

Tel : 2869 9213
Fax : 2869 6794

MEMO

To : CAS(2)3
From : CAS(1)1
Ref : CB1/BC/14/00
Date : 9 July 2002

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

At present, a straight forward 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 relief stage of 28 days, a processing stage of 10 days and an execution stage of 30 days. The time chart of statutory procedures for repossession of premises is attached at the **Appendix** for your ease of reference. The Bill seeks to, among other things, expedite the repossession process by reducing the relief stage from 28 to seven days.

While agreeing that the proposal is a step forward in the right direction, members of the Bills Committee hold 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 allowing landlords to set down the case for hearing at the time of lodging application for Order of Possession, automatic execution of possession order by bailiff without the need to apply to court for leave to issue Writ of Possession and having in place a similar summary judgement procedure as that in the High Court under the Bill.

According to the Administration, the Government's internal Working Group, in conjunction with the Judiciary Administrator, has thoroughly reviewed the repossession procedures in formulating the proposals in the Bill. Improvements where appropriate have been incorporated into the Bill based on the principle of maintaining justice and fairness for all parties in the legal process. On the proposal of 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. The Tribunal will most unlikely 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.

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-tenants that there is a proceeding between the landlord and tenant. While the 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.

As regards 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 has given notice of intention to defend the action, the plaintiff 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 proceedings, unless it is very clear that the tenant has no defence to the claim.

Despite the Administration's explanation, members of the Bills Committee 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. Additional manpower and financial resources may be required to the facilitate the courts in handling these claims. In this connection, members of the Bills Committee agree that the subject be referred to the Panel on Administration of Justice and Legal Services for necessary follow-up.

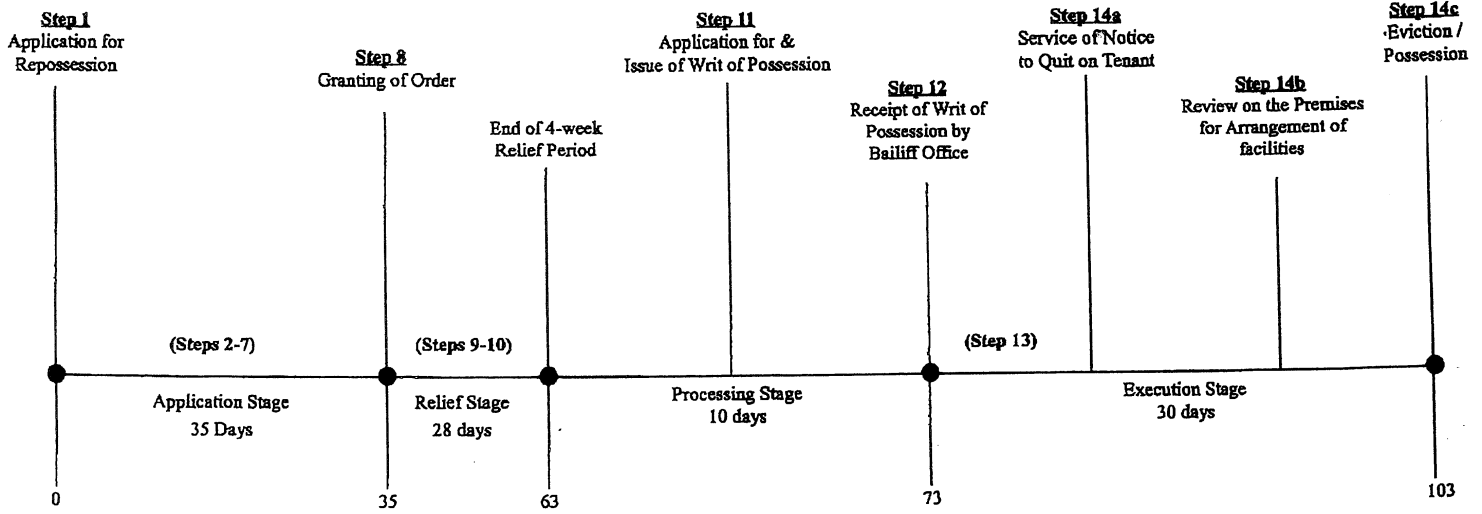
With best regards,

(Miss Becky YU)
CAS(1)1

Encl.

Item 6
 6. To put down in the time charts on statutory procedures for repossession of premises (tabled at the meeting) references of the relevant ordinances, authorities and orders.

Time Chart
Repossession of Premises for Non-payment of Rent where a Notice of Opposition has been filed
 (Lands Tribunal – existing relief period)



Notes :

1. The Chart illustrates a straightforward case which takes a total of 103 days. During the period an order is granted in about 35 days from the application date. The same process can however, take longer time depending on the circumstances of the case.
2. A relief period of 4 weeks will be granted following the order.
3. Please refer to attached table for details of steps and timings.