

Panel on Administration of Justice and Legal Services

Court Procedure for Repossession of Premises

Purpose

1. This paper reviews the impact of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2002 on the Lands Tribunal and sets out recent measures introduced within the jurisdiction of the Judiciary to streamline the court procedure for repossession of premises.

Background

2. The Landlord and Tenant (Consolidation) (Amendment) Bill 2001 was passed on 18 December 2002 and came into operation on 27 December 2002. It provided, inter alia, for the shortening of the mandatory relief period from a minimum of 28 to 7 days following the granting of an order of possession to allow the tenant a final opportunity to settle the rent in arrears before a Writ of Possession can be executed. The purpose was to minimise the abuse of the relief period by habitually defaulting tenants. The impact of this amendment on the operation of the Lands Tribunal is reported in paras. 4–9 below.

3. In examining the Amendment Bill, the Bills Committee requested the Panel on Administration of Justice and Legal Services to further examine a number of proposals to streamline the statutory procedure for repossession of premises to protect the interest of the landlords. Among them, a proposal on allowing landlords to set down their cases for hearing at the time of lodging an application for repossession at the Lands Tribunal concerns the Judiciary. Our position is described in paras. 10–15 below.

Impact of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2002

4. The operation of the Amendment Ordinance has not created any adverse impact in terms of caseload, waiting time for hearing at the Lands Tribunal and execution of Writs of Possession by the Bailiff service.

Caseload and Waiting Time

5. In 2003, there were 5616 applications for repossession filed with the Lands Tribunal, an increase of 12% over the 5034 applications in 2002.

6. Despite the increase in the number of cases filed, waiting time from the date of application for repossession to first hearing fell from 54 days in 2002 to 45 days in 2003. The time taken for granting a default order for possession from the date of application was even shorter, falling from 39 days to 35 days.

Relief against forfeiture

7. The Landlord and Tenant (Consolidation) (Amendment) Ordinance 2002 shortened the relief period against forfeiture from 28 to 7 days. Such relief only covers cases where the ground for an order of possession is non-payment of rent. Other grounds to claim possession include unlawful subletting, immoral or illegal use of the premises by the tenant, or repossession for the landlord's own use.

8. In 2003, the Lands Tribunal granted 1354 Writs of Possession, of which 351 (26%) were subject to the mandatory relief period. The corresponding figures in 2002, were 1407 and 340 (24%) respectively, showing no significant difference between the two years. Nonetheless, since the relief period is shortened, the time taken for application and issue of Writs of possession would have been correspondingly reduced.

Execution of Writs of Possession

9. At the time when the Amendment Bill was being examined, the Bills Committee noted that only about 14% of the Writs of Possession could be executed by the Bailiffs within 30 days. The Bills Committee was informed that the Judiciary Administration was introducing new working procedures in this respect. Such business process re-engineering initiative has been very successful. In 2003, 92% of the Writs of Possession cases were executed within 30 days, the average being 25 days.

Allowing landlords to set down the case for hearing at the time of lodging an application for repossession

10. The Bills Committee noted that the lead time between the date of application for repossession and the date of the first hearing was 35 days for a straight-forward case. It took the view that consideration should be given to further streamlining the procedure by allowing landlords to set down their cases for hearing at the time of lodging an application for repossession.

11. At present, Rule 14 of the Lands Tribunal Rules prescribes that an application for hearing can only be made after a notice of opposition has been filed or the time for so doing has elapsed (i.e. within 14 days of service of the notice of application – Rule 69). If service of the notice of application is

effected by post, it shall be deemed to have been effected at the time at which the document would be delivered in the ordinary course of post (Rule 7(2)). Pursuant to Practice Direction 19.2, in the case of ordinary post, service is presumed to have been effected on the second working day after posting. Hence, there is a prescribed window of at least 15 days between the date of application for repossession and the date of application for hearing.

12. Further, Rule 14(1)(b) requires a minimum of 3 days' between the application for hearing and the actual listing of the case by the Tribunal. Then the Tribunal has to give at least 14 days' notice to the parties in respect of the hearing days. In other words, there has to be at least another 17 days between the application for hearing and the actual hearing date.

13. These statutory requirements account for a minimum of 32 days between the date of application and the date of hearing. Hence the existing lead time of 35 days means an effective waiting time of only 3 days, which is very short by any standard.

14. In about 50% of the repossession cases, the tenants do not file a notice of opposition. The landlords are therefore able to obtain a default judgment for repossession 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 the landlord. If this specific proposal is implemented, by the time the landlord knows that the tenant has not filed a notice of opposition and he applies to vacate the hearing, the hearing date will just be a few days ahead. It is most unlikely that the Tribunal will be able to fix another hearing for the vacated slot. Therefore, the proposal will result in a waste of resources and in turn lengthen the court waiting time.

15. Nevertheless, with a view to giving priority to repossession cases, the Lands Tribunal has adjusted its listing practice from January 2004. At least one day in a week a court will be assigned to deal exclusively with repossession cases, with the hearing in the form of a callover hearing. A large number of cases (15–20) will be listed and straightforward cases can be disposed of immediately. More complicated cases will be adjourned to follow the regular listing schedule. It is estimated that 80 % of the cases can be disposed of in this manner. It should further reduce the waiting times reported in para. 6 above, in particular, those for default orders. We shall monitor the results of this new practice. If necessary, the number of these callover hearings in a week can be increased.