

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Honourable Howard YOUNG

- 5 (a) In subclause (1)-
- (i) by deleting "appointed day" wherever it
 appears and substituting
 "commencement date";
- (ii) by deleting "之前已存在的屬" and
 substituting "的前一天屬存在的".
- (b) By deleting subclause (2) and substituting –
- "(2) On and after the commencement date, a
 tenancy to which Part IV applies and which is in
 existence on the day before the commencement
 date, but in respect of which no notice or request
 has been given or made before the
 commencement date under section 119 or 119A
 of the principal Ordinance, may, subject to
 subsections (2B) and (2C), only be terminated

by a transitional termination notice as provided
for by section 5A.” .

(c) By adding –

“(2A) The term “the tenancy” (該租賃) as
used in subsection (1)(c) and (d) does not
include any new tenancy granted
pursuant to Part IV on or after the
commencement date.

(2B) The requirement in subsection (2) for a
transitional termination notice in respect
of a tenancy, and any such notice that
has been issued in respect of a tenancy,
ceases to apply if, on or after the
commencement date –

(a) the parties to the
tenancy –

(i) agree to
some other
period for

notice of
termination;

or

- (ii) alter any
other term
of the
tenancy; or

- (b) the tenancy is assigned to
a new tenant.

(2C) Subsection (2) is without prejudice

to –

- (a) section 5B(1) as to the
making of an order for
possession;
- (b) any right of forfeiture
conferred on a landlord;
- (c) any right of surrender or
early termination
conferred on a tenant.

(2D) (a) The benefits and protection afforded by this Part shall, in any tenancy to which it applies, be available to the widow, widower, mother, father, or any sister, brother, daughter or son over the age of 18 years of the tenant where she or he was residing with the tenant at the time of the tenant's death; and, for the purposes of this Part, references to a tenant shall except in this subsection include a reference to such widow, widower, mother, father, sister, brother, daughter or son.

(b) Only one person mentioned in paragraph (a) shall be entitled to the benefits and protection of this Part at one time and, in default of agreement by those persons, the Tribunal shall nominate that person on such grounds as appears to it to be just and equitable.

(c) The benefits and protection afforded by this Part shall not be available to a personal representative of a deceased tenant or, notwithstanding any will or the law of succession

on intestacy, any other
person who is not a
person mentioned in
paragraph (a) as entitled
to those benefits and that
protection.

(2E) On and after the commencement
date, a tenancy which would have
terminated, but for the requirement
in subsection (2) for a transitional
termination notice, shall, until
terminated by such a notice, but
subject to section 5B, continue at
the same rent and upon the same
covenants, conditions and other
terms of the original tenancy as are
appropriate to a month to month
tenancy."

(d) In subclause (3) –

- (i) by deleting "appointed day" and substituting "commencement date";
 - (ii) by deleting "that day" and substituting "that date".
- (e) In subclause (4) –
 - (i) by deleting "appointed day" and substituting "commencement date";
 - (ii) by deleting "that day" and substituting "that date".
- (f) In subclause (5) –
 - (i) by deleting "appointed day" where it twice appears and substituting "commencement date";
 - (ii) by deleting "that day" and substituting "that date".
- (g) In subclause (6), by deleting "appointed day" and substituting "commencement date".

New

By adding immediately before Part 3 –

"5A. Transitional termination notice

(1) For the purpose of section 5(2), a "transitional termination notice" (過渡性終止通知書) means a written notice of termination of a tenancy served on or after the commencement date in accordance with this section.

(2) A transitional termination notice must be served –

(a) by a landlord, in the case of a tenancy of premises of which the rateable value does not exceed \$36,000, not less than 36 months, and in any other cases; not less than 12 months; or

(b) by a tenant, not less than 1 month,

before the day on which it is to take effect.

(3) A transitional termination notice may be served at any time on or after the commencement date,

but –

(a) in respect of a fixed term tenancy which was in existence on the day before the commencement date, may not be served earlier than the last day of the term;

(b) in respect of a periodic tenancy which was in existence on the day before the commencement date, may not be served earlier than the last day of the period of the tenancy current at the commencement date.

(4) A transitional termination notice may be served in any of the ways specified in section 119Y(1) of the principal Ordinance and subsection (2) of that section applies to such service.

- (5) Where a transitional termination notice is served on a tenant, if –
- (a) the notice is in both Chinese and English; and
 - (b) the notice is posted on 3 successive days upon the main door or entrance of the premises affected,

the notice shall take effect terminating also any sub-tenancies created out of the tenancy to which it relates.

- (6) Subject to section 5(2B), a transitional termination notice duly served in respect of a tenancy in accordance with this section takes effect according to its terms, notwithstanding –

- (a) a change of landlord that does not create a new tenancy;
- (b) any express or implied provision in the tenancy regarding the giving of notice of termination

(subject to section 5(2C)(c) as to

early termination); or

- (c) any other rule of law regarding the date on which a termination notice takes effect.

(7) For the purposes of subsection (2)(a), the rateable value of any premises shall be —

- (a) in the case of premises included in the valuation list declared in March 2004 under section 13 of the Rating Ordinance (Cap. 116), the rateable value contained in that list;

- (b) in any other case, the rateable value which would have been contained in the list referred to in paragraph (a) had the premises been included in that list, as certified by the Commissioner of Rating and Valuation.

(8) For the purpose of subsection (7), where any part of premises is let or

sublet-

(a) “premises” refers to that part of the

premises which-

(i) in the case of the tenant,

is the subject of the

tenancy and not the

subject of the sub-

tenancy;

(ii) in the case of the

subtenant, is the subject

of the sub-tenancy and

not the subject of any

other sub-tenancy;

(b) The rateable value of part of the

premises that is let or sublet shall be

the amount of rateable value of the

premises attributable to that part, as

certified by the Commissioner of

Rating and Valuation.

5B. Other transitional provisions

(1) During the continuance of a tenancy as

described in section 5(2E), the Tribunal may, on the

application of the landlord, make an order for

possession of the premises to which the tenancy relates, or any part of them, notwithstanding that a transitional termination notice in respect of the premises has not been served, or has been served but has not expired, if the Tribunal is satisfied that the premises are, or that that part of them is, reasonably required by the landlord for occupation as a residence for himself, his father, his mother or any son or daughter of his over the age of 18.

(2) The Tribunal shall not make an order for possession under subsection (1) if –

(a) in the case of a tenancy, the tenant satisfies the Tribunal that, in all the circumstances of the case, it would manifestly not be just and equitable to make the order; or

(b) in the case of a sub-tenancy, the Tribunal is satisfied in all the circumstances of the case,

including whether other accommodation is available for the principal tenant or the sub-tenant, greater hardship would be caused by making the order than by refusing it.

(3) If the Tribunal makes an order for possession under subsection (1) –

- (a) the Tribunal must specify the name of the person for whose occupation it is satisfied the premises are, or the part of the premises is, required;
- (b) subject to subsection (4), the landlord must not, for a period of 24 months after the date of the order, use, or allow the use of the premises, or the part of the premises, other than as a

residence for the person specified

under paragraph (a);

- (c) subject to subsection (4), the landlord must not, for a period of 24 months after the date of the order –

(i) let the premises or any part of them;

or

(ii) assign transfer or part with possession of the premises or any part of them.

(4) If the Tribunal makes an order for possession under subsection (1), the Tribunal may authorize the landlord to –

- (a) let the premises or any part of them;

- (b) assign, transfer or part with possession of the premises or any part of them; or
- (c) use, or allow the use of, the premises, or any part of them, other than as a residence for the person specified under subsection (3)(a).

(5) The Tribunal, when granting an authority under subsection (4) to let, must specify the terms, including the rent, on which the premises are, or the part of the premises is, to be let, and the rent must not be more than that payable by the tenant last in possession.

(6) Without prejudice to subsection (8), a landlord who contravenes subsection (3)(b) or (c) commits an offence and is liable on conviction on indictment –

- (a) to a fine of \$500,000;

(b) in addition, on a second or subsequent conviction, to imprisonment for 12 months;

(c) in any case, to forfeit a sum not exceeding the equivalent of –

(i) in the case of a contravention of subsection (3)(c)(i), 2 years' rent calculated at the rate at which the premises were let without the authority of the Tribunal; or

(ii) in the case of a contravention of subsection (3)(c)(ii), the

difference, at the
date of the
contravention,
between the
market value of
the premises with
vacant possession
and the market
value of the
premises with the
former tenant in
possession.

(7) A court which sentences a landlord for an offence under subsection (6) may, in addition to imposing a penalty under that subsection, make an order under subsection (8) after hearing the former tenant and the landlord.

(8) If –

(a) an application for a possession order by the landlord is made under subsection (1) and it is subsequently made to appear to the Tribunal that the application was successful by reason of the misrepresentation or concealment of material facts by the landlord;
or

(b) the landlord is shown to have acted in contravention of subsection (3)(b) or (c),

the Tribunal or, as the case may be, the court referred to in subsection (7) may order the landlord to pay to the former tenant such sum as it thinks fit by way of compensation for damage or loss sustained by that tenant as a result of the application.

(9) A letting, assignment, transfer or parting with possession of premises or part of them shall not be void,

voidable or unenforceable by reason only of a
contravention of subsection (3)(b) or (c).

(10) A landlord who has been granted an order for
possession pursuant to subsection (1) shall be
presumed, until the contrary is shown, to have
knowledge of the making of the order, of the terms of
the order, and of any consent given by the tenant or sub-
tenant in connection with the delivery of vacant
possession.

(11) For the purpose of subsection (1) –
"his father, his mother or any son or daughter of his" (其

父親、母親、兒子或女兒) includes the father,

mother, son or daughter of one or more

landlords, holding the premises jointly or in

common, with the other landlord or landlords so

holding assenting to the application for an order

for possession;

"landlord" (業主) includes one or more landlords,

holding the premises jointly or in common, with

the other landlord or landlords so holding
assenting to the application for an order for
possession."