

Item 1

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.

The Judiciary Administrator agrees to extend the time for making distress. The Administration proposes to move Committee Stage Amendments to amend the proposed section 86 to the effect that the time for making distress is extended to 7 p.m.

Item 2

To amend the Bill to the effect that the powers to amend fees and forms under section 114 of LTO should rest with the Chief Judge of a District Court rather than the Secretary for Housing.

The Judiciary Administrator advises that it would be more appropriate for the Chief Justice to be vested with the power to amend fees and forms under section 114 of LTO. The proposed amendment to Clause 7 is at **Annex A**.

Item 3

To introduce an implied forfeiture clause so that any illegal alteration or addition made to a premise without prior consent of the landlord will constitute a cause for forfeiture of tenancy.

The proposed implied forfeiture clause is provided at Clause 11(3)(d) of **Annex A**.

Item 4

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 has been issued to the tenant.

The proposed implied forfeiture clause is provided at Clauses 11(3)(c) and (4)(a) of **Annex A**.

Item 5

To provide cases of penalty for harassment of tenants.

The followings are District Court cases that have been advised by the Prosecution Division of Department of Justice :

(I) DCCC 961/1990

The case involved 3 defendants. One of the charges against one of the defendants is causing harassment to tenant. The defendant was found **not guilty**.

(II) DCCC 65/1993

The case involved five defendants, two of whom were charged for causing harassment to tenants, but were found **not guilty**.

(III) DCCC 1274/1993

8 defendants (i.e. D1-8) were involved. Details of charges on harassment to tenants are as follows :

(1) Defendant 1 - two charges of causing harassment to tenant

Result: found not guilty under both charges

(2) Defendant 3 – one charge of causing harassment to tenant

Result: found not guilty

(3) Defendant 4 – six charges of causing harassment to tenant

Result: pleaded guilty in four charges and was fined \$2,000 for each charge. The remaining two charges were left on court's file.

(4) Defendants 6, 7 and 8 – four charges of causing harassment to tenant

Result: pleaded guilty in three charges. Fined \$2,000 per person for two charges, and \$10,000 per person for one charge. The remaining charge was left on court's file.

Item 6

To seriously re-consider further streamlining the repossession procedures. To guard against possible abuse of the procedures, consideration can be given to imposing heavy penalty on landlords who recover repossession based on misrepresentation.

- (a) In formulating the proposals in the Amendment Bill, the repossession procedures had been reviewed thoroughly by the Government's internal Working Group in conjunction with the Judiciary Administrator, and improvements where appropriate were incorporated into the Bill based on the principle of maintaining justice and fairness for all parties in the legal process.
- (b) As advised by the Judiciary Administrator, if a defence of a landlord to recover repossession is proved to be knowingly flawed during the proceeding, the defence would fail. The risk of failing to recover the premises serves well to deter landlords from recovering the premises based on misrepresentation.
- (c) For tenancy renewal cases under Part IV of the LTO, section 119H(9) provides that if a landlord succeeds to oppose granting of a new tenancy to the tenant, and subsequently made to appear to the Court that the opposition was successful by reason of the misrepresentation or concealment of material facts, the Court might order the landlord to pay to the tenant such sum as it thinks fit as compensation.

Item 7

To seek clarification on statutory and incidental fees in relation to service by bailiff.

Statutory fees		
(a) Commission	10% of the sum realised.	
(b) Fixed cost for filing of Affidavit	Under \$5,000	\$60
	Above \$5,000 but under \$20,000	\$120
	\$20,000 or above	\$250

Plus

(c) Auctioneers' commission	5% of the proceeds of the auction.
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Incidental fees		
(a) Deposit for Guard Fees*		
(i) Execution in Hong Kong Island	\$4,000 for 8 days of security guard fees at \$500 per day.	
(ii) Execution in Kowloon and the N.T.	\$3,840 for 8 days of security guard fees at \$480 per day.	
(b) Deposit for Bailiff's Travel Expenses*		
(i) Urban Area	\$400	
(ii) The N.T.	\$800	
(c) Advertisement of auction		
(i) Sing Tao Daily	Approximately \$1,800	
(ii) South China Morning Post**	Approximately \$5,300	

Note:

* Both deposits of Guard Fees and the Travel Expenses are incidental and charged on the actual expenses in each occasion of execution. Credit balance of the fees is refundable.

** South China Morning Post is only for expatriate defendants, or companies with limited liability.

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Annex A

LANDLORD AND TENANT (CONSOLIDATION)
(AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Housing, Planning and Lands

Clause

Amendment Proposed

- 7 By deleting "Secretary for Housing" and substituting
"Chief Justice".
- 11 By deleting the proposed section 117(3) and
substituting -
- "(3) In the absence in a tenancy of any -
- (a) express covenant for the payment
of rent and condition for
forfeiture, there shall be implied
in the tenancy a covenant to pay
the rent on the due date and a
condition for forfeiture if that
implied covenant is broken by
virtue of non-payment within 15

days of the due date;

(b) express covenant [prohibiting] the use of the premises or any part thereof the subject of the tenancy for an immoral or illegal purpose and condition for forfeiture, there shall be implied in the tenancy a covenant that the tenant not use, or suffer or permit the use of, the premises or any part thereof for an immoral or illegal purpose and a condition for forfeiture if that implied covenant is broken;

(c) express covenant that the tenant not cause unnecessary annoyance, inconvenience or disturbance to the landlord or to any other person and a condition for forfeiture, there shall be implied in the tenancy a covenant that the tenant not cause unnecessary annoyance, inconvenience or disturbance to the landlord or to any other person and a condition for forfeiture if that implied covenant is broken;
or

(d) express covenant prohibiting any alteration or addition to the premises or any part thereof the subject of the tenancy and condition for forfeiture, there shall be implied in the tenancy a covenant that the tenant not alter or add to, or suffer or permit the alteration or addition to, the premises or any part thereof without the consent of the landlord and a condition for forfeiture if that implied covenant is broken.

(4) It is hereby declared that -

(a) the persistent delay of payment of rent is an act that falls within the ground mentioned in subsection (3)(c);

(b) subsection (3)(b), (c) and (d) shall have effect subject to section 58(1) to (13) of the Conveyancing and Property Ordinance (Cap. 219) (and notwithstanding subsection (14) of that section).".