation.
  4. (Please add such other persons as may be required to be served)

**Note:** If you intend to oppose this appeal, you must personally attend at the Lands Tribunal Registry within 14 days of the day of service of this notice, and file a notice of opposition by means of Form 7."

### **Rating Ordinance**

#### **10. General powers of Commissioner**

Section 5 of the Rating Ordinance (Cap. 116) is amended by adding -

"(1A) The Commissioner may disclose any information obtained under this Ordinance to any specified person where

in his opinion the disclosure will enable or assist the person to perform a function or exercise a power (including a right) imposed or conferred on the person by -

- (a) this Ordinance;
- (b) the Landlord and Tenant (Consolidation) Ordinance (Cap. 7);  
or
- (c) the Government Rent (Assessment and Collection) Ordinance (Cap. 515).

(1B) In subsection (1A), "specified person" (指明人士) means -

- (a) the Lands Tribunal established under the Lands Tribunal Ordinance (Cap. 17) or a court or magistrate;
- (b) a public officer acting in his capacity as a public officer; or
- (c) a landlord or tenant acting in his capacity as a landlord or tenant, as the case may be, under section 119AA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7)."

#### 11. **Use of returned requisition as evidence**

Section 6A(2) is repealed and the following substituted -

"(2) In subsection (1), "returned requisition" (已交回的申報表) means -

- (a) a requisition served under section 5(1)(a) on the owner or occupier of a tenement;

- (b) a notice lodged with the Commissioner under section 119L(1), or a requisition served on a person under section 119T(1)(a), of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7); or
- (c) a requisition served under section 31(1)(a) of the Government Rent (Assessment and Collection) Ordinance (Cap. 515) on the lessee of an applicable lease or the owner or occupier of a tenement,

and returned by him to the Commissioner containing or purporting to contain all or any of the particulars required to be given by him to the Commissioner."

### **District Court Ordinance**

#### **12. Relief against forfeiture by action for non-payment of rent**

Section 69 of the District Court Ordinance (Cap. 336) is amended -

- (a) in subsection (3), by repealing "4 weeks" and substituting "7 days";
- (b) by adding -

"(3A) The Secretary for Housing may, by notice published in the Gazette, amend the number of days specified in subsection (3) by substituting another number therefor."



**Government Rent (Assessment and  
Collection) Ordinance**

**13. General powers of Commissioner**

Section 31 of the Government Rent (Assessment and Collection) Ordinance (Cap. 515) is amended by adding -

"(1A) The Commissioner may disclose any information obtained under this Ordinance to any specified person where in his opinion the disclosure will enable or assist the person to perform a function or exercise a power (including a right) imposed or conferred on the person by -

- (a) this Ordinance;
- (b) the Landlord and Tenant (Consolidation) Ordinance (Cap. 7);  
or
- (c) the Rating Ordinance (Cap. 116).

(1B) In subsection (1A), "specified person" (指明人士) means -

- (a) the Lands Tribunal established under the Lands Tribunal Ordinance (Cap. 17) or a court or magistrate;
- (b) a public officer acting in his capacity as a public officer; or
- (c) a landlord or tenant acting in his capacity as a landlord or tenant, as the case may be, under section 119AA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7)."

14. **Use of returned requisition  
as evidence**

Section 39 is amended -

- (a) by renumbering it as section 39(1);
- (b) by adding -

"(2) In subsection (1), "returned requisition" (已交回的申報表) includes, in addition to a returned requisition within the meaning of section 2 -

- (a) a notice lodged with the Commissioner under section 119L(1), or a requisition served on a person under section 119T(1)(a), of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7); or
- (b) a requisition served under section 5(1)(a) of the Rating Ordinance (Cap. 116) on the owner or occupier of a tenement,

and returned by him to the Commissioner containing or purporting to contain all or any of the particulars required to be given by him to the Commissioner."

**Hop Yat Church of The Church of Christ  
in China Incorporation Ordinance**

**15. Power of Corporation**

Section 4(j) of the Hop Yat Church of The Church of Christ in China Incorporation Ordinance (Cap. 1027) is amended by repealing "apply for and obtain exclusion orders under Part I of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) and to agree and pay such compensation as the Tenancy Tribunal" and substituting "make applications and obtain orders under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) and to agree and pay such compensation as the Tribunal within the meaning of that Ordinance".

**The Methodist Church, Hong Kong,  
Incorporation Ordinance**

**16. Powers of the Corporation**

Section 4(i) of The Methodist Church, Hong Kong, Incorporation Ordinance (Cap. 1133) is amended by repealing "apply for and obtain exclusion orders under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), and to agree and pay such compensation as a tenancy tribunal" and substituting "make applications and obtain orders under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), and to agree and pay such compensation as the Tribunal within the meaning of that Ordinance".

## Explanatory Memorandum

The object of this Bill is to amend the Landlord and Tenant (Consolidation) Ordinance (Cap. 7)("the Ordinance") to -

- (a) enable fees to be charged for the issue by the Commissioner of Rating and Valuation ("the Commissioner") of certain certificates (clauses 3 and 34 and new section 144(1), (2) and (3) at clause 38);
- (b) remove archaic terminology (clauses 4 and 6);
- (c) increase from \$30,000 to \$100,000 the rateable value ceiling of premises which may be repossessed by means of streamlined procedures (clauses 5, 35 and 36);
- (d) transfer from the Chief Executive in Council to the Secretary for Housing the power to amend the Fourth and Fifth Schedules (clause 7);
- (e) empower the Commissioner to specify the forms to be used under Part III (clause 8);
- (f) make it clear that the Financial Secretary's power to determine fees is by notice published in the Gazette (clauses 9, 10(b), 20(a) and 21);
- (g) require an application under section 116(4A) to be "in the specified form" (clause 10(a));
- (h) imply in every tenancy to which Part IV applies a covenant to pay the rent on the due date and a condition for forfeiture for non-payment within 15 days of the due date (clause 11);

- (i) reduce statutory periods within which service of notices to terminate a tenancy or to request a new tenancy may be made (clauses 12 and 13);
- (j) empower the Commissioner to provide tenancy information to landlords terminating tenancies and to tenants seeking new tenancies (clause 14);
- (k) empower the Lands Tribunal ("the Tribunal") to determine the terms of a future tenancy where the landlord and tenant are unable to agree on the terms of the tenancy (clause 15);
- (l) empower the Tribunal to entertain an application for a new tenancy under section 117(1) for a new tenancy notwithstanding that the application does not comply with section 119D(2) or (3) (clause 16);
- (m) empower a landlord to oppose an application for a new tenancy under section 117(1) on grounds specified in section 119E(1) notwithstanding that he has not stated those grounds in his notice under section 119 or 119A(6) (clause 17);
- (n) where the Tribunal has granted an order for possession for redevelopment, require the developer to comply with the plans for redevelopment lodged with the Tribunal whether or not the new building will be for domestic use (clause 18(a));
- (o) amend the provisions of section 119F(4) specifying the compensation payable to affected tenants and sub-tenants where premises are to be rebuilt (clause 18(b));

- (p) clarify what the term "premises" means in section 119F(5)(b), in particular where there has been a breach of a redevelopment condition and the "old" premises have been demolished (clause 18(c));
- (q) introduce a new section to empower the Commissioner to issue certificates stating the rateable value of premises and the compensation that would be payable to tenants under section 119F(4) (at clause 18(b)) if the Tribunal were to grant certain orders (new section 119FB at clause 19);
- (r) repeal provisions to ensure consistency with the human rights provisions of the Basic Law (clause 20(b));
- (s) introduce into section 119N a provision based on section 119M(4) to provide for the calculation of the rent to be paid for the 3 months' interim period specified in section 119N at the end of which a tenancy will terminate (clause 22);
- (t) make minor drafting revisions to sections 119P(5)(b) and (6) and 119S (clauses 23 and 24);
- (u) clarify the Commissioner's power to disclose information obtained under the Ordinance where such disclosure will enable or assist a specified person (including the Tribunal) to perform a function or exercise a power under the Ordinance, the Rating Ordinance (Cap. 116) or the Government Rent (Assessment and Collection) Ordinance (Cap. 515) (clause 25). Similar disclosure provisions are

added to the Rating Ordinance (Cap. 116) and the Government Rent (Assessment and Collection) Ordinance (Cap. 515) (sections 10 and 13 of the Schedule to the Bill);

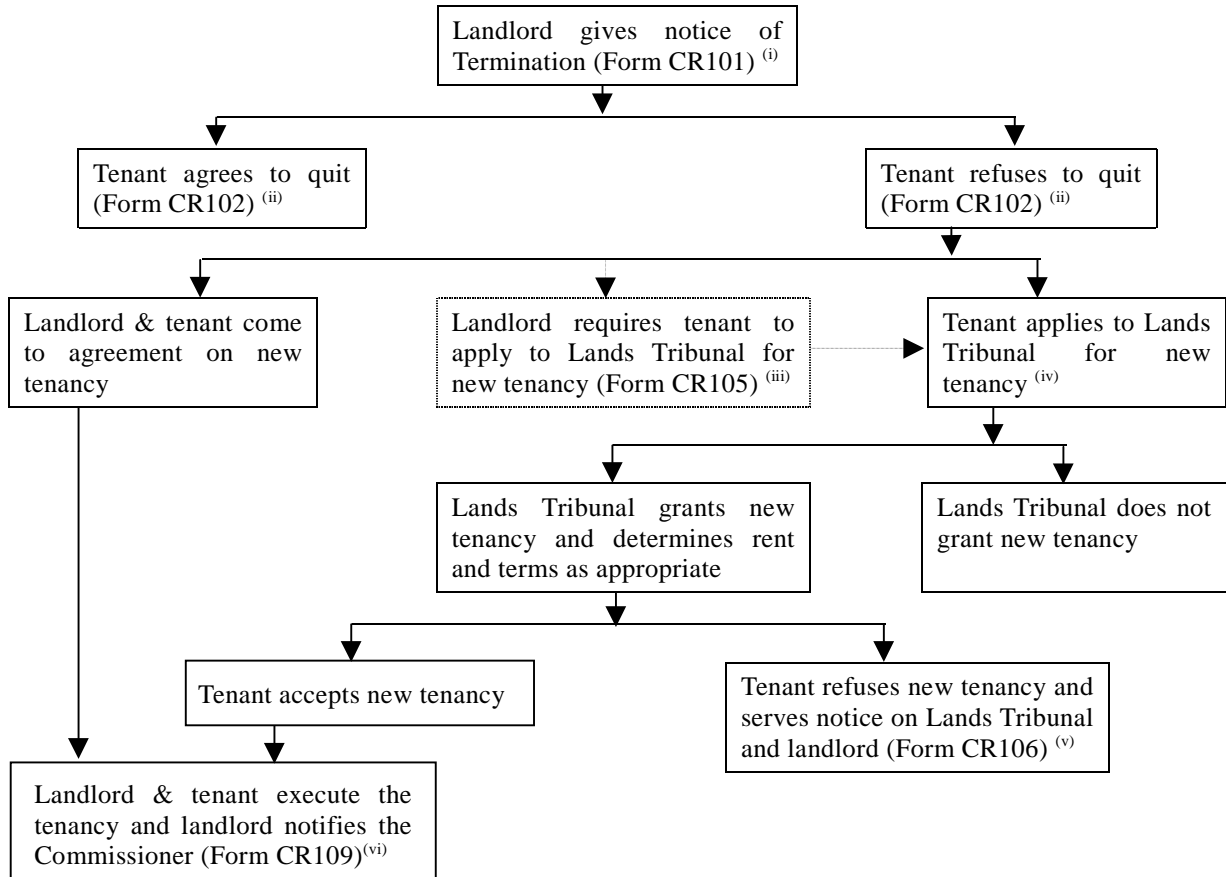
- (v) introduce evidentiary provisions in relation to certain requisitions returned to the Commissioner under the Ordinance, the Rating Ordinance (Cap. 116) or the Government Rent (Assessment and Collection) Ordinance (Cap. 515) (clause 26 and sections 11 and 14 of the Schedule to the Bill);
- (w) repeal and replace provisions dealing with the harassment of tenants (whether by landlords or others) to better ensure that there is no interference with the right of tenants to the peaceable occupation of their premises (new section 119V at clause 27);
- (x) repeal provisions in order that all tenancies in business premises will be treated the same in Part V in respect of notices of termination (clauses 28, 30, 31 and 32);
- (y) provide for an appeal to the Tribunal against the Commissioner's decision as to whether or not a tenancy is excluded under section 121(3) (clause 29);
- (z) empower the Commissioner to specify the forms to be used under Part VI (clause 37); and
- (za) provide for transitional provisions (new section 144(4) to (7) at clause 38) and make consequential

amendments to the Lands Tribunal Ordinance (Cap. 17) and the Lands Tribunal Rules (Cap. 17 sub. leg.) (sections 2, 3, 4, 7, 8 and 9 of the Schedule to the Bill).

2. The Bill also amends section 21F of the High Court Ordinance (Cap. 4) and section 69 of the District Court Ordinance (Cap. 336) to reduce the mandatory relief period following the granting of a repossession order from 4 weeks to 7 days (sections 1 and 12 of the Schedule to the Bill).



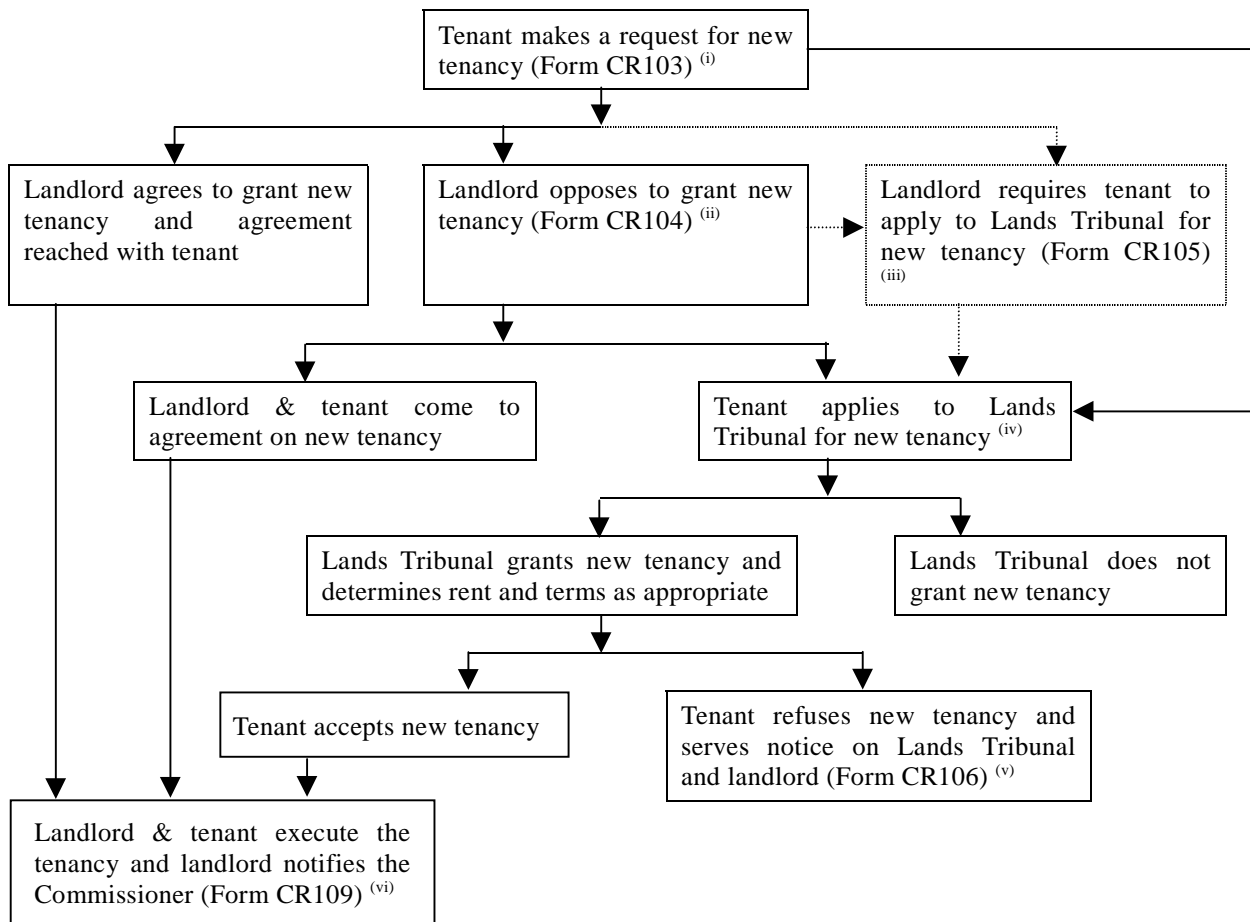
**Renewal of Tenancies under Part IV of LTO-Action Initiated by Landlord**



**Notes:**

	<b><u>Existing</u></b>	<b><u>Proposed</u></b>
(i)	To serve not more than 7 nor less than 6 months before the date of termination of tenancy specified in the notice.	Not more than 4 nor less than 3 months.
(ii)	To serve within 2 months of receiving Form CR101.	Within 1 month.
(iii)	To serve no sooner than 2 months after the date of Form CR101.	Form CR105 removed
(iv)	To apply within 2 months from the date of Form CR105 or before the date of termination stated in Form CR101, whichever is the earlier.	To apply after 1 month of receiving Form CR101 and before date of termination stated in this Form.
(v)	To serve within 1 month after the determination.	No change.
(vi)	To serve within 1 month of execution.	No change.

**Renewal of Tenancies under Part IV of LTO-Action Initiated by Tenant**



**Notes:**

<b>Existing</b>	<b>Proposed</b>
(i) To request a new tenancy commencing not more than 7 nor less than 6 months after the making of the request.	Not more than 4 nor less than 3 months.
(ii) To serve within 2 months of receiving Form CR103.	Within 1 month.
(iii) To serve no sooner than 2 months after the date of Form CR103.	Form CR105 removed
(iv) To apply after 2 months of making the request; and within 2 months from the date of Form CR105 or before the date for the commencement of the new tenancy, whichever is the earlier.	To apply after 1 month of making the request and before the date of commencement of the new tenancy.
(v) To serve within 1 month after the determination.	No change.
(vi) To serve within 1 month of execution.	No change.

**Comparison of Compensations for Premises Let in Parts under Existing and Proposed Methods of Calculation**

For a flat with a RV of \$96,000 (monthly rent of \$8,000), the existing statutory compensation will be \$456,000, as calculated below -

$$\$456,000 = \$30,000 \times 7 + \$30,000 \times 5 + \$30,000 \times 3 + \$6,000 \times 1$$

If the above flat is let in 4 parts with the following apportioned RVs, redevelopment compensations under the existing and proposed methods of calculation will be -

<u>Part</u>	<u>RV</u> (\$)	<u>Monthly Rent</u> (\$)	<u>Existing Compensation</u> (\$) <sup>(i)</sup>	<u>Proposed Compensation</u> (\$) <sup>(ii)</sup>	<u>Increase</u> (%)
A	12,000	1,000	57,000	84,000	(+47%)
B	18,000	1,500	85,500	126,000	(+47%)
C	30,000	2,500	142,500	210,000	(+47%)
<u>D</u>	<u>36,000</u>	<u>3,000</u>	<u>171,000</u>	<u>240,000</u>	<u>(+40%)</u>
Total	96,000	8,000	456,000	660,000	(+45%)

Notes:

- (i) Existing method of calculation is based on apportionment of the compensation as follows -

$$\begin{aligned} \text{Part A} & \$12,000 \div \$96,000 \times \$456,000 = \$57,000 \\ \text{Part B} & \$18,000 \div \$96,000 \times \$456,000 = \$85,500 \\ \text{Part C} & \$30,000 \div \$96,000 \times \$456,000 = \$142,500 \\ \text{Part D} & \$36,000 \div \$96,000 \times \$456,000 = \$171,000 \end{aligned}$$

- (ii) Proposed method of calculation is based on apportionment of the RV as follows -

$$\begin{aligned} \text{Part A} & \$12,000 \times 7 = \$84,000 \\ \text{Part B} & \$18,000 \times 7 = \$126,000 \\ \text{Part C} & \$30,000 \times 7 = \$210,000 \\ \text{Part D} & \$30,000 \times 7 + \$6,000 \times 5 = \$240,000 \end{aligned}$$