

ESTATE AGENTS AUTHORITY

**Views on the
Landlord and Tenant (Consolidation) (Amendment) Bill 2001**

1. The Authority would like to make the following observations on the Landlord and Tenant (Consolidation) (Amendment) Bill 2001.

Simplification of tenancy renewal procedures under Part IV of LTO

2. The Bill proposes to shorten the statutory period by 3 months (from the original 7 to 6 months to the proposed 4 to 3 months) for the service of notice by landlord terminating a tenancy (Form CR 101) or by a tenant requesting a new tenancy (Form CR 103) and by 1 month (from the original 2 months to the proposed 1 month) for the service of the respective counter-notices (Form CR 102/CR 104) (Clauses 12 and 13). The Bill also repeals the provisions relating to service of notice by the landlord on the tenant (Form CR 105) and shortens the period within which the tenant must apply for a new tenancy with the Lands Tribunal. The proposals are deemed appropriate as they will shorten the above notice periods so that the landlord and the tenant may better position themselves to take account of the market situation nearer to the expiry of the existing tenancy. It is also agreed that if the said notice periods are to be shortened, then Form CR 105 will no longer be required.
3. Clause 14 of the Bill empowers the Commissioner of Rating and Valuation to provide tenancy information of comparable premises to the landlord terminating a tenancy and to the tenant seeking a new tenancy on application at a fee. Clause 14 is thus an appropriate addition as it facilitates the landlord and the tenant in reaching agreement on the level of rent for renewal of tenancy without recourse to legal proceedings at the Lands Tribunal.

4. The Bill also proposes that the landlord should be allowed to change or add grounds of opposition to a tenancy renewal application owing to changed circumstances arising after the services of notice of termination or opposition, and that the Lands Tribunal be empowered to hear cases in which the landlord or the tenant fails to observe the statutory time limits in serving or submitting notices with good cause. It is observed that while the proposed provisions do give flexibility to an otherwise rigid statutory framework, whether such flexibility will be subject to abuse will have to be carefully monitored.

Rebuilding Compensation for the Tenant and Sub-tenant

5. The Bill amends the method of calculating compensation payable to affected tenants and sub-tenants where the premises are to be repossessed by the landlord for rebuilding. The proposed method of calculating compensation, by reference to the rateable value of the actual portion of the flat occupied by the tenant or sub-tenant, is considered reasonable as it provides a more favourable arrangement for tenants in part-let and sub-let tenancies who are often citizens in the underprivileged category.

Heavier Penalties on Harassment of Tenants and Sub-Tenants

6. Clause 27 of the Bill imposes heavier penalties in relation to harassment and unlawful eviction of the tenant. A contravention of the provision will result in 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. The Bill also proposes to simplify the evidential burden by requiring 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 defendant's intention. The Bill further stipulates that the defendant will not be deemed to have committed an offence if he is able to prove that he has had reasonable ground for doing the act. These amendments will enhance the deterrent effect against acts of harassment and allow a defence for a defendant who is genuinely aggrieved and are thus worthy of support.

Facilitating private settlement in redevelopment cases

7. To facilitate negotiation between the parties on a mutually acceptable amount of compensation, the Bill proposes 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. This proposal is justified in that it is intended to expedite the process of redevelopment through voluntary surrender of premises without the need to initiate any legal proceedings.

Amendments to Other Ordinances to Modify the Relief Period against Forfeiture Following the Grant of an Order of Possession for Non-Payment of Rent

8. To minimize any abuse of the relief period by habitually defaulting tenants, the Bill 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 from 4 weeks to 7 days following the grant of a repossession order for non-payment of rent. The proposed amendment is deemed reasonable because, in practice, the tenant is already in arrears of rent for several months before court procedures are initiated and before judgment is delivered.

Amendment to the Lands Tribunal Rules to streamline the Default Judgment Procedure of the Lands Tribunal

9. The Bill amends Rule 15 of the Lands Tribunal Rules so that in the case of a landlord applying for an order of possession, ejection, rent, mesne profits or any other liquidated demand and where no notice of opposition is filed by the tenant, such application to the Lands Tribunal will not be required to be supported by an affidavit. The amendment is justified as it will bring the “orders in default” procedure in the Lands Tribunal in line with those of the High Court and of the District Court.

Concluding Remarks

10. The Amendment Bill has, on the whole, given due regard to the

interests of all parties concerned as it will simplify the tenancy renewal procedures, increase the basis for compensation to tenants and sub-tenants where properties are repossessed by the landlord for rebuilding, and offer better protection to tenants from harassment by landlords through the introduction of heavier penalties. It also provides for equitable measures to expedite the landlord's repossession of rented premises under court order.

Estate Agents Authority
April 2002

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