

Your Ref: CB(3)/PAC/R47

Dated 11 April, 2007

BY e-mail & fax

The Legislative Counsel,

The Hong Kong Special Administrative Region of the People's Republic of China,

Dear Sirs,

**Re: The Director of Audits' Report on the
Result of value for money audit (Report No.47)
Chapter 2: Administration of short term tenancies**

I refer to your letter of 13th February 2007 and am sorry for the delay in responding as, given the fact that I have retired from my Civil Service sometime ago and that to answer satisfactorily the questions raised in your letter, it would be necessary for me to retrieve relevant documents from the Lands Department. In the course of my attempts to trace relevant files and records, I have encountered practical difficulties in that I did not receive the co-operation from my former colleague as I would otherwise expect. The Lands Department only allowed me to access to some, but not all as I have requested, the relevant file records during my visit on 27th February 2007.

Despite that, I have found some relevant documents, albeit falling short of my expectation both as to quantity and quality, to assist me in dealing with the captioned issue. The following contains a concise response to the matter of your concern.

Nevertheless, to assist Honourable Members of the Public Accounts Committee with their enquiries, it may be more helpful for me to set out the chronology of material events and then to deal with the questions posed by the Public Accounts Committee. Answers to these questions would be apparent from the chronology.

On 11th November 2002, Madam Yvonne Cheng, the then Estate Surveyor/S(ES/S) submitted a rent review assessment on file (see Appendix 1) to me via Mr. Peter Tsang, the then Senior Estate Surveyor/SE(SSES/SE) for approval and on

22nd November 2002, Mr. Peter Tsang recommended to me for approval of ES/S's valuation/submission albeit subject to the tenant rectifying the breach as depicted in a letter at F.(65) (see Appendix 2). It would be apparent from these documents that the Lands Department had already been made aware of the breach of the terms of the tenancy latest as at November 2002.

On 23rd November 2002, I approved the recommendation of Ms Yvonne Cheng and made the following remarks in the file:-

'As the tenancy is running on [a] quarterly base and you recommend [that] there is no change in rental value, we don't have to inform the tenant about maintenance of existing rental until after 1st March 2003 (which was the rent review due date). Meanwhile action to purge the breach in use should proceed as normal'

The above remark made by me reflected my then attitude as to the breach of the tenancy agreement on the part of the tenant i.e. the government should not tolerate any breach of the tenancy agreement.

On 4th December 2002, whilst I was conducting site visits of a land control action case and some other cases in the same area, Mr. Peter Tsang arranged a site inspection on the subject premises for a second check on the rent review assessment previously submitted by Ms. Yvonne Cheng. In the course of our inspection, some photographs were taken by my colleague showing the subject premises in question.

On 9th December 2002, in the course of processing the rent review assessment, Ms. Yvonne Cheng, Mr. Peter Tsang and I myself had a discussion on the subject matter and, before us were the photographs taken of the subject premises taken on 4th December 2002. The written explanation from the tenant of 26th November 2002 was noted at F.(68) (see Appendix 3). It was obvious from my observation from both the said photographs that there was no storage of any dangerous goods although dogs were kept in the porch. Neither was there any sight of human habitation nor was there any bathroom facilities there save and except a watchman staying overnight on the subject premises which had previously been approved by the former DLO/ST on 29th May 2002. This user was consistent and compatible with the permitted user under the

tenancy agreement - 'storage of non-dangerous goods and a kennel'. As goods would necessarily include, inter alia, disused furniture, gardening tools, the presence of which could not be relied upon as a ground to challenge the tenant's user.

It is necessary to refer to records of an earlier visit made by Mr. Paul Clift, the former DLO/ST, who had gone to the subject premises on 22nd April 2002 with his colleague, Mr. Peter Tsang, to deal with the request of the tenant to have a watchman staying at the subject premise. From the file records, there was no report of any sight of breach of the tenancy agreement found on that visit (see Appendix 4).

Hence, from the available documents before me at that time, there was no material before me to form any view that there had been a continuous breach of the tenancy agreement in that the subject premises had been continuously used for residential purposes. From the available information and photographs, I concluded in M170 in the file of my rent review assessment approved so that Ms Yvonne Cheng could proceed with the rent review proceedings. I remain of the view that my assessment was a correct one given the information available to me did not point to breach of the tenancy agreement as to user.

Had Lands Department(LD) revealed the document at Appendix 5 and the aforesaid documents to Honourable Members of the Account Committee, the falsity of the Background Statement (d) supplied by LD that '.....DLO/ST had conducted two site visits ' is plainly untrue.' Not only that it was possible from file records to ascertain the actual number of visits paid by DLO/ST, but also that the identity of the persons visiting and the actual dates of the visits, had they thoroughly checked all the files kept by DLO/ST office.

To disillusion the misgivings of some of the Honourable Members of the Account Committee as to whether it would be unusual for DLO/ST personally to conduct site visits, I have also, during my revisit of the relevant file records with the Lands Department that the following site visits had actually conducted by senior officers of the Lands Department:-

- (a) On 14th December 1999, Mr. Paul Clift, the former DLO/ST, and the SES/SE visited and inspected the subject premises in connection with breach of the tenancy agreement (see Appendix 6).
- (b) On 17th January 2000, Mr. Allan Hay, the former AD/NT, visited and inspected the subject premises as a result of direct representation from the tenant (see Appendix 7).
- (c) On 2nd March 2000, Mr. Paul Clift, the former DLO/ST, visited and inspected the subject premises together with SES/SE (see Appendix 8).
- (d) On 22nd April 2002, Mr. Paul Clift, the former DLO/ST, visited and inspected the subject premises as a result of being contacted by the Director of Lands for the purpose of considering whether a watchman should be allowed to stay overnight thereat (see Appendix 4).
- (e) On 8th August 2006, the serving DLO/ST and Ms Trevina Hung, the SES/SE, and Mr. Frances Ng, the AD/NT, visited the subject premises consequential upon complaints revealed from the press (see Appendix 9).

It is noteworthy from the rent review submission at M170 (see Appendix 1) that Ms Cheng only disclosed the following matter for my consideration:-

'...we are currently taking action against the tenant for breach of use under the terms of the tenancy. F(65) refers'

I had never been advised to refer to any other file notes or previous inspection records in the file. Hence, there was no basis upon which I could make any comment on the remark made by Ms. Cheng. My attitude to this submission could also be reflected from the remark that I had made in the file – I would not tolerate any breach of any tenancy agreement with the Government.

From my revisit of the relevant files on 27th February 2007 and also from my recollection of the events, I had never communicated or contacted the tenant during the period between 22nd October 2002 and 4th December 2002. As a matter of fact, I have never seen the tenant at any time.

It may also worth mentioning that, from the contents of the file records, on 22nd December 1999 and 2nd March 2000, the tenant had contacted and/or met with

the former DLO/ST (see Appendices 8 and 10) apparently concerning matters relating to the process of his tenancy. The file records also revealed that on 28th February 2000 the tenant had spoken to the Director of Lands as well as to AD/NT requesting to broaden the user clause in the tenancy agreement to include 'kennels' as part of the 'storage' use (see Appendix 11).

My comment on the interpretation of the 2 site visits conducted by Mr. Peter Ho and Mr. Raymond Yu in 2005 and 2006 are as follows:-

(a) As apparent from the file records, Mr. Yu had been instructed to inspect the subject premises on 1st August 2006 consequential upon a complaint from the press. The Senior Estate Surveyor/SE, District Lands Officer/Shatin and the Assistant Director/New Territories also inspected the same on 8th August 2006 (see Appendix 9). Despite that, there was no record in the file showing any disagreeing conclusion or findings by AD/NT. Subsequently, on 14th August 2006, Mr. Yu was asked to make a statement about his visit as to the user of the subject premises (see Appendix 12). According to Land Instruction on processing of complaints, it was the duty of AD/NT to monitor important complaints from the public or the press. He had been charged with the duty to assign the most appropriate officer to advise him after a full investigation of the matter inclusive of any arrangement of site inspection by the appropriate officer. According to the convention, office procedure and practice, Mr. Yu's report and findings on 14th August 2006 should have been considered and endorsed by his seniors i.e. SES/SE, DLO/ST and AD/NT before it would be prepared and kept in the file. In the event of any disagreement of the contents of the report from his senior officers, AD/NT should arrange another site inspection by a more senior and qualified officer to do so. On important issues, AD/NT should also have given guidelines to deal with the complaint whenever necessary.

(b) As to the site inspection conducted by Mr. Peter Ho, the Project Surveyor, on 28th September 2005, it is noteworthy to mention that, as a qualified surveyor with over 10 years experience, the following notes were made by him thereafter:-

'...the findings of his site inspection were reported in the Case Progress Meeting held on 29 Sept, 2005...' (see Appendix 13)

It is apparent that, given Mr. Ho's independent professional judgment and findings on the user of the subject premises having been discussed and endorsed by the Case Progress Meeting. It is also worth mentioning that the Case Progress Meeting was chaired by the DLO/NT with her there were 2 Senior Estate Surveyors.

(c) I would have thought that, given the contents of the file records, it would not have been possible for Mr. Ho and Mr. Yu to compare the occupation and user after 2 site inspection if they had not seen the nature of the actual occupancy and all relevant factors affecting the same in these 2 site visits. It must be borne in mind that there was a time gap of some 4 years in between the visits.

(d) As the Lands Department has confirmed in his letter of 29th March 2007 that the statements made by Director of Lands as had been reported in pages 93 and 106 of the record of the PAC Meeting on 28th November 2006 were based upon site inspections reports of Mr. Ho and Mr. Yu of 29th September 2005 (Appendix 12) and of 14th August 2006(Appendix 13), it would be impossible for him not to have noticed that the findings of the two inspections had been endorsed and closely monitored by their seniors .

I hope that the above would serve as my answers to the questions posed by Honourable Members of the Account Committee.

Yours faithfully,

Leung Kwai Lam

**Note by Clerk, PAC: Appendices 1 to 13 not attached.*