

Item 1

To provide a copy of the internal guidelines of the Police on handling of disputes between landlords and tenants.

A copy of the internal guidelines of the Police on handling of disputes between landlords and tenants is attached at the **Annex**.

Item 2

To consider including in the Bill a mandatory requirement for tenants to provide their personal information on name, occupation, salary as well as past rental records to landlords, and to seek legal advice on whether the proposed requirement will contravene the Personal Data (Privacy) Ordinance (Cap. 486).

- (a) The Personal Data (Privacy) Ordinance does not prohibit mandatory requirement for disclosure of personal data under another Ordinance.
- (b) The Administration does not object to a landlord requiring the tenant to provide their information on name, occupation and so forth where the landlord finds fit subject to the landlord's observance of the Data Protection Principles prescribed under Schedule 1 of the Personal Data (Privacy) Ordinance. Yet, the Administration does not agree to mandate such disclosure by legislation.
- (c) Article 17 of the International Covenant on Civil and Political Rights (ICCPR), which is incorporated into Hong Kong laws through Article 39 of the Basic Law, prohibits "arbitrary and unlawful" interference with privacy, save for under some permissible situations such as national security and public order. In deciding whether the current purpose of the proposed mandatory requirement to minimise the possibility of non-payment is "permissible", consideration is to be given to the principle of proportionality.
- (d) In the present case, the proposed mandatory disclosure requirement does not appear to be proportional to the purpose to be achieved.

Whether a tenant could afford the rent and whether he would make the payment may or may not be related to whether certain personal particulars are disclosed. There are various reasons for non-payment of rent. Compulsory proof of the particulars would only eliminate a small number of non-payment cases. Hence, Department of Justice advises that the proposed mandatory disclosure requirement appears not to comply with the provisions of the ICCPR.

- (e) The Administration is of the view that the information disclosure should be left to the parties of the tenancy agreement rather than the legislation. Even without such legislative provisions, a landlord could still require the personal information from the tenant, depending on the bargaining power of the parties.

Item 3

To allow the application for Writ of Possession to proceed in parallel with the granting of Order for Possession with a view to further reducing the time for repossession of premises where a notice of opposition has not been filed.

- (a) After having consulted the Department of Justice and the Judiciary Administrator, the Administration does not agree to allow the application for Writ of Possession to proceed in parallel with the granting of Order for Possession.
- (b) An Order for Possession directs a tenant to deliver up vacant possession of the premises after a certain period of time, and is enforceable by the landlord. Where the tenant complies with the Order and delivers up vacant possession, no further assistance from the Court would be needed.
- (c) A Writ of Possession is a direction from the Court to the bailiff to obtain possession from a tenant. A Writ of Possession may be necessary only after an Order of Possession is made and if the tenant fails to comply with the Order for Possession. As it cannot be known in the outset whether a tenant would fail to comply with an Order for Possession, to allow an application for an Order and Writ in parallel could lead to an eventual waste of public resources.

Item 4

To clarify whether it is a general practice of the Court to require a landlord who fails to apply for Writ of Possession on the expiry date of the four-week relief period to wait for another four weeks.

As advised by the Judiciary Administrator, the situation mentioned is not a practice of the Court. In practice, a landlord is free to apply for Writ of Possession at any time after the four-week period from the date of the Order for Possession.

Item 5

To provide information on overseas countries which have a fast-track system on repossession of premises.

The Administration is searching for the information requested, and will provide the Bills Committee with such information where available.

Item 6

To liaise with the Lands Department, the Consumer Council, the Law Society and the Estate Agents Authority with a view to working out standardized terms for tenancy agreement to protect the interest of both landlords and tenants. Consideration should also be given to including a standard provision to allow landlords to enter the leased premises on good grounds, such as inspection of unauthorized building works upon receipt of repair order from the Buildings Department.

The Administration has liaised with the Consumer Council and the Estate Agents Authority, which have kindly agreed to offer assistance in working out some advisory guidelines on tenancy agreement terms for the reference of landlords and tenants. The suggestion of inclusion of a provision to allow landlords to enter the leased premises on good grounds will be taken forward in drawing up the guidelines.

Item 7

To work out a clear guideline on the manner in which properties left in the premises by the tenant after repossession of premises should be disposed of and to clarify if such disposal will affect the duty of Bailiff to sell properties left on the premises.

- (a) The Judiciary Administrator agrees to work out clear guidelines prescribing the orders to be issued out of the power proposed in the Bill to be delegated to the Lands Tribunal to dispose of properties left in the premises by the tenant.
- (b) The preliminary view of the Judiciary Administrator is that a landlord probably has to get back to the Court to apply for another order in respect of disposal of properties.
- (c) There should be no conflict between the order of disposal by the Lands Tribunal and the duty of bailiff to sell properties left on the premise. The Judiciary Administrator preliminarily advises that the disposal order may include an order to the bailiff to sell, to discard or to return the properties to the tenant, where the circumstances fit.

Item 8

To consider whether there should be no more than two occasions of granting of relief for forfeiture to tenants who only settle rent in arrears after landlords have taken procedure for forfeiture when rent is not paid within 15 days after the due date.

- (a) The Administration understands that a landlord may suffer financially if he does not receive rental payments punctually. However there may be cases in which a tenant is in genuine hardship and is unable to pay the rent. The Administration would therefore like to make a counter-proposal, that a tenant should be forbidden to claim for relief for more than once per tenancy unless with good cause, if the Court has previously made an Order for Possession to forfeit the tenancy. Save for good cause, the Court should not allow the tenant to pay up the rent in arrears and be relieved from the forfeiture after the first occasion.

- (b) Subject to the agreement of the members, the Administration would further explore the counter-proposal.

Item 9

To deter unlawful eviction, consideration should be given to requiring landlords to ensure that agents they hire to evict tenants will not use harassing acts while imposing a criminal liability on those agents who use such acts.

- (a) Section 119V of the LTO regarding harassment to tenants causing unlawful eviction applies to both landlords and their agents.
- (b) Where an agent resorts to harassing acts, if a principal is the actual perpetrator of the acts as shown by the evidence available, the principal would be liable.
- (c) The criminal liability imposed on landlords or anyone committing harassing acts leading to unlawful eviction is a major deterrent to landlords and their agents. If a landlord does not want to be caught by section 119V, he should make sure that no harassing acts as set out in the section would be committed by himself and/or his agents.

Item 10

To protect landlords, particularly those in redevelopment cases, who are forced to sell their premises to developers because of harassing acts done by the latter.

LTO is an ordinance governing the relationship between landlords and tenants. It is inappropriate for the Administration to comment on the issue as it is out of the scope of the Ordinance.