



9th March 2004

Mrs Percy Ma
Clerk to the Panel on Administration of Justice and Legal Services
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Madam,

Re: Request for Revision of Law relating to Trespass
and Abuse of the Landlord and Tenants Ordinance

We take the liberty of enclosing herewith a copy each of our letter to the Chairman of the law Reform commission of Hong Kong dated 26th February 2004 and their reply dated 5th March 2004, both of which are self-explanatory. We hope the law relating to re-possession of property should be revised to obviate abuses like those cases we reported.

Thank you for your kind attention.

Yours faithfully
For and On behalf of
Hip Shing Hong Dev. Co. Ltd.

David Fong



香港法律改革委員會
THE LAW REFORM COMMISSION OF HONG KONG

5 March 2004

Mr David Fong
Director
Hip Shing Hong Development Company Limited
23/F Hip Shing Hong Centre
55 Des Voeux Road Central
Hong Kong.

Dear Mr Fong,

Landlord and Tenant Ordinance (Cap 7)

The Secretary for Justice has asked me to reply on her behalf to your letter of 26 February 2004, suggesting that the ~~Law Reform Commission~~ consider a review of the procedure by which a landlord obtains repossession of his premises.

As you may know, the Commission considers for reform those areas of law which are referred to it by the Secretary for Justice or the Chief Justice. In choosing which subjects are appropriate for referral, the Secretary for Justice and the Chief Justice consider a number of criteria. One of these is whether there is a specialist body with expertise in the particular area of law in question, or if there is already a review in progress elsewhere. In those circumstances, the subject is unlikely to be referred to the Commission. So, for instance, the Standing Committee on Company Law Reform, or the Court Users' Committees, would be better placed than the Commission to consider company law or court procedural matters respectively.

I understand that members of the Legislative Council's Bills Committee on the Landlord and Tenant (Consolidation) (Amendment) Bill 2003 suggested that the procedure for repossession should be reviewed and this has recently been the subject of consideration by the Legislative Council Panel on Administration of Justice and Legal Affairs. In a paper presented to the Panel on 29 January 2004 the Judiciary Administrator indicated that, with a view to giving priority to repossession cases, the Lands Tribunal has adjusted its listing practice from January 2004.

In the circumstances, you may wish to bring your concerns to the attention of the Legislative Council Panel by writing to:

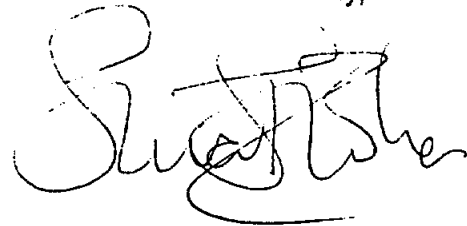
Mrs Percy Ma
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Legislative Council
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8 Jackson Road
Central
Hong Kong

Alternatively, you may wish to write to the Judiciary Administrator, whose address is:

Judiciary Administrator
Judiciary
High Court Building
38 Queensway
Hong Kong.

I hope this assists, and thank you for your interest in the work of the Law Reform Commission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Stuart M I Stoker', written in a cursive style.

(Stuart M I Stoker)
Secretary
Law Reform Commission

#305162

26th February 2004

COPY

The Hon. Miss Elsie Leung GBM, JP
Secretary for Justice
Chairman
Law Reform Commission
20/F, Harcourt House,
39 Gloucester Road, Wanchai,
Hong Kong

Dear Madam,

Re: Request for Revision of Law relating to Trespass
and Abuse of the Landlord and Tenants Ordinance

We are the owner of a portfolio of over 1.5 million square feet of investments properties. We are the victim of trespassers who make use of loopholes and time lags of the tenancy law. May we take the liberty of attaching herewith the facts of a cases, which may perhaps justify your consideration of revising the law relating to the landlord's application for vacant possession of premises where defaulting tenants, sub-tenants and trespasses are abusing the law.

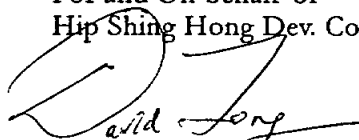
We would like to draw your attention that the tenant failed to pay rent in June and July 2003. After Dstraint proceedings and auction took place in August, the trespasser / sub-tenant began to occupy the premises and to do business. We then followed up with the application for vacant possession. It was not until 15th January 2004 that we were able to re-entered the premises. The trespasser / sub-tenant has already enjoyed about five months of rent-free occupation, for which we received no rent at all. We could not take action against them to claim for damages because they did not identify themselves. The same sequence of events happened to the shop we own next door, exhibiting a pattern. The two cases were reported to the Commercial Crime Bureau. In fact, this phenomenon is common in Hong Kong. You may find more examples if you do some research.

Could you imagine the damages small investors would suffer if he were up against a mortgage payment and other taxes? And how easily organized crime can make a profit without costs? If this loophole were not stopped, it would adversely affect the real estate investment climate and Hong Kong's reputation.

Hence, we hope we are not that naive to submit this case for your consideration of some urgent revision of the law so that justice is done. Perhaps streamlining of administration procedure will be very helpful

Thank you for your kind attention.

Yours faithfully
For and On behalf of
Hip Shing Hong Dev. Co. Ltd.



David Fong
Director

/MKL/am

有關：北角和富道嘉洋大廈 A 舖
由三房客非法佔用而引至收樓案件報告

本案起源於零三年七月三十日，由訴訟部聯同執達吏到封，租客欠 6 及 7 月租金共 HK\$46,200.00。6/8/2003 拍賣，由其他人仕投得貨物進場，及後公司收到由“丹華牛仔褲公司”之傳真，稱以 HK\$15,000.00 與公司之租客租得此舖，13/8/2003 指示 W. I. Cheung & Co 辦理有關收回舖位手續。

有關該舖之收樓手續之法律程序，如下：

1. 20/08/2003 先去信租客及各三房客，給予五天時間搬出及矯正所犯之錯誤；此信由 W. I. Cheung & Co 發出。
2. 22/08/2003 由 Kinght & Ho 代表“丹華”覆信 W. I. Cheung & Co., 否認有佔用該舖。
3. 01/09/2003 基於上述，由於丹華非三房客，W. I. Cheung & Co 需重發信與各佔用人，由 1/9 起再予以五天時間各搬出。
4. 06/09/2003 W. I. Cheung 草擬 statement of claim 備入稟法庭告租客毀約及要求收樓。
5. 21/10/2003 已取得法庭之 Final and Interlocutory Judgment, 業主獲勝訴。
6. 31/10/2003 W. I. Cheung & Co 須按例，派員往張貼通告三天，並給予七天時間，勒令遷出。
7. 03/11/2003 W. I. Cheung & Co 於需向法庭申請 writ of possession, 待批後才能約 Bailiff 執行收樓。
8. 11/12/2003 W. I. Cheung & Co 經辦人 Mr. Wong 稱已取得法庭之 possession order, 待交往執達吏處排期，到定期便聯同執達吏到物業處張貼 NTQ。於張貼後約十天再 review, 日期七天才能正式收樓(由執達吏收)。Mr. Wong 稱可能要一月初才能正式收回。
9. 15/12/2003 W. I. Cheung & Co. Mr. Wong 來電確定了已相約執達吏於 19/12/2003 上午派票/NTQ 及到封。
10. 18/12/2003 由執達吏到封，如佔用人不付款，於 29/12/2003 上午 11:00 拍賣，拍賣後如佔用人仍未遷出則再約執達吏收樓，如佔用人不遷出，業主有權代搬走其貨物往別處，限三天內到取，否則當棄置物處理。
11. 29/12/2003 由 W. I. Cheung & Co. 聯同 Bailiff 到封，搜封價值約 16,000 貨物，備 29/12/2003 拍賣，拍賣款約 4,000 餘元，由第三者投得。
12. 15/01/2004 律師樓及執達吏聯同訴訟部同事相約在該舖，於中午執行收樓令，順利收回舖位。

日期：2004 年 01 月 26 日
報告：Alan Mak