

立法會
Legislative Council

LC Paper No. CB(1) 2445/01-02
(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 eighth meeting held on
Tuesday, 23 July 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 HUI Cheung-ching, JP
Hon CHAN Kam-lam, JP
Hon Albert CHAN Wai-yip
Hon LAU Ping-cheung

Members absent : Hon James TO Kun-sun
Hon TAM Yiu-chung, GBS, JP

Public officers attending : Housing, Planning and Lands Bureau

Ms Ophelia TSANG Oi-lin
Representative (Housing)

Miss Drew LAI Sai-ming
Representative (Housing)

Department of Justice

Mr G A FOX
Senior Assistant Law Draftsman

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) 2312/01-02 — Minutes of the meeting held on
8 July 2002)

The minutes of the meeting held on 8 July 2002 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1) 2207/01-02(01) — List of follow-up actions arising
from the discussion on
10 June 2002

LC Paper No. CB(1) 2207/01-02(02) — Administration's response to
CB(1) 2207/01-02(01)

LC Paper No. CB(1) 2284/01-02(01) — List of follow-up actions arising
from the discussion on 8 July 2002

LC Paper No. CB(1) 2284/01-02(02) — Administration's response to item 4
of the list of follow-up actions
arising from the discussion on
8 July 2002

LC Paper No. CB(1) 2284/01-02(03) — Administration's response to items
1, 2, 3, 5 and 6 of the list of
follow-up actions arising from the
discussion on 8 July 2002

LC Paper No. CB(1) 2330/01-02(01) — List of follow-up actions arising from the discussion on 16 July 2002

LC Paper No. CB(1) 2330/01-02(02) — Administration's response to CB(1) 2330/01-02(01))

2. The Committee deliberated (Index of proceedings attached at **Annex A**).
3. The Administration was requested to-
 - (a) elaborate on the background for increasing penalty for harassment of tenant and unlawful eviction and to give further details of the cases on tenant harassment;
 - (b) reduce the fees in relation to service by bailiff, and consider putting in place a new mechanism by which bailiff would be asked to provide the valuation of properties left in repossessed premises by tenant so that it would be for the landlord to decide on how such properties should be disposed of;
 - (c) include an undertaking in the speech to be delivered by the Secretary for Housing, Planning and Lands at the resumption of Second Reading debate on the Bill that the provision of false information by tenants should be included in the context of the comprehensive review of the security of tenure provisions under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7). The involvement of the sub-tenants in the legal proceedings at which the principal tenant was in default of rent payment should also be considered;
 - (d) include in the proposed section 144 that Committee Stage amendment to the Bill would only apply to new tenancy agreements signed after the enactment of the Bill;
 - (e) follow up on review of internal guidelines on the handling of tenancy disputes by Police and keep members informed; and
 - (f) redraft clause 11 along the line of the Building Management Ordinance (Cap. 344).
4. There being no other business, the meeting ended at 12:45 pm.

**Proceedings of the meeting of the
Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001
Meeting on Tuesday, 23 July 2002, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
000000 - 000235	Chairman	Confirmation of minutes of the meeting held on 8 July 2002 (LC Paper No. CB(1) 2312/01-02)	
000235 - 000247	Chairman Administration	Discussion on item 5 of LC Paper No. CB(1) 2207/01-02(02) on cases of harassment of tenants	
000247 - 000315	Chairman	Questioned the rationale for increasing the penalty for harassment of tenants and unlawful eviction when there were not too many such court cases and the penalty imposed was not heavy	
000315 - 000650	Mr Albert CHAN Chairman	Low prosecution figures might be attributable to Police inaction against tenancy disputes or difficulties in bringing the cases to court	
000650 - 000953	Administration Mr Albert CHAN Chairman	More information to be provided by the Judiciary Administrator (JA) on details of charges	The Administration to elaborate on the background for increasing penalty for harassment of tenant and unlawful eviction and to give

			further details of the cases on tenant harassment
000953 - 001130	Mr Albert CHAN	Need for imposing heavier penalties for criminal damage to premises by tenants	
001130 - 001232	Administration	Reference made to provisions under the Crimes Ordinance (Cap. 200) where the maximum penalty for criminal damage was imprisonment for 10 years	
001232 - 001323	Mr HUI Cheung-ching Chairman	Criminal damage to premises by tenants	
001323 - 001346	Mr Albert CHAN Administration	Comparison made between penalties for harassment of tenants and penalties for criminal damage by tenants	
001346 - 001527	SALA2	Reference made to para 8 and 9 of LegCo Brief on the rationale for imposition of heavier penalties for harassment of tenants and unlawful eviction. Need for further elaboration on justification for increasing penalty	
001527 - 001655	Chairman Administration	Discussion on item 7 of LC Paper No. CB(1) 2207/01-02(02) on statutory and incidental fees in relation to service by bailiff	

001655 - 001809	Mr Albert CHAN	Concerned about high bailiff fees. Need to simplify services by bailiff. Query on difference between guard fees in Hong Kong Island, Kowloon and New Territories	
001809 - 001854	Administration	Guard fees differed as the services were contracted out to two different companies	
001854 - 001926	Chairman Mr Albert CHAN	Discussion on measures to reduce bailiff charges, particularly in respect of disposal of properties left by tenants which were of insignificant value	
001926 - 001942	Administration	Discussion on range of services by bailiff. Bailiff would advise landlord not to proceed with auction of properties left by tenants if these were of insignificant value	
001942 - 002016	Mr Albert CHAN	Need to introduce a new mechanism whereby bailiff would provide a valuation of properties left by tenants. In this way, landlord could choose to dispose of the property and in the event of any claims by tenant on the disposed properties, refund the tenant based on the valuation by bailiff	

002016 - 002032	Administration	Guidelines to be provided by JA on disposal of properties left by tenants	
002032 - 002548	Mr Albert CHAN Administration Chairman	Discussion on the need to facilitate landlords in disposal of properties left by tenants	
002548 - 002852	Mr Albert CHAN Chairman Mr HUI Cheung-ching	Elaboration on the proposed mechanism of valuation by bailiff. Landlords to decide on how properties should be disposed of	
002852 - 002926	Administration	Need to revert to JA on the proposed mechanism of valuation by bailiff	
002926 - 002959	SALA2	Request for clarification on whether the incidental fees as set out in item 7 of LC Paper No. CB(1) 2207/01-02(02) would only apply to distress for rent and seizure of movable properties	
002959 - 003142	Administration, Chairman	Explanation on fees. Confirmed that the incidental fees would only apply to distress for rent and seizure of movable properties	
003142 - 003225	Mr Albert CHAN SALA2 Administration	Discussion on fees. Incidental fees would not be charged for repossession of tenanted premises	

003225 - 003418	Mr Albert CHAN Chairman	Landlords might wish to obtain a valuation of properties to safeguard against possible claims by tenants for disposed properties. Need for the proposed new mechanism of valuation by bailiff as an additional option to be provided to landlords	The Administration to reduce the fees in relation to service by bailiff and to consider putting in place a new mechanism by which bailiff would be asked to provide the valuation of properties left in repossessed premises by tenant so that it would be for the landlord to decide on how such properties should be disposed of
003418 - 003450	SALA2 Mr Albert CHAN	Enquiry on provisions for valuation by bailiff as such was not set out explicitly	
003450 - 003528	Administration Chairman	Bailiff would not provide valuation of properties in cases where only repossession of premises was applied for. Valuation would be provided in cases of seizure of movable properties since these properties would have to be auctioned at a later stage	
003528 - 003607	Mr Albert CHAN	Landlords might be subject to claims from tenants if they had disposed of the properties left by tenants without applying to court for seizure of properties	

003607 - 003707	Administration Chairman	Landlords could apply to the court for seizure of properties if these were found to have been left by tenants upon repossession	
003707 - 003741	Administration	JA's advice to be sought on the proposed mechanism of valuation	
003741 - 003922	Mr Albert CHAN Administration	Timeframe and fees for application for seizure of properties	
003922 - 003930	Mr Albert CHAN	Supported the introduction of a new mechanism of valuation although this might result in a slight increase in costs. Concerned about high cost of advertising in the South China Morning Post (SCMP)	
003930 - 004059	Administration Mr Albert CHAN Chairman	Auction need only be advertised in SCMP in cases involving expatriate defendants or companies with limited liability	
004059 - 004214	Chairman	Discussion on LC Paper No. CB(1) 2284/01-02(03)	
004214 - 004253	Administration	Items 1 to 3 of LC Paper No. CB(1)2284/01-02(03) would be provided at a later stage	
004253 - 004332	Chairman	Discussion on item 5 of LC Paper No. CB(1) 2284/01-02(03) on the vesting of power to settle tenancy disputes	

004332 - 004504	Administration	The Administration would study the dispute resolution mechanism of the Labour Department for its desirability and applicability in tenancy mediation	
004504 - 004532	Chairman	Discussion on item 6 of LC Paper No. CB(1)2284/01-02(03) on updating of internal guidelines on the handling of tenancy disputes by Police	
004532 - 004542	Administration	Police agreed to review guidelines	
004542 - 004635	Chairman Mr Albert CHAN	Need to follow up on review of internal guidelines	The Administration to follow up on review of internal guidelines on the handling of tenancy disputes by Police and keep members informed
004635 - 004750	Chairman	Discussion on item 1 of LC Paper No. CB(1) 2330/01-02(02) on the proposal of imposing criminal liability for false information	
004750 - 004907	Administration	Explanation that a Committee Stage amendment (CSA) to effect the proposal of imposing criminal liability on the provision of false information by tenants was outside the scope of the Landlord and Tenant (Consolidation) Ordinance(LTO)	

004907 - 004938	Mr Albert CHAN	Enquiry on the timeframe for the comprehensive review to be conducted by the Administration	
004938 - 005003	Chairman Administration	The comprehensive review would be carried out after the passage of the Bill	
005003 - 005043	Mr Albert CHAN	The Democratic Party would not insist on the proposed imposition of criminal liability on the provision of false information by tenants in the absence of public consultation on the subject. It was hoped that the proposal would be considered in the context of the comprehensive review	
005043 - 005108	Administration Chairman Mr Albert CHAN	The Administration agreed to review the proposal in the context of the comprehensive review	
005108 - 005126	SALA2	The Administration should be requested to include an undertaking in the speech to be delivered by the Secretary for Housing, Planning and Lands at the resumption of Second Reading debate on the Bill that the provision of false information by tenants would be considered in the context of the comprehensive review of the security of tenure provisions under LTO	The Administration to include an undertaking in the speech to be delivered by the Secretary for Housing, Planning and Lands at the resumption of Second Reading debate on the Bill that the provision of false information by tenants should be included in the context of the

			comprehensive review of the security of tenure provisions under LTO
005126 - 005146	Mr Albert CHAN Mr James TIEN	Agreed on proposed course of action as stated above	
005146 - 005249	Chairman	Discussion on item 2 of LC Paper No. CB(1)2330/01-02(02) on the inclusion in Form 22 of applications for distress for rent, interest for rent in arrears and disposal of properties left in premises by tenants	
005249 - 005301	Mr James TIEN Administration	The Administration was requested to provide the revised Form 22 for members' reference	The Administration to provide the revised Form 22 for members' reference
005301 - 005349	Chairman Administration	Discussion on item 3 of LC Paper No. CB(1)2330/01-02(02) on CSA to reflect the legislative intent to forbid a tenant to claim for release from forfeiture more than once per tenancy unless with good cause as determined by court	
005349 - 005451	Chairman	Discussion on item 4 of LC Paper No. CB(1) 2330/01-02(02) on the CSAs to clause 11	
005451 - 010046	Administration	Explanation on the CSAs to clause 11. Proposed section 117(4) was meant to favour what was agreed between landlords and tenants in their tenancy	

		agreement	
010046 - 010143	Chairman	Questioned the application of proposed section 117(4)	
010143 - 010257	Administration	Proposed section 117(4) would be applied in cases of ambiguity. Provision drafted to reflect members' intent to favour the tenancy if in doubt	
010257 - 010337	Chairman	Concerned about how proposed section 117(4) should be applied	
010337 - 010457	Mr HUI Cheung-ching Mr LAU Ping-cheung Administration	Discussion on the application of proposed section 117(4)	
010457 - 010912	Chairman	Reference made to the Building Management Ordinance (Cap. 344) (BMO), where clauses could be implied into the Deed of Mutual Covenant (DMC) "insofar as the terms were not inconsistent with the DMC". This would remove ambiguous situations	
010912 - 010948	Administration	The provisions would be redrafted in line with BMO, if the intention was "where it was not inconsistent with the tenancy agreements, then the following shall apply"	

010948 - 011025	Chairman	The redrafting would make it clear that where there was an express provision in the tenancy agreement, such would apply and would override the implied forfeiture clause. Where there was no express agreement, and there was no inconsistencies in the implied forfeiture clause, then the implied regime under clause 11 would apply. There might be a need to take out proposed section 117(4) and to delete the words “subject to subsection(4), in the absence in a tenancy of either” from proposed section 117(3) and replace with the phrase as aforementioned	
011025 - 011101	Administration	Consideration could be given to redrafting proposed section 117(4) along the lines proposed by the Chairman. However, proposed section 117(4) might cut down disputes	
011101 - 011745	Mr James TIEN Chairman Mr CHAN Kam-lam	Bills Committee supported provisions that were fair to both landlords and tenants. Comparison made to Schedule 7 of BMO. Discussion on application of the implied forfeiture clause	

011745 - 012245	Administration Chairman	Request for Administration to redraft clause 11 along the line of BMO	The Administration was requested to redraft clause 11 along the line of BMO
012245 - 012408	Chairman Administration	Discussion on proposed section 117(5) on the effect of section 58 of the Conveyancing and Property Ordinance (Cap. 219) (CPO) on the implied forfeiture clause. Explanation on section 58(4) of CPO, which provided the right for sub-tenants to apply for continuation of sub-tenancy for a term not longer than the term under the original sub-lease	
012408 - 012603	Mr James TIEN Administration Chairman	Discussion on hypothetical cases of sub-tenancies and the applicability of implied forfeiture clause	
012603 - 012620	Mr CHAN Kam-lam	Enquiry on the timeframe for sub-tenants to apply for continuation of sub-tenancy if application for repossession was filed by landlords	
012620 - 012659	Administration	The Court would allow for relief for sub-tenants. Timeframe would depend on individual circumstances	

012659 - 012855	Administration Mr CHAN Kam-lam Chairman Mr James TIEN	Discussion on difficulties of repossession arising from application for continuation of sub-tenancies under section 58(4) of CPO	
012855 - 013310	Mr Albert CHAN Mr James TIEN Mr CHAN Kam-lam Mr HUI Cheung-ching	Discussion on different scenarios. Need for a review on security of tenure of sub-tenants in the event of default of rent payment by principal tenant	The Administration to include the involvement of the sub-tenants in the legal proceedings at which the principal tenant was in default of rent payment
013310 - 013417	Chairman Administration	Explanation on notice of requirement under 58(1) to (13) of CPO and the need to comply with such notice in the forfeiture of tenancies by virtue of proposed section 117(3)(d), (e) and (f)	
013417 - 013535	Mr Albert CHAN	Enquiry on cases of illegal occupation with consent by owners corporation, e.g., food store set up within residential premises	
013535 - 013605	Administration	Tenancies could be forfeited on grounds of illegal occupation by virtue of implied forfeiture clause. Provisions of the Bill would only apply to new tenancies signed after the enactment of the Bill	

013605 - 013743	Administration Chairman	Transitional provisions under clause 38, proposed section 144	The Administration to include in proposed section 144 that provisions under the Bill would only apply to new tenancy agreements signed after the enactment of the Bill
013743 - 014028	Chairman Administration	Discussion on arrangements for meeting on 31 July 2002	
014028 - 014915	Mr Albert CHAN Administration Chairman	Another meeting scheduled for 25 September 2002 at 2:30pm to discuss other outstanding items to be provided by the Administration. These included items 1 to 3 of LC Paper No. CB(1) 2284/01-02(03), updated internal guidelines by Police on the handling of tenancy disputes, guidelines on disposal of properties left in premises by tenant, revised Form 22 etc	

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

Legislative Council Secretariat
20 August 2002