

Legislative Council Panel on Housing
Review of Statutory Procedures for Repossession of
Domestics Premises and Recovery of Rent

PURPOSE

This paper seeks Members' views on the findings of the Working Group on review of statutory procedures for repossession of domestic premises and recovery of rent.

BACKGROUND

2. It is an issue of public concern that landlords have to go through a series of time-consuming and complicated statutory court procedures for recovering possession of leased domestic premises on the grounds of non-payment or arrears of rent. At the LegCo meeting on 16 June 1999, Members raised concern on this subject. The Administration then set up an interdepartmental Working Group comprising representatives from the Housing Bureau, Department of Justice, and Rating and Valuation Department to review the relevant statutory procedures. In addition, the Working Group also explored possible ways to tackle the problem of habitual rent defaulters.

Statutory procedures for repossession of premises

3. To recover possession of leased domestic premises on the ground of non-payment of rent, landlords may make applications to the Lands Tribunal, District Court or the Court of First Instance. At present, the majority (about 90%) of repossession cases are handled by the Lands Tribunal. In view of this, the interdepartmental working group decided to concentrate its focus on procedures in the Lands Tribunal.

4. At present, the repossession procedures involve:

(I) Application stage

- The process includes filing of application for repossession and application for hearing. Depending on the caseload of the Lands Tribunal and allowing time for filing of defence, the

hearing will usually take place within two months after filing of application for repossession.

(II) Relief stage

- Following the granting of an order for possession by the Lands Tribunal, there will be a four-week mandatory relief period. During this period, the tenant may settle the rent in arrears or vacate the property.

(III) Execution stage

- If the tenant does not settle the rent in arrears before the expiry of the relief period and does not give up possession of the premises, the landlord may apply for a writ to execute the court order by bailiffs. Upon the receipt of the Writ of Possession, the bailiffs now take about a month to execute the Writ and deliver vacant possession of the premises to the landlord.

5. The legal repossession process takes about four months to complete. However, the actual time of recovery may be longer where landlord defers commencing legal action until a number of rent payments have defaulted, or if the tenant applies to the court for stay of execution of the order. In practice, the average full recovery time is about six months.

6. The Working Group has examined the statutory procedures for repossession of premises and recovery of rent, and has identified areas for improvements at each stage of the repossession procedures.

Pre-application stage

- A landlord usually cannot repossess his premises on the ground of non-payment of rent before the end of the tenancy if there is no forfeiture clause relating to non-payment of rent in the tenancy agreement. He has to wait until the expiry of the tenancy in order to repossess the premises by opposing to the renewal of tenancy on grounds of non-payment of rent. The Working Group recommends that an implied

forfeiture provision should be added to Part IV of the Landlord and Tenant (Consolidation) Ordinance (LTO) to the effect that the tenancy can be forfeited if the tenant fails to pay rent within 15 days of the due date unless otherwise provided for under the tenancy agreement.

- In fact, this proposal has already been incorporated into the Landlord and Tenant (Consolidation) (Amendment) Bill 1999. Owing to the lapse of the 1999/2000 LegCo session in June 2000, the Amendment Bill will be reintroduced into the Legislative Council in the current session.

Application stage

- Under the present application procedures, a landlord can have an option to apply to set the application down for formal hearing or file a written application (with supporting affidavit) to request a judgment in default if the respondent tenant does not file any notice of opposition. However, only about 12% of the cases in the first nine months of the year adopt this fast-track procedure. For some unknown reasons, landlords rarely elect to pursue this simpler procedures. The Working Group considers that efforts should be made to increase landlords' awareness of the fast-track judgment in default procedures.
- For distress for rent procedures stipulated under Part III of the LTO, the landlord's application can be supported by an affidavit setting out in detail the facts of the case. A warrant of distress will be issued if the application is accepted by the District Court. This saves time and effort of having to first apply and then to wait for a hearing. The Working Group suggests that similar procedures should be considered for granting of repossession order on application by affidavit.

Relief stage

- Following the making of an order for possession by the Lands Tribunal, a respondent tenant is given a period of not less than four weeks within which he can pay all rent in arrears and costs of the legal action incurred by the landlord. The relief period is considered too long and unfair to the landlords. The Working Group proposes to shorten the mandatory

forfeiture relief period from four weeks to seven days. This will enable the landlord to execute recovery action faster, discourage the tenant from using this as a means to delay rent payments, and minimise the abuse of forfeiture relief period by habitual defaulting tenants.

- Part VI of the LTO now provides for fast-track application for repossession in the District Court. After the originating summons is served on the tenant, the Court will issue a warrant for execution by the Bailiff if the tenant does not attend the hearing or the court is not satisfied with his defence. No relief period will be provided. It is also not necessary to apply for execution of the warrant. However, the procedures under Part VI only cover repossession of small tenements where tenancy agreements have terminated, but not in cases where landlords take repossession action as a result of forfeiture of tenancies owing to non-payment of rent. The Working Group suggested that detailed consideration be given to the applicability of similar fast-track repossession procedures to Part IV of the LTO. The whole process of repossession can be shortened from 4 months to 2.5 months. We intend to incorporate this proposal in the Landlord and Tenant (Consolidation) (Amendment) Bill.

Execution stage

- The Judiciary is making efforts to shorten the waiting time for the execution of orders by bailiffs. The average time taken between first execution and delivery of vacant possession of the premises to the landlord has improved significantly from 46 days to 30 days in the past year.

Administrative measures

7. It is apparent that many landlords may encounter difficulties in handling the statutory procedures, and failure to comply with those procedures may result in delays in obtaining orders for possession. It is therefore very important that landlords should be well informed of existing legal procedures and have easy access to advisory and supporting services. In order to complement the legislative measures to streamline the statutory procedures, the Working Group proposes administrative measures to

facilitate the statutory procedures. These include -

- (a) supportive assistance should be provided at the Registry of the Lands Tribunal. The Landlord and Tenant Services Division of the Rating and Valuation Department should extend the scope of its service by providing assistance in filling out and lodging applications or oppositions by landlords and tenants at the Lands Tribunal. This service will supplement the distribution of guidance notes by the Registry of the Lands Tribunal;
- (b) efforts should be stepped up in enhancing publicity and public education to acquaint landlords with the statutory procedures for repossession of premises. The Judiciary Administrator has offered to produce information pamphlets, instruction sheets, and a video highlighting the concerned statutory procedures. The Judiciary Administrator has agreed to increase the channels for distribution of prescribed forms.

Habitual defaulters

8. “Professional tenants” operate with the intent either to delay rent payment or to avoid it altogether. The latter is particularly difficult to control because such tenants are usually well versed in the actions of the Courts and the procedures concerned. The Working Group has considered two options to tackle the problem. These include making the act of habitual default in rent payment a criminal offence and setting up a data bank to enable landlords to check whether a prospective tenant has any past records of non-payment of rent.

9. After detailed deliberation, the Working Group concludes that the above options cannot be pursued for the following reasons -

Criminal sanctions on habitual default in payment of rent

10. According to legal advice, non-payment of rent is a breach of contract for which civil remedies such as repossession or an action for debt are available. There are insufficient grounds to justify the creation of a new criminal offence of habitual default in rent payment having regard to

the far-reaching implications this would have on similar creditor-debtor relationships presently governed by the law of contract such as credit card companies vs. cardholders.

Data bank

11. At present, access to court records (which contain personal information to identify tenants involved in habitual defaults) by third parties will be subject to the approval of the Judge on application to the court. In view of such limited public access to court records, and the possible contravention of the Personal Data (Privacy) Ordinance for unlimited disclosure of personal information, the option of data bank will not be pursued.

CONSULTATION

12. Members are invited to comment on the above proposals.

**Housing Bureau
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