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Report of the Bills Committee on
Landlord and Tenant (Consolidation) (Amendment) Bill 2001

Purpose

This paper reports on the deliberations of the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001.

Background

2. The Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (the Ordinance) was enacted in 1973 by consolidating all previous legislation relating to landlord and tenant matters, protection and determination of tenancies as well as control and recovery of rent.

3. The Landlord and Tenant (Consolidation) (Amendment) Bill 1999 (the 1999 Amendment Bill) was introduced into the Legislative Council in December 1999 consequent upon a review of the Ordinance. However, the 1999 Amendment Bill was not scrutinized by the Legislature before the end of the 1999/2000 session owing to time constraints. In response to public concern over the lengthy and complicated statutory procedures for repossession of rented premises, the Government set up a Working Group on the Review of Statutory Procedures for Repossession of Domestic Premises and Recovery of Rent in September 1999. The recommendations of the Working Group were endorsed by the Administration in August 2000. As some of the recommendations required legislative amendments, these were included in the Landlord and Tenant (Consolidation) (Amendment) Bill 2001 in addition to the proposals in the 1999 Amendment Bill.

The Bill

4. The Landlord and Tenant (Consolidation) (Amendment) Bill 2001 seeks to amend the Ordinance to -

(a) improve the operation of the Ordinance;

(b) simplify tenancy renewal procedures;

(c) improve the basis of calculating compensation for the tenant and sub-tenant occupying small premises repossessed by the landlord for redevelopment;

(d) increase penalties for harassment of the tenant and unlawful eviction;

(e) streamline the statutory repossession procedures; and

(f) ensure that the provisions of the Ordinance are consistent with the human rights provisions in the Basic Law.

The Bills Committee

5. At the House Committee meeting on 22 June 2001, members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Audrey EU Yuet-mee, the Bills Committee has held 11 meetings. The membership list of the Bills Committee is at **Appendix I**. Apart from examining the Bill with the Administration, the Bills Committee has also invited views from interested parties. Six groups, including two from the legal profession, have made written and/or oral representation to the Bills Committee. A list of these groups is at **Appendix II**.

Deliberations of the Bills Committee

Tenancy renewal procedures

6. The Bill proposes to shorten the statutory period by three months (from the original six to seven months to the proposed three to four months) for the service of notice by a landlord terminating a tenancy (Form CR 101) or by a tenant requesting a new tenancy (Form CR 103) and by one month (from the original two months to the proposed one month) for the service of the respective counter-notices (Form CB 102/CR 104). The Bills Committee notes that with the reduction of the lead time, the service of notice by the landlord requiring the tenant to apply to the Lands Tribunal for a new tenancy (Form CR 105) is considered redundant as there will not be much room for the tenant to procrastinate application to the court for the granting of a new tenancy. It therefore raises no objection to the proposed repealing of Form CR 105. To facilitate landlords and tenants in reaching agreement on the level of rent for renewal of tenancy without recourse to the Lands Tribunal, the Bills Committee also agrees to the proposal of empowering 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.

7. Members however express concern on the proposed provision of allowing landlords to change or add grounds of opposition to a tenancy renewal application owing to changed circumstances arising after the service of notice of termination or opposition lest this may be subject to abuse. The Administration's explanation is that while there may be situation where a landlord deliberately mis-states his grounds of opposition on the form and then uses different grounds before the court, his defence will fail should the court find that the landlord has mis-stated his grounds of opposition.

Penalties on harassment of tenants and unlawful eviction

8. The Bill proposes to impose heavier penalties in relation to harassment and unlawful eviction of tenants. An offender will be subject to 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. It 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 act is likely to cause the tenant to give up occupation of the premises, rather than to prove the defendant's intention.

9. While recognizing the need to deter harassment and unlawful eviction of tenants, members question the deterrent effect of heavier penalties given the limited number of past successful prosecutions in relation to and the relatively low levels of penalty for harassment. They hold the view that apart from landlords, agents hired by landlords should also be subject to criminal liability if they resort to harassing acts to evict tenants. According to the Administration, the revised penalties are proposed in response to public concern over harassment acts. Although harassment activities are less proliferating in recent years, harassment of tenants is a serious offence and should be addressed with due severity despite short-term fluctuations in the property market. The proposed penalties are appropriate to deter such offences. Moreover, the criminal liability on harassing acts leading to unlawful eviction applies to both landlords and their agents. Where an agent resorts to harassing acts and it is the principal who is the actual perpetrator of the acts as shown by the evidence available, the principal will be held liable. As such, a landlord should make sure that no harassing acts would be committed by himself and/or his agent if he does not want to be caught by the provision.

10. Noting that the Police will not intervene in any disputes arising from occupation, possession of premises or rent arrears between landlords and tenants, unless a breach of the peace may occur or a criminal offence has been disclosed, members query how the provisions in the Bill can be effectively enforced. The Administration's explanation is that there are established internal guidelines on the procedures to be adopted by the Police in dealing with reports of alleged offences which emanate from tenancy disputes between landlords and tenants. In the light of the Bill, the Police has included additional provisions in the guidelines to draw the attention of police officers to address the problem of unscrupulous behaviour of landlords and tenants that attracts criminal liability. A Crime Investigation Team will

take up the case if it is reasonably believed that a criminal offence has been committed by either party. If no evidence of criminal liability is found, the case will be referred to the Rating and Valuation Department (RVD) for mediation as appropriate. The Police will further revise the internal guidelines after the passage of the Bill to take account of further changes in the provisions of the Bill. Meanwhile, the Police will continue to monitor the situation of tenancy disputes.

Rebuilding compensation for tenants and sub-tenants

11. When premises are repossessed for redevelopment, the statutory compensation payable by the landlord to the tenant and sub-tenant is calculated according to a sliding scale of compensation levels viz. the higher the rateable value, the lower the compensation multiplier. Under the existing method of calculation, compensation is calculated in accordance with the rateable value of the whole flat and then apportioned among the tenant and sub-tenant. Owing to the higher rateable value and lower compensation multiplier for the whole flat (as compared with that for a part or sub-let portion within the flat), the apportioned compensation to each tenant or sub-tenant is much reduced. Given that tenants and sub-tenants are often citizens in the underprivileged category who should receive more assistance to alleviate hardship arising from relocation, the Bill proposes to amend the method of calculating compensation to make reference to the rateable value of the actual portion of the flat which the tenant or sub-tenant occupies. Under the proposed amendment, the court will first apportion the rateable value according to the portion each occupant retains, and then work out the amount of compensation payable based on the apportioned rateable value. As a result, the compensation received by each occupant will be higher than that under the current arrangement. A comparison of compensation under the existing and proposed methods of calculation is at **Appendix III**.

Statutory repossession procedures

12. At present, a straightforward case of repossession of premises for non-payment of rent where a notice of opposition has been filed will take a total of 103 days. This involves an application stage of 35 days, a minimum mandatory relief period of 28 days, a processing stage of 10 days and an execution stage of 30 days. The purpose of the relief period is to allow the tenant a final opportunity to settle the rent in arrears before the Order for Possession is executed. To minimize the abuse of the relief period by habitually defaulting tenants, the Bill proposes to shorten the relief stage from 28 to seven days.

13. While agreeing that the proposal is a step forward in the right direction, the Bills Committee holds the view that the statutory procedures for repossession can be further streamlined to protect the interest of landlords, particularly in the event of repeated defaults in payment of rent by tenants. Consideration should be given to carrying out some steps in parallel to shorten the lead time. These include -

(a) allowing landlords to set down the case for hearing at the time of lodging an application for Order for Possession;

(b) enabling automatic execution of a possession order by the Bailiff without the need to apply to court for leave to issue a Writ of Possession; and

(c) putting in place under the Bill a similar summary judgement procedure as that in the High Court.

14. On allowing a landlord to set down the case for hearing simultaneously, the Administration's explanation is that legal advice reveals that it will not save time as court waiting time can be lengthened or wasted. Currently, there are about 50% of repossession cases where tenants do not file a notice of opposition and hence the landlords are able to obtain repossession through default judgement without a hearing. The time for a tenant to file a notice of opposition is 14 days after receiving the notice of application for possession by landlord. If parallel steps are taken, by the time it is known that the tenant has not filed the notice of opposition and the landlord applies to vacate the hearing, the hearing date is just a few days ahead. It is most unlikely that the Tribunal will be able to fix another hearing in the freed time slot. Therefore, the proposal will result in a waste of resources and in turn lengthen the court waiting time.

15. On the feasibility of removing the need to apply to the court for leave to issue a Writ of Possession, the Administration's explanation is that the court has a duty to consider each application for repossession carefully, and if a tenant pays up the rent in arrears before the lapse of the 28-day relief period (seven day as proposed in the Bill), he shall be entitled to relief from repossession by the landlord. Under Order 45 rule 3 of the Rules of the High Court, the Writ of Possession shall not be issued without the leave of the court. Such leave shall not be granted unless it is shown that every person in the actual possession has received such notice of the proceedings. The purpose of such a provision is to alert each and every person or sub-tenant that there is a proceeding between the landlord and tenant. While the principal tenant fails to pay rent, the sub-tenants may have made punctual payments to the tenant. It will be unfair to sub-tenants for any automatic execution of order without their knowledge, thereby depriving them of their rights of relief given under Order 45 rule 3.

16. On the proposed summary judgement procedures, the Administration's view is that under Order 14 rule 1 of the Rule of High Court, the summary judgement procedures arise when though the defendant (tenant) has given notice of intention to defend the action, the plaintiff (landlord) seeks to get a summary judgement on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed. This will involve a court hearing, and application must be made by summons supported by an affidavit. The summons together with a copy of the affidavit must be served on the tenant not less than 10 clear days before the hearing date. The introduction of the Order 14 procedures in the

Lands Tribunal may prolong rather than expedite repossession, unless it is very clear that the tenant has no defence to the claim.

17. Members are not convinced of the Administration's explanation. They remain of the view that efforts should be made to expedite the repossession process taking into account the plight of aggrieved landlords. A fast-track procedure may have to be worked out for landlords to claim repossession of premises, particularly in the event of repeated defaults in payment of rent by tenants. In the light of members' concern, the Administration agrees to introduce an implied forfeiture clause in the Bill to assist landlords who fail to put in the tenancy agreement a forfeiture clause in respect of persistent delay in payment. The same will apply to the use of premises for an immoral or illegal purpose. CSAs will be moved to that effect.

18. To facilitate the courts in handling these claims, the Bills Committee considers that additional manpower and financial resources may be required. Consideration should also be given to vesting RVD with the power to deal with tenancy disputes not exceeding a prescribed amount of money as in the case of labour disputes by the Labour Department. At members' request, RVD has studied the adjudication and mediation services for employment disputes, and has sought advice from the Judiciary Administrator, who has strong reservation. Members agree that the proposal be shelved at the moment, and may be brought up in the future where appropriate. Meanwhile, the Panel on Administration of Justice and Legal Services will be requested to continue discussing with the Administration the financial and manpower required to facilitate the courts in handling tenancy claims.

19. Apart from streamlining the repossession procedures, members hold the view that measures should be put in place to enable landlords to repossess properties on which tenants have constructed unauthorized building works (UBWs). According to the Administration, the term UBWs is not defined under the Buildings Ordinance (Cap. 123) (BO) or other ordinances. It is commonly used to refer to buildings works carried out in contravention of the provisions of BO. Hence, it may be necessary for scrupulous landlords and tenants to prove that there is no erection of UBWs before and after letting and renting. This will be too onerous a burden and will create additional cost to both landlords and tenants as they will have to consult Authorized Persons or to view the approved building plans themselves to determine whether the premises is UBW-free.

20. At members' request, the Administration has examined a number of options to imply a forfeiture clause for UBWs into tenancy agreements.

(a) The first option is to provide that where a tenant causes buildings works to be carried out in contravention of any of the provisions of BO, it will give rise to a right of forfeiture. This is ruled out because landlords who are seriously affected by alteration works which contravene no provision of BO will not benefit from the implied forfeiture clause. Besides, the proposal will carry substantial

resource implications to the Building Authority as there will be a large number of inquiries from landlords and tenants as to whether building works carried out in the leased premises are in contravention of the provisions of BO.

(b) The second option is to tie the implied forfeiture clause to the issue of a section 24 order under BO so that it can be triggered upon the issue of a section 24 order. However, as not all UBWs are subject to the issue of section 24 orders, it follows that premises which are not the subject of a section 24 order does not necessarily mean that it is free from UBWs. There are also situations where some alterations carried out by tenants may cause damage to the leased premises but do not warrant the issue of section 24 order. Moreover, complications in the application for forfeiture will arise if a tenant lodges an appeal against a section 24 order. This will inevitably prolong the repossession procedures and therefore not desirable.

(c) The third option is to provide that a tenancy can be forfeited if material alterations have been carried out by tenants on the leased premises. The proposal is again ruled out since according to the Department of Justice, the expression of "material alteration" is difficult to define and is likely to give rise to endless arguments on whether an alteration is "material" or not.

21. Noting the practical difficulties and additional costs incurred in making the erection of UBWs a condition for implied forfeiture of tenancy, members agree that the Administration should alternatively introduce an implied forfeiture clause to provide that no structural alteration should be made to the rented premises without the prior written consent of the landlord, failing which the landlord may forfeit the tenancy. The proposal will also allow landlords to let the premises on an "as is" basis. A CSA will be moved to that effect.

Mandatory relief period following granting of an order of possession for non-payment of rent

22. At present, the courts grant a mandatory relief period of a minimum of 28 days following the granting of an order of possession to allow the tenant a final opportunity to settle the rent in arrears before the Order for Possession is executed. To minimize the abuse of the relief period by habitually defaulting tenants, the Bill proposes to shorten the mandatory relief period from the existing minimum of 28 days to a minimum of seven days.

23. While welcoming the proposed amendment, which is considered reasonable since, in practice, a tenant is already in arrears of rent for several months before court procedures are initiated and before judgement is delivered, the Bills Committee finds it necessary to limit the number of claims for relief from forfeiture by a tenant to prevent

abuse. Consideration should also be given to imposing a fixed interest rate or a surcharge of certain percentage of the rent in arrears as a deterrent for default in payment of rent. The Administration's explanation is that under section 48 of the High Court Ordinance (Cap. 4) (HCO), the courts have discretion to determine the interest rate and the period for which interest is to be charged on debt and rent in arrears. Section 49 of HCO also provides that judgement debts shall carry simple interest rate as the court, including Lands Tribunal, District Court and High Court, may order. The current post-judgement interest rate is 8.14%. Given that there is a general provision in HCO governing all types of actions, it is not desirable to have a specific interest provision in the Ordinance. Besides, there is no evidence showing that judges will generally decline to exercise their discretionary power to impose interest in recovery of rent arrears cases. As such, the discretionary power delegated to judges should be maintained so as to enhance flexibility to cope with different circumstances. To reflect its intent of forbidding a tenant to claim for relief from forfeiture more than once per tenancy unless with good cause as determined by the court, the Administration will move CSAs to amend the relevant sections under HCO and the District Court Ordinance (Cap. 336).

Enforcement of Possession Order

24. Members hold the view that the present enforcement procedure is cumbersome. Three appointments are generally necessary before the Bailiffs will execute the Writ of Possession and a substantial deposit has to be given to the Bailiffs for the action. They consider that clear guidelines on the disposal of properties left in the premises by tenants after repossession should be worked out. Consideration should also be given to imposing a fixed time limit within which tenants should remove their properties after repossession of premises and storing unclaimed properties in a public warehouse. According to the Administration, the Judiciary Administrator agrees to work out clear guidelines prescribing the orders to be issued under the power proposed in the Bill to be delegated to the Lands Tribunal to dispose of properties left in the premises by tenants.

25. As regards the proposed imposition of a strict time limit for removal of properties or a requirement to store unclaimed properties in a public warehouse, the Administration's view is that these proposals may not be appropriate for all situations. Besides, the Bill empowers the court to make orders with regard to disposal of properties. This will provide the court with discretion to deal with cases of different circumstances and to make an appropriate order for disposal of the unclaimed properties where it thinks fit. Members however point out that landlords will have to get back to the court to apply for another order in respect of disposal of properties, which may unduly delay the repossession procedure. To this end, the Judiciary Administrator agrees to revise the Notice of Application under Landlord and Tenant (Consolidation) Ordinance (Form 22) to include applications for disposal of properties left in premises by tenants, and to extend the time for making distress from between 9 am and 5 pm to 9 am and 7 pm. CSAs will be moved to that effect.

26. Concern has been raised on the services of Bailiffs. Members question if the low execution rate whereby only 14% of the Writs of Possession can be executed within the usual time frame of 30 days is attributed to the insufficient supply of Bailiffs. According to the Administration, the Judiciary Administrator has recently streamlined the internal working process and it is expected that 40% of the Writs can be executed within 30 days in the coming months. As to whether manpower and financial resources will be provided to the Lands Tribunal with a view to further expediting the repossession procedures, the Administration's explanation is while resources are tight, the Judiciary Administrator will continue to put its resources to optimal use and make necessary deployment where needed.

27. Members hold the view the current fees charged for the enforcement of orders are on the high side. To reduce the fees, consideration should be given to requiring Bailiffs to provide the valuation of properties upon repossession while landlords will decide on how the properties should be disposed of. According to the Administration, the fees charged for enforcement action include both statutory and incidental items. Statutory fees include commission amounts to 10% of the total amount of the arrears of rent claimed and fixed costs for the filing of the affidavit and the distraint. Incidental fees are the guard fees and travel expenses incurred incidentally to each occasion of execution. On the proposal of requiring Bailiff to provide valuation only, the Administration's view is that though Bailiffs are in practice performing duties loosely similar to inventory taking and valuation of the properties on the premises to facilitate repossession the delegation of power of final valuation to Bailiff will deprive tenants of the right to apply for a review of the valuation of the left over properties by the Bailiff as the landlord may have disposed of the properties already. This will lead to human rights implications.

Comprehensive review of the Ordinance

28. The Bills Committee considers that measures should be put in place to protect landlords against rogue tenants. In this connection, consideration should be given to including in the Bill a mandatory requirement for tenants to provide their personal information such as name, occupation, salary as well as past rental records to landlords, provided that such a requirement does not contravene the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO). Provision of false information will be subject to criminal liability. The Administration's view is that it does not agree to compel the disclosure of personal data by legislation albeit such disclosure is not prohibited by PDPO. 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 some permissible situations such as national security and public order. According to the Administration, whether a tenant can afford the rent and whether he will make the payment may or may not be related to the disclosure of certain personal particulars. As there are various reasons for non-payment of rent, compulsory proof of the particulars will only eliminate a small number of non-payment cases. Therefore, the proposed mandatory disclosure requirement, the failure of which will lead to criminal

liability, appears not to comply with the provisions of ICCPR. The Administration is of the view that disclosure of information should be left to the parties of the tenancy rather than the legislation. Besides, a landlord can still require personal information from the tenant even in the absence of the legislative provision, depending on the bargaining power of the parties. The imposition of criminal liability on the provision of false information by tenants is beyond the scope of the Bill since it is not relevant to any subject matter of the Bill. Moreover, the proposal for a new and unusual criminal offence will raise very significant new issues of principle which go beyond the details of the Bill.

29. While acknowledging the Administration's explanation, members remain of the view that the subject of disclosure of personal information warrants further consideration. Noting that a comprehensive review of the security of tenure provisions under the Ordinance will be conducted shortly, members request and the Administration agrees 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 will be considered in the context of the review. Involvement of sub-tenants in the legal proceedings at which the principal tenant is in default of rent payment will also be included in the review.

Recommendation

30. The Bills Committee recommends the resumption of the Second Reading debate on the Bill on 18 December 2002.

Consultation with the House Committee

31. The House Committee at its meeting on 6 December 2002 supported the recommendation of the Bills Committee to resume the Second Reading debate on the Bill on 18 December 2002.

Prepared by
Council Business Division 1
Legislative Council Secretariat
13 December 2002

Appendix I

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

Membership list

Chairman	Hon Audrey EU Yuet-mee, SC, JP
Members	Hon James TIEN Pei-chun, GBS, JP Hon James TO Kun-sun Hon HUI Cheung-ching, JP Hon CHAN Kam-lam, JP Hon TAM Yiu-chung, GBS, JP Hon Albert CHAN Wai-yip Hon LAU Ping-cheung (Total : 8 Members)
Clerk	Miss Becky YU
Legal Adviser	Mr Arthur CHEUNG
Date	1 July 2002

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Appendix II

A list of deputations
which have made written and/or oral representation to the Bills Committee

Estate Agents Authority

Hong Kong Bar Association

Hong Kong Owners Club

Hong Kong Real Estate Agencies General Association

Law Society of Hong Kong

Property Agencies Association Ltd

Comparison of Compensations for Premises Let in Parts under Existing and Proposed Methods of Calculation

Sliding scale of redevelopment compensation levels under Part IV of the Landlord and Tenant (Consolidation) Ordinance

Rateable Value (RV)	**Multiplier**
For the first $30,000 of the RV (where RV does not exceed $30,000)	7
For the second $30,000 of the RV (where RV exceeds $30,000 but does not exceed $60,000)	5
For the third $30,000 of the RV (where RV exceeds $60,000 but does not exceed $90,000)	3
For the remainder of the RV (where RV exceeds $90,000)	1

For a typical flat with a RV of $59,400 (i.e. monthly rent of $4,950), the existing statutory redevelopment compensation for the whole flat will be –

$30,000 x 7 + $29,400 x 5 = $357,000

If the flat is let in 10 portions with the following apportioned RVs, redevelopment compensations under the existing and proposed methods of calculation will be -

Portion	Floor Area (m^2)	Apportioned Rateable Value ($)	Old (1) Compensation ($)	New (2) Compensation ($)	Increase
Cubicle	4.7	6,360	38,220	44,520	16.5 %
Upper Bunk	2.0	3,480	20,920	24,360	16.4 %
Lower Bunk	2.0	3,480	20,920	24,360	16.4 %
Cubicle	4.7	5,160	31,010	36,120	16.5 %
Cubicle	4.8	6,000	36,060	42,000	16.5 %
Cubicle & Cockloft	7.0 + 2.5	12,600	75,720	88,200	16.5 %
Upper Bunk	2.3	3,480	20,920	24,360	16.4 %
Cubicle	6.9	6,360	38,220	44,520	16.5 %
Cubicle	9.7	9,000	54,090	63,000	16.5 %
Lower Bunk	2.3	3,480	20,920	24,360	16.4 %
Total	(73.1 whole flat)	59,400	357,000	415,800	16.5 %

Notes :

(1) Existing method of calculation is based on apportionment of the compensation of the whole flat as follows –

Cubicle	$6,360 ÷ $59,400 x $357,000 = $38,220	
Upper Bunk	$3,480 ÷ $59,400 x $357,000 = $20,920	
Lower Bunk	$3,480 ÷ $59,400 x $357,000 = $20,920	
Cubicle	$5,160 ÷ $59,400 x $357,000 = $31,010	
Cubicle	$6,000 ÷ $59,400 x $357,000 = $36,060	etc.

(2) Proposed method of calculation is based on apportionment of the RV as follows –

Cubicle	$6,360 x 7 = $44,520	
Upper Bunk	$3,480 x 7 = $24,360	
Lower Bunk	$3,480 x 7 = $24,360	
Cubicle	$5,160 x 7 = $36,120	
Cubicle	$6,000 x 7 = $42,000	etc.