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 來函檔號 Your Ref: CB(3)/PAC/R47



地政總署總部
 LANDS DEPARTMENT
 HEADQUARTERS

我們矢志努力不懈，提供盡善盡美的土地行政服務。
 We strive to achieve excellence in land administration.

香港北角渣華道三三三號北角政府合署二十樓
 20/F., NORTH POINT GOVERNMENT OFFICES
 333 JAVA ROAD, NORTH POINT, HONG KONG

網址 Web Site: www.info.gov.hk/landsd

TO: Legislative Council Building
 8 Jackson Rd, Central
 Hong Kong

(Attn.: Ms Miranda HON –
 Clerk, Public Accounts Committee)

December 11, 2006

Dear Ms HON,

**The Director of Audit's Report on the
 Result of Value for Money Audits (Report No. 47)**

I refer to your letter dated 1.12.2006 requesting additional information for the listed items concerning the above.

2. For item (a), as mentioned at para. 2.15 in the Audit Report, once a tenant had legal proceedings against the Government, the LandsD had difficulties in recovering the rent arrears and repossessing the sites because of the ongoing legal proceedings. During the public hearing on 28.11.2006, we reiterated the same point and stressed that to enforce payment of rent during the course of proceedings, applications for appropriate cases have been made to court for interim payment of rent. While it would not be appropriate to disclose the legal advice on specific cases, a note on the issues of concern is prepared and is at Appendix A for your information.


3. For item (b), LandsD has discussed the issues with D of J in the past and understand the position well. It would not be correct or fair to say that Government is unable to protect its interests. The Government can and does act to protect its interest but it is subject to the usual restraints imposed by Court procedures on a private landlord. The best protection lies in proper monitoring of cases of default and prompt response to them, and much of the improvement measures as recommended by the Report have been in place. If the situation does not improve notwithstanding the improvement measures, further consideration could be given to the issues by a task force to be set up which would include Counsel of the D of J to review the issues.

4. For item (c), this Department has decided to introduce financial vetting of the tenderers of major car-park STT as advised in the Audit Report. The vetting will be carried out by an independent team formed by accounting staff. Details of the vetting mechanism is being worked out and which will make reference to the guidelines laid out in the relevant ETWB Technical Circulars on financial vetting for tender evaluation.

5. For item (d), two meetings of the senior management chaired by me were held on 1.12.2006 and 11.12.2006 to discuss this issue. A preliminary plan for the setting up of the internal audit team is being drafted. At the same time consideration will be made for the deployment of staff and funding and the internal consultations with staff will also have to be conducted. It is anticipated that the team will be established in the next financial year.

6. For item (e), copies of the documents are provided in Appendix B.

7. In addition, written statements from the two serving LandsD staff are also provided in Appendix B. Requisition letters have been sent to the two former LandsD staff and we are now waiting for their replies.


PP (Patrick LAU)
Director of Lands

Encl.

General Note on Government's position as Landlord

Government's legal position as landlord under STTs is similar to that of any private landlord. Once legal proceedings affecting the STT have been issued, Government is bound to submit to the jurisdiction of the court. Any legal action that Government may take to enforce its rights needs to be considered on its merits depending on the issues involved in the legal proceedings.

Though it might appear to Government that the primary purpose of some proceedings taken by tenants was to avoid or delay paying rent, the difficulty for Government was that the tenants' claims might appear to be plausible, in that they were not issues that a court could deal with on a summary basis.

Once a tenant stops paying rent in breach of the terms conditions, the Government may take legal proceeding against the tenant. In a case where the tenant has taken proceedings against the Government, the Government may counterclaim in the same proceedings for unpaid rent. Under the rules of the High Court Ordinance (Cap. 4, Order 14/5) the Government may apply for summary judgment on the counterclaim for rent. This, however, might not be helpful in some cases, where the tenant seeks damages in its action against the Government.

In the same proceedings, the Government may seek an interim order under Order 29 of Cap. 4, for payment by the tenant of rent during the course of the proceedings. There should be no reason, in principle, however, for the court to deny an application for interim payment of rent, if for no other reason than the Government would be good for any judgment that may be awarded against.

There is also a downside for any tenant who decides to take proceedings purely for the purpose of avoiding the payment of rent. The Government would invariably respond to the proceedings, first with a counterclaim and potentially with the insolvency proceedings referred to below. By initiating such proceedings, a tenant would need to be prepared to invest considerable effort and expense in pursuit of the proceedings, as it would probably need to instruct solicitors and probably counsel, to answer the Government's response. This

would include the counterclaim, the likelihood of an application for interim payment and the possibility of an application for summary judgment on the counterclaim.

The Government, as it demonstrated in the car park cases, may protect its interests by making use of the winding up or bankruptcy proceedings. Even though there are court proceedings, the tenant would be in arrears for rent. The Government does not need a judgment to initiate winding up or bankruptcy proceedings, as may be appropriate, against a tenant, nor is it considered an affront to the court to bring winding up or bankruptcy proceedings against a tenant where the tenant has issued proceedings against the Government. This is because the court would deal with the insolvency proceedings, though a different judge, who would take account of the initial proceedings in the insolvency proceedings

Another option for the Government, or any other private landlord, would be to attempt to effect peaceable re-entry of a property. It is unusual, however, to do so as the consequences, such as the risk of injury or breach of the peace, the risk of the tenant seeking an injunction and damages against the Government and the risk of offending the court, all speak against taking such action. In a couple of instances during the car park cases saga, Lands Department did effect peaceable re-entry but only in favourable circumstances and the officers involved were under instructions to back off if challenged.

Appendix B

1. Copies of documents (inspection reports and photos) relating to inspection conducted on 22/10/2002, 4/12/2002, 28/9/2005 and 1/8/2006 (Annex I)
2. Rank of officers who conducted inspection :

<u>Date of inspection</u>	<u>Ranks of officers who conducted inspection</u>
22/10/2002	Estate Surveyor/South
4/12/2002	District Lands Officer/Shah Tin Senior Estate Surveyor/South East
28/9/2005	Project Surveyor Land Executive/East 1
1/8/2006	Land Executive/East 1

3. Correspondences (Annex II)
 - (i) Warning letter dated 24/11/2002 from DLO/ST to D. Heung
 - (ii) Reply dated 26/11/2002 from D. Heung to DLO/ST
4. Statement (Annex III)
 - (i) Peter S K HO Project Surveyor
 - (ii) YU Hok-chi Raymond Land Executive/East 1

***Note by Clerk, PAC:** *Inspection reports and photographs relating to the inspections conducted on 28 September 2005 and 1 August 2006 (in Annex I) not attached.*

See Appendices 12 and 13 for the photographs taken during the inspections on 22 October 2002 and 4 December 2002 respectively.

S&S/SE, *pl proceed as per paragraph 2.5*
M.168 *29/10*

An inspection of the subject tenancy was carried out on 22.10.2002 and it was revealed that:

- (i) the main structure on site had been converted into domestic use;
- (ii) the porch area which was used as a kennel area previously was being used as a carport.

Background

2.1 The subject tenancy has existed as follows:

STT No	Tenant	Area m ²	Use	Remarks
108	Steel Structures	1,840	Storage and Helipad (for construction of CLP power lines and towers)	- tenancy granted on 1.12.1979, terminated on 1.10.1979 following completion of works
315	Hing Shing Metal Co.	1,480 ⁽¹⁾	Storage and Helipad	- tenancy granted on 1.12.1979 following application from "Steel Structures" to allow his sub-contractor Hing Shing Metal Co. for future contracts. ⁽²⁾
958	Daniel Heung Cheuk Kei	740	Storage of non-dangerous goods	-tenancy granted on 1.1.1994 to Daniel Heung Cheuk Kei ⁽³⁾
1150	Daniel Heung Cheuk Kei	1,070	Storage on non-dangerous goods and kennel	-tenancy granted on 6.4.2001 to regularize additional use of kennel and size of tenancy. -proceeding STT 958 had not been executed properly. M89 in LNT 183/ZAT/62 refers.

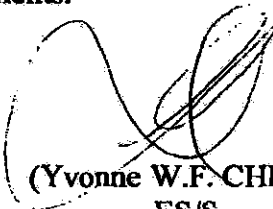
Notes

- (1) Tenancy area subsequently reduced on 24.2.2002
- (2) Hing Shing Metal Co. granted Daniel Heung Cheuk Kei a Power of Attorney with respect to the tenancy on 28.2.1982 F(60) in LNT 41/ZAT/62 refers to deal with tenancy matters.
- (3) Hing Shing Metal Co had merged with another company and the company was then dissolved. The tenancy was transferred to Daniel Heung Cheuk Kei on the grounds that he had a legal power of attorney of the dissolved company and to avoid a loss of rental and management problems. F(2) in LNT 183/ZAT/62 refers.

2.2 It is noted from file records that the subject tenancy has been the subject of recurring breaches of tenancy involving the user and encroachment of government land.

M. 168 (Cont'd)

- 2.3 The tenant had previously submitted an application to regularize the domestic use of the premises. The issue has been considered at length, however it has been made clear that current policy of the department does not allow regularization of short term tenancies for domestic purposes. AD/NT's minute to DLO/ST of 24.1.2000 at M.53 refers.
- 2.4 Please find attached at float a letter for issue requesting reinstatement of the premises to comply with SC(3)-User clause under tenancy.
- 2.5 As the tenancy is due for rent review on 1.3.2003 and three months is required to affect the increase in rent under Clause 4(g) of the tenancy agreement. I have verbally spoken to SS/ST,LACO that rent review can still be conducted without prejudice to government's right to re-enter the site for the breach and in the event the breach is not rectified. I will prepare a memo to seek to confirmation on the matter.
3. Please advise if you have any further comments.



(Yvonne W.F. CHENG)

ES/S

24.10.2002

M.176

F.N.

A joint site inspection has been carried with SES/SE on 4.12.2002 on the subject STT upon request of Mr. Daniel HEUNG.

2. On the day of inspection, the subject tenancy was found to have been used for storage of non-dangerous goods and kennel use. Photos showing the existing conditions of the STT are put at F(71).



(K.L. LEUNG)

DLO

9.12.2002



地政總署
沙田地政處
DISTRICT LANDS OFFICE,
SHATIN
LANDS DEPARTMENT

我們矢志努力不懈，提供盡善盡美的土地行政服務。
We strive to achieve excellence in land administration.

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11/F., SHA TIN GOVERNMENT OFFICES,
1 SHEUNG WO CHE ROAD, SHA TIN, N.T.

Urgent By Fax & Post

Fax No : 2570 9115

電話 Tel: 2158 4847
圖文傳真 Fax: 2602 4093
電郵地址 Email:
本署檔號 Our Ref: (65) in LNT 183/ZAT/62
來函檔號 Your Ref: -----

D. Heung & Associates, Architects & Engineers Limited
Block C, 14th Floor, Seaview Estate
2-8 Watson Road
North Point
Hong Kong

24 October 2002

Attn. : **Mr. D. HEUNG**

Dear Sirs,

Short Term Tenancy No. 1150
Mau Tat, Sha Tin

I refer to our recent inspection of the captioned tenancy on 22nd October 2002.

My inspection revealed that the main structure on site has been converted to domestic use and the porch area previously used as a kennel area is now used as a carport. Pursuant to the First Schedule of the Tenancy Agreement, the Premises are to be used for storage of non-dangerous goods and a kennel and in accordance with Special Condition (3), no part of the Premises shall be used for residential purposes. The above uses are in contravention of Special Condition No. 3 and the user specified under the First Schedule of the subject tenancy.

Under the circumstances, you are hereby required to remedy the breach of the tenancy condition by reinstating the Premises to its approved use to my satisfaction within 21 days from the date of this letter. An inspection will be made upon expiry of the said 21-day period to ascertain if in fact the breach has been remedied. Should you continue to ignore my warning of the said breach, the said tenancy will be terminated without further notice.

Should you have any query about this matter, please contact the undersigned at telephone no. 2158 4847 during office hours.

Yours faithfully,


(Miss Yvonne W. F. CHENG)
for District Lands Officer, Sha Tin

YWFC/sf Letter-YC 24-10-02-1 .doc



D. HEUNG & ASSOCIATES, ARCHITECTS & ENGINEERS LIMITED

Block C, 14th Floor, Seaview Estate, 2-8 Watson Road, North Point, Hong Kong.
Telephone: (852) 2512 8211 Facsimile: (852) 2570 9115 E-mail: dha@netvigator.com

26th November 2002

District Lands Office, Shatin,
Lands Department,
11/F., Sha Tin Government Offices,
1 Sheung Wo Che Road,
Sha Tin,
N.T.

Attn: Ms. Yvonne W. F. Cheng

Dear Madam,

**Re: Short Term Tenancy No. 1150
Mau Tat, Sha Tin**

Further to your letter dated 24 October 2002, I wish to make the following clarifications:

1. During the summer of 2002, I have carried out general repairs of the premises which included painting inside and out of the steel buildings which was corroded, replacing the windows and doors which was severely damaged by burglars. And general pruning and weeding of the surrounding shrubs so to prevent insect infestation, particularly mosquitoes and flesh eating flies which has killed many of our dogs.
2. The carport/kennel has remained the same since the early 1990s. It was painted and cleaned up.
3. Other than the above, there was no conversion of any kind.
4. Given the history of intrusion and burglaries by illegal immigrants and petty thieves in the last two years. We find it necessary to have over night attendance to our place in order to stop them from breaking-in. The tidy surrounding and orderly arrangement of our personal belonging is our effort to show the thief that the place is not un-attended.
5. Please be assured that we have no intention to convert the premises to "residential".

Yours faithfully,

Daniel C K Heung

Inward Correspondence
Registration No.16288
交來文件登記號碼



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ISO 9001 : 1994
Certification No. : CC1123



ISO 9001 : 1994
Certification No. : CC1123

Statement for STT 1150

The undersigned, Peter S K Ho, a Project Surveyor of Lands Department visited the premises on 28 September 2005 for the purpose of rent review.

As I recalled, I found fixtures and belongings inside the house were covered up. Many plastic casings were piled on floor. The circumstances of premises were very alike to the conditions observed at a previous inspection in December 2002, at which, approval was given to accept that the place was used for storage of goods.

Pursuant to the STT concerned, the premises were used for the storage of non-dangerous goods and a kennel. I also noted a watchman was allowed to stay and there were about ten dogs accommodated in the premises.

My impression on the face of this inspection was no breach of usage.



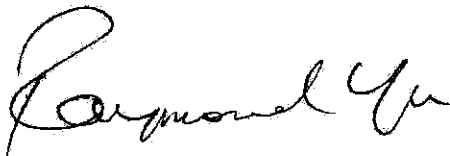
Peter S K Ho
6 December 2006

I, YU Hok-chi Raymond, a staff of Lands Department visited the site of ex-STT 1150 on 28 September 2005 to check the site prior to rent review.

When I reached the site, I saw two structures, a larger structure and a smaller one. I went into the larger structure and saw some furniture covered by plastic sheets and some piled plastic boxes.

The smaller structure was a porch. Some dogs were stayed under the said porch and the others were walking on the grass.

According to the tenancy agreement of the subject STT, storage of non-dangerous goods and kennel uses were allowed. Based on the above observation, with reference to the previous inspection records, I concluded that there was no breach of user on site.

A handwritten signature in black ink, appearing to read 'Raymond Yu', written in a cursive style.

YU Hok-chi Raymond
5 December 2006

I, YU Hok-chi Raymond, a staff of Lands Department visited the site of ex-STT 1150 on 1 August 2006 as instructed by my supervisor to check whether there was any breach of user.

When I reached the site, I saw two structures, a larger structure and a smaller one. I went into the larger structure and saw some furniture covered by plastic sheets and some piled carton boxes.

The smaller structure was a porch. Some dogs were stayed under the said porch and the others were walking on the grass.

According to the tenancy agreement of the subject STT, storage of non-dangerous goods and kennel uses were allowed. Based on the above observation, with reference to the previous inspection records, I concluded that there was no breach of user on site.

A handwritten signature in cursive script that reads "Raymond Yu". The signature is written in black ink and is positioned above the typed name and date.

YU Hok-chi Raymond
5 December 2006