

立法會
Legislative Council

LC Paper No. CB(1) 2190/01-02
(These minutes have been seen
by the Administration)

Ref : CB1/BC/14/00/2

**Bills Committee on
Landlord and Tenant (Consolidation) (Amendment) Bill 2001**

**Minutes of fifth meeting held on
Monday, 10 June 2002, at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon James TO Kun-sun
Hon HUI Cheung-ching, JP
Hon CHAN Kam-lam
Hon LAU Ping-cheung

Members absent : Hon TAM Yiu-chung, GBS, JP
Hon Albert CHAN Wai-yip

Public officers attending : Housing Bureau

Ms Ophelia TSANG Oi-lin
Principal Assistant Secretary

Ms Drew LAI Sai-ming
Assistant Secretary

Department of Justice

Mr G A FOX
Senior Assistant Law Draftsman

Ms Mabel CHEUNG
Government Counsel

Rating and Valuation Department

Mr WONG Chun-siu, JP
Deputy Commissioner

Mr SIU Kuen-sang
Acting Assistant Commissioner
(Rent Control and Special Duties)

Mr LAM Kin-ha
Principal Valuation Surveyor

Mr CHAN Kwok-fan
Senior Rent Officer

Clerk in attendance : Miss Becky YU
Chief Assistant Secretary (1)1

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Mary TANG
Senior Assistant Secretary (1)2

I Confirmation of minutes of previous meeting
(LC Paper No. CB(1) 1944/01-02 — Minutes of the meeting held on
17 May 2002)

The minutes of the meeting held on 17 May 2002 were confirmed.

II Meeting with the Administration
(LC Paper No. CB(1) 1744/01-02(01) List of follow-up actions arising
from the discussion on
19 April 2002
LC Paper No. CB(1) 1744/01-02(02) Administration's response to
CB(1) 1744/01-02(01)

- LC Paper No. CB(1) 1945/01-02(01) — List of follow-up actions arising from the discussion on 17 May 2002
- LC Paper No. CB(1) 1945/01-02(02) — Administration's response to CB(1) 1945/01-02(01)

2. The Committee deliberated (Index of proceedings attached at **Annex A**).
3. The Administration was requested to-
 - (a) consider extending the time for making distress under proposed section 86 of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (LTO) from 5 p.m. to 6 or 7 p.m. taking into account the living pattern nowadays;
 - (b) amend the Bill to the effect that the powers to amend fees and forms under section 114 of LTO should rest with the Judiciary rather than the Secretary for Housing;
 - (c) introduce an implied forfeiture clause so that any alteration or addition made to premises without the prior consent of the landlord would constitute a cause for forfeiture of tenancy;
 - (d) include an implied forfeiture clause in case of tenant's persistent delay in payment of rent, provided that a written notice to such effect had been issued to the tenant;
 - (e) provide past cases of penalty for harassment on tenants;
 - (f) seriously re-consider further streamlining the repossession procedures. To guard against possible abuse of the procedures, consideration could be given to imposing heavy penalty on landlords who seek to recover possession by misrepresentation; and
 - (g) seek clarification on statutory and incidental fees in relation to service by bailiff.
4. There being no other business, the meeting ended at 12:45pm.

**Proceedings of the meeting of the
Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001
Meeting on Monday, 10 June 2002 at 10:45 am.
in Conference Room B of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
000000 001005	- Chairman	Confirmation of minutes of meeting on 17 May 2002 (LC Paper No. CB(1) 1944/01-02)	
001005 001257	- Administration	Explanation on the Administration's response to the concerns raised at the meeting on 19 April 2002. Continued from item 6 of Annex A to LC Paper No. CB(1) 1744/01-02(02) - Small tenements recovery and item 7 - Time for making distress	
001257 001330	- Mr James TO	Need to extend time for making distress to beyond 5pm to take account of living pattern nowadays	
001330 001356	- Administration	The time for making distress was proposed by the Judiciary Administrator (JA)	
001356 001440	- Mr James TIEN	Ditto	
001440 001517	- Chairman	Ditto	
001517 001546	- Mr James TO	Ditto	
001546 001607	- Chairman	Ditto	
001607 001633	- Administration	Ditto	

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001633 001656	- Mr James TO	The time for making distress was proposed by the Judiciary Administrator (JA)	
001656 001715	- Administration	Ditto	
001715 001813	- Mr James TO	Ditto	
001813 001902	- Mr James TIEN	Ditto	
001902 001917	- Chairman	Ditto	The Administration to consider extending the time for making distress under proposed section 86 of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (LTO) from 5 p.m. to 6 or 7 p.m. taking into account the living pattern nowadays
001917 002022	- Administration	Item 8 - Powers to amend fees and forms	
002022 002046	- Chairman	Ditto	The Administration was requested to amend the Bill to the effect that the powers to amend fees and forms under section 114 of LTO should be rested with the Chief Judge of a District Court rather than the Secretary for Housing
002046 002133	- Mr James TO	Ditto	

002133 002156	- Chairman	Judicial fees and charges should be further followed up by the Administration of Justice and Legal Services (AJLS) Panel	
002156 002223	- Mr James TO	Queried the rationale for delegating the power to amend Schedule IV(fees) and V (forms of affidavit) under section 114 of the Landlord and Tenant (Consolidation) Ordinance (LTO) to the Secretary for Housing	
002223 002240	- Administration	Matters which fell under LTO were within the policy purview of Secretary for Housing	
002240 002305	- Mr James TIEN	Concerned about delegation of power to the Courts	
002305 002349	- Administration	Ditto	
002349 002421	- Mr James TIEN	Ditto	
002421 002438	- Administration	Ditto	
002438 002518	- Chairman	Agreed to follow up on judicial fees and charges at AJLS Panel	
002518 002547	- Administration	Item 9 - Extension of Part V protection	
002547 002556	- Chairman	Ditto	

002556 002940	- Administration	Item 10 - Illegal use and illegal structures	
002940 003005	- Mr HUI Cheung-ching	Ditto	
003005 003142	- Administration	Item 11 - Persistent failure to pay rent	
003142 003152	- Chairman	Ditto	
003152 003217	- Mr James TIEN	Ditto	
003217 003222	- Chairman	Ditto	
003222 003244	- Administration	Introduction of an implied forfeiture clause on persistent late payment of rent	
003244 003357	- Mr CHAN Kam-lam	Need to define what should be regarded as persistent late payment	
003357 003410	- Administration	Written notice to be provided by landlord. Court to decide what should be regarded as persistent late payment	The Administration was requested to include an implied forfeiture clause in case of tenant's persistent delay in payment of rent, provided that a written notice to such effect had been issued to the tenant
003410 003418	- Chairman	Annex B to LC Paper CB(1)1744/01-02(02) - Reply to the submission from the Law Society of Hong Kong (LS)	

003418 003725	- Administration	Clauses 12 and 13 LS's proposal of reducing the lead time for landlord to serve a notice of termination of tenancy on the tenants to "not more than three nor less than two months"	
003725 003843	- Mr James TIEN	Ditto	
003843 003922	- Chairman	Ditto	
003922 003952	- Mr James TO	Ditto	
003952 004014	- Mr James TIEN	Agreed that a lead time of three to four months would be more appropriate	
004014 004032	- Administration	Ditto	
004032 004048	- Mr James TO	Ditto	
004048 004059	- Chairman	Ditto	
004059 004359	- Administration	Clauses 16, 17 and 27	
004359 004405	- Mr HUI Cheung-ching	Concerned that provisions in LTO provided more protection to tenants than landlords	
004405 004415	- Chairman	Ditto	
004415 004445	- Administration	LTO was meant to protect tenancy rights	

004445 004514	- Chairman	Enquiry on whether a review would be conducted on tenancy matters	
004514 004609	- Administration	Any review would be outside the scope of the Bill	
004609 004639	- Chairman	Matter to be referred to the Housing Panel for follow up	
004639 004834	- Administration	Explanation on Annex C to LC Paper CB(1)1744/01-02(02) - Reply to submission from the Hong Kong Owners' Club	
004834 004856	- Mr James TIEN	Penalty for harassment on tenants	
004856 004917	- Administration	The Bill proposed to increase the fine to \$500,000 and imprisonment for 12 months on first conviction and a fine of \$1 million and imprisonment for three months on subsequent conviction	
004917 004939	- Mr James TIEN	Ditto	
004939 004949	- Mr CHAN Kam-lam	Concerned that penalty was too heavy	
004949 005023	- Administration	Penalty depended on severity of offence	
005023 005042	- Mr CHAN Kam-lam	Enquiry on penalties for criminal intimidation	
005042 005048	- Chairman	Ditto	
005048 005236	- Administration	Penalties imposed by Courts under the Crimes Ordinance would depend on severity of offence	

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005236 005355	- Mr CHAN Kam-lam	Enquiry on what should be regarded as harassment. Query on the need to impose such a heavy penalty for harassment on tenants	
005355 005415	- Administration	Penalties meant to deter harassment of a more serious nature	
005415 005500	- Chairman	Need to define what should be regarded as unlawful harassment	
005500 005517	- Administration	Ditto	The Administration was requested to provide past cases of penalty for harassment on tenants
005517 005547	- Mr James TIEN	Harassment on tenants taken by rent collecting agents	
005547 005616	- Administration	Ditto	
005616 005653	- Mr James TIEN	Ditto	
005653 005810	- Administration	Heavier penalties were proposed in response to public concern about unlawful means to evict tenants	
005810 005937	- Chairman	Whether means to evict tenants constituted harassment if it amounted to a criminal act. Reference made to a non-criminal act of eviction whereby a landlord removed the entrance door in an attempt to evict sub-tenant	
005937 010046	- Mr James TO	Means to evict tenant constituted harassment even though it did not amount to a criminal act	

010046 010105	- Chairman	Might be more appropriate to use “wrongfully” rather than “unlawfully” under the proposed section 119V of LTO regarding harassment	
010105 010126	- Mr James TO	Ditto	
010126 010200	- Chairman	Need to make reference to past cases as to what would constitute harassment acts	
010200 010221	- Mr James TIEN	Ditto	
010221 010233	- Chairman	Ditto	
010233 010252	- Administration	Ditto	
010252 010405	- Mr James TIEN	Difficulties in differentiating between lawful and unlawful eviction	
010405 010432	- Administration	Ditto	
010432 010442	- Mr James TIEN	Need to provide protection to landlords as well as tenants	
010442 010532	- Administration	“Unlawfully” would mean not in accordance with the law and this would include criminal, statute, civil or common law	
010532 010548	- Chairman	Ditto	

010548 010638	- Administration	Persistent interference with the peace and comfort of a tenant might result in an offence under section 119V(2) of LTO	
010638 010911	- Mr James TO	Landlords would not normally be charged for offences under section 119V(2) of LTO for reasonable acts to recover rent in arrears	
010911 011021	- Administration	Reference made to provisions of the Bill which provided for streamlining of repossession procedures for non-payment of rent	
011021 011214	- Mr James TIEN	Concerned about the lengthy repossession procedures for non-payment of rent	
011214 011303	- Administration	Need for statutory procedures to be complied to enable fairness to both landlords and tenants	
011303 011419	- Mr James TIEN	Need to fast-track repossession procedures for non-payment of rent	
011419 011449	- Administration	Landlord could start repossession procedures if rent was not paid within 15 days after the due date	
011449 011514	- Chairman	Ditto	
011514 011620	- Administration	Ditto	
011620 011724	- Chairman	Ditto	

011724 011821	- Mr James TIEN	Interest of landlords should be taken into account. Law could be amended such that once rent was in arrears for a certain length of time, the Court could direct bailiff to recover premises	
011821 011941	- Administration	Recovery procedures being discussed at length with JA. Need for Order of Possession to be followed by Writ of Possession. Landlords should not be allowed to set down case for hearing at the time of lodging application for Order of Possession as this would incur wastage of court resources since more than half of the cases were uncontested and did not require a hearing	
011941 012009	- Mr James TIEN	Ditto	
012009 012026	- Administration	Ditto	
012026 012108	- Mr James TIEN	Suggest bailiff action to repossess premises be taken after rent had been in arrears for a certain length of time	
012108 012133	- Administration	Ditto	
012133 012206	- Mr James TIEN	Ditto	
012206 012235	- Mr James TO	Ditto	

012235 012313	- Administration	Explanation on repossession procedures	
012313 012424	- Chairman	Ditto	
012424 012515	- Mr James TO	Bailiff action had to be taken in accordance with court orders	
012515 012531	- Administration	Summary proceedings were taken in cases of no opposition from tenants	
012531 012847	- Mr James TO	Need to adhere to court proceedings	
012847 012951	- Mr CHAN Kam-lam	Ditto	
012951 013143	- Mr James TIEN	To guard against possible abuse of repossession procedures, consideration could be given to imposing heavy penalty on landlords who recover possession based on misrepresentation	
013143 013228	- Administration	Mr TIEN's proposal of requesting bailiff action if rent was in arrears fell outside the scope of the Bill. There was need for a fair hearing under the Basic Law. Sheriff or marshall action in United States to recover premises was executed by order of court	
013228 013245	- Chairman	Ditto	
013245 013506	- Administration	Ditto	

013506 013607	- Mr James TIEN	Need to shorten recovery procedures for non-payment of rent in the interest of landlords	
013607 013815	- Administration	The Administration had made every effort to streamline repossession procedures but there proceedings which had to be adhered to	The Administration was requested to seriously re-consider further streamlining the repossession procedures. To guard against possible abuse of the procedures, consideration could be given to imposing heavy penalty on landlords who recover possession based on misrepresentation
013815 013834	- Chairman	Ditto	
013834 013920	- Administration	Criminal liability to be imposed on rogue tenants. Deposit in the Court for default on rent payment in repossession	
013920 014255	- Mr James TIEN	Ditto	
014255 014344	- Administration	Ditto	
014344 014354	- Mr James TIEN	Ditto	
014354 014440	- Mr CHAN Kam-lam	Deposit would ensure repayment of rent as landlords might not be able to recover rent upon repossession	

014440 014537	- Mr James TO	Objection to introduce requirement for deposit in court as this would result in drastic change to the existing system in civil proceedings. Consideration should instead be given to requiring interim payment of rent	
014537 014600	- Chairman	Ditto	
014600 014611	- Mr James TO	Ditto	
014611 014628	- Mr CHAN Kam-lam	Ditto	
014628 014723	- Mr James TIEN	Supported interim payment of rent	
014723 014735	- Mr James TO	Ditto	
014735 014756	- Administration	According to JA, there was no provisions in the current court procedures for requirement for a deposit and there was no legal basis for doing so	
014756 014829	- Chairman	Ditto	
014829 014912	- Mr CHAN Kam-lam	Ditto	
014912 015056	- Administration	Ditto	

015056 015144	- Mr James TO	With the proposed provisions allowing landlords to initiate recovery procedures if rent was not paid after 15 days, the time required for repossession and consequently the loss to the landlords had been significantly reduced	
015144 015242	- Mr James TIEN	Landlords would not normally initiate repossession immediately after 15 days of non-payment of rent. Action to repossess the premises usually taken after rent had been in arrears for a few months	
015242 015331	- Chairman	Need to consider interim payment and how it could be applied in court	
015331 - 015350	Mr LAU Ping-cheung	False information given by landlords on the amount of rent in arrears	
015350- 015446	Administration	Provisions under Crimes Ordinance dealt with false information	
015446 - 015505	Chairman	Ditto	
015505- 015525	Mr James TIEN	Concerned about high statutory fees charged for services by bailiffs which amounted to 10% of the total amount of rent in arrears	
015525- 015738	Administration	Agreed to seek further clarification from JA on statutory and incidental fees in relation to service by bailiff	The Administration was requested to seek clarification on statutory and incidental fees in relation to service by bailiff
015738- 015750	Chairman	Disposal of unclaimed properties	

015750-015800	Administration	Disposal of unclaimed properties further elaborated under item 7 of LC Paper No CB(1)1944/01-02. Explanation on Annex D - Reply to the submission from the Property Agencies Association	
015800-015820	Mr CHAN Kam-lam	Enquiry on whether calculation method of compensation for part-let premises was the same as that provided under the Lands Resumption Ordinance	
015820 - 020027	Administration	The Urban Renewal Authority would be adopting a similar calculation method	
020027 - 020113	Administration	Explanation on Annex E - Reply to the submission from the Estate Agent Authority	
020113 - 020127	Chairman	Ditto	
020127 - 020210	Administration	Ditto	
020210 - 020900	Chairman	Meetings to be scheduled in July and September 2002 to continue scrutiny of the Bill	

Note: The audio records of the above proceedings are kept at the LegCo Library

Legislative Council Secretariat
5 July 2002