

## A. Introduction

The Audit Commission (Audit) conducted a review of the Lands Department (LandsD)'s administration of short term tenancies (STTs) with reference to its laid down objectives and procedures. The review focused on the following areas:

- administration of rent arrears;
- monitoring of tenants' performance; and
- enforcement of tenancy conditions.

2. At the beginning of the public hearing held on 28 November 2006, **Mr Patrick LAU Lai-chiu, Director of Lands**, said that the LandsD accepted all the audit recommendations, and most of the recommendations had already been implemented. The remaining ones would take more time to implement as they involved amendments of the STT agreement or cooperation with other government departments. Audit had also recommended that the LandsD should inspect all of the more than 4 000 STTs in the territory to find out unauthorised use of the sites, and this would take some time to complete. It was the LandsD's aim to complete the implementation of all the recommendations by early 2007.

## B. Administration of rent arrears

3. As revealed in paragraphs 2.5 to 2.8 of the Director of Audit's Report (Audit Report), the LandsD had not included four significant STT rent arrears cases in the annual returns of arrears of revenue, which was at variance with Standing Accounting Instruction (SAI) 1020. Due to the non-inclusion of the four cases in the returns, Audit estimated that, for the six years 1999-2000 to 2004-2005, the LandsD had under-reported its rent arrears by 12% to 35%. The Committee asked why the LandsD had not included the four cases in its annual returns.

4. The **Director of Lands**, and **Mr Edwin CHAN, Chief Estate Surveyor/Estate Management, LandsD**, responded that:

- normally when a tenant did not pay rent, the LandsD would issue rent demand notes to him. However, the LandsD did not issue rent demand notes to the tenants in the above four cases as there were ongoing legal proceedings between the tenants and the Government. According to the Department of Justice (D of J)'s advice, rent demand notes should not be issued under such circumstances. It was inappropriate for the LandsD to issue rent demand notes while taking legal actions to terminate the tenancies. As no rent demand notes were issued, the staff concerned did not include the four cases

in the annual returns of arrears of revenue. The LandsD admitted that this was not correct. The department had already updated its departmental accounting circulars and the Lands Administration Office (LAO) Instructions to advise its staff to comply with SAI 1020; and

- although rent demand notes were not issued, the LandsD had in fact continued to demand the tenants to pay the outstanding rent through legal means. Therefore, the omission of the four cases from the annual returns did not cause any financial loss to the Government.

5. According to paragraphs 2.9 and 2.10 of the Audit Report, as at 31 March 2006, of the \$54 million STT rent arrears, \$9 million (17%) had been overdue for more than five years. On the other hand, up to 30 June 2006, action to write off four long outstanding rent arrears cases had not been completed despite indications that recovery actions would not be fruitful. Paragraph 2.14 of the Audit Report also revealed that the LandsD's rent arrears had increased significantly from \$42 million as at 31 March 2004 to \$163 million as at 31 March 2005, mainly due to rent arrears of five car-park STT cases.

6. Against the above background, the Committee asked:

- why the LandsD had not completed the write-off action expeditiously and how it would improve the situation;
- whether the LandsD's actions to recover rent arrears had been ineffective, as reflected by the large amount of rent arrears that had remained outstanding for a long time; and
- given that, as revealed in Table 2 in paragraph 2.10 of the Audit Report, some rent arrears had to be written off because the tenant had wound up or was a shell company with no company assets, how the LandsD would address the problem.

7. The **Director of Lands** and the **Chief Estate Surveyor/Estate Management** said that:

- the total amount of STT rent arrears written off in the past five years was \$28.9 million, which was only 0.5% of the LandsD's rental income of \$5.566 billion generated from STTs in the same period. Nevertheless, the LandsD agreed with Audit that it was unsatisfactory for the write-off action to take a long time to complete. The LandsD had focused on rent recovery and neglected the need to take timely write-off action;

- the LandsD had made improvement in this regard. Under the current procedure for writing off the rent in arrears, District Lands Offices (DLOs) were required to submit to the Headquarters write-off cases within two years for completing the write-off action. For those cases which could not be written off in two years, the DLOs were required to provide an explanation, e.g. the case might be under litigation or rent recovery action was still in progress. The LandsD had given an instruction to the DLOs that they should settle the write-off cases in their hands in the coming few months. The LandsD had also clarified the write-off procedure to remove any misunderstanding among staff. Regarding the four cases referred to in Table 2 of the Audit Report, the action to write off the rent in arrears was near completion now;
- the significant increase in rent arrears during the period from 31 March 2004 to 31 March 2005 was mainly due to the five car-park STT cases referred to in paragraph 2.14 of the Audit Report. Perhaps those STT tenants had run into financial difficulties as a result of Hong Kong's unfavourable economic conditions in recent years. Although their business had declined, they still had to pay the same amount of rent as stipulated in the STTs, which were entered into several years ago. As such, they did not pay rent; and
- the amount of rent arrears had dropped from \$163 million as at 31 March 2005 to about \$90 million as at 31 March 2006. Nevertheless, the LandsD admitted that its rent recovery actions in the past had not been too effective. It had already taken measures to reduce the risk of tenants defaulting on rent payments, including increasing the rental deposit for STT tenders for car-parks or related uses from three-months' to six-months' rents, and reducing the fixed term of new car-park STTs from three years to one year, so that a tenant could opt out after one year. With the introduction of these measures, the situation of rent arrears had improved.

8. The Committee noted from paragraph 2.15 of the Audit Report that once an STT tenant had commenced legal proceedings against the Government, the LandsD had difficulties in recovering the rent arrears. The tenant could continue occupying the sites without paying rent for a lengthy period. Audit also pointed out that the LandsD had difficulties in repossessing the sites even after termination of the tenancies because of the ongoing legal proceedings. Given that the LandsD would not issue rent demand notes to a tenant when there were ongoing legal proceedings between the tenant and the Government, the Committee was concerned that a tenant could avoid or delay paying rent by taking legal action against the Government. Furthermore, as revealed in Case 1-1 (Table 1 in paragraph 2.5 of the Audit Report), the Government could not recover any rent arrears from a tenant (a limited company) with no assets even if it had been wound up.

9. The Committee questioned why the LandsD suspended action to recover outstanding rents once a tenant had initiated legal proceedings against the Government.

10. The **Director of Lands** stated that:

- it was a fact that the LandsD would have difficulties in recovering the rent arrears and repossessing the sites when a tenant had commenced legal proceedings against the Government. This was because the LandsD would have to act according to the court's orders under such circumstances. In handling such cases, the LandsD had acted according to the advice of the D of J; and
- it was not true the LandsD would not take action to recover outstanding rents for an STT under litigation initiated by the tenant. The LandsD would try to recover the rent arrears and any interest through legal means, and the results would depend on the court's decision.

11. The Committee queried the legal basis for the LandsD's not demanding rent payment by issuing rent demand notes when a tenant had taken legal action against the Government, as a result of which other STT tenants might be encouraged to follow suit. On the other hand, the Committee noted that in the private sector, a landlord would insist that his tenant continue to pay rent even if the tenant had initiated legal action against him. In addition, it appeared to the Committee that some STT tenants had found a formula for grabbing money, i.e. after entering into an STT with the Government, they found a grey area in the tenancy agreement and initiated legal action against the Government. In the course of the proceedings, they did not pay rent while continuing to operate on the sites and make money. In the end, they might go bankrupt and the Government could do nothing. The Committee asked whether the LandsD agreed that such a loophole existed and how the LandsD could safeguard the Government's interests.

12. The **Chief Estate Surveyor/Estate Management** said at the public hearing and the **Director of Lands** in his letter of 11 December 2006 (in *Appendix 5*) that, to enforce payment of rent during the course of legal proceedings, in some cases, the Government had applied to the court for interim payment of rent. In response to the Committee's enquiry about the legal basis, the **Director of Lands** provided, in the same letter, a note on the Government's position as a landlord. It was stated that:

- the Government's legal position as a landlord under STTs was similar to that of any private landlord. Once legal proceedings affecting an STT had commenced, the Government was bound to submit to the jurisdiction of the court. Any legal action that the Government might take to enforce its rights needed to be considered on its merits depending on the issues involved in the legal proceedings;

- though it might appear to the Government that the primary purpose of some proceedings taken by tenants was to avoid or delay paying rent, the difficulty for the 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 stopped paying rent in breach of the STT conditions, the Government might take legal proceeding against the tenant. In a case where the tenant had taken proceedings against the Government, the Government might counterclaim in the same proceedings for unpaid rent. Under the rules of the High Court Ordinance (Cap. 4, Order 14/5), the Government might apply for summary judgement on the counterclaim for rent. This, however, might not be helpful in some cases, where the tenant sought damages in its action against the Government;
- in the same proceedings, the Government might seek an interim order, under Order 29 of Cap. 4, for payment of rent by the tenant during the course of the proceedings;
- there was also a downside for any tenant who decided 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. 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 judgement on the counterclaim; and
- the Government might protect its interests by making use of the winding up or bankruptcy proceedings. Another option for the Government, or any other private landlord, would be to attempt to effect peaceable re-entry of a property.

13. In the light of the issues of concern set out in the LandsD's above note, the Committee asked:

- whether the Government had ever taken legal proceedings against a tenant once he stopped paying rent in breach of the STT conditions, or responded to the proceedings taken by a tenant purely for the purpose of avoiding the payment of rent, as stated in the note; and
- why it might not be helpful for the Government to apply for summary judgement on the counterclaim for rent in some cases.

14. In his letter of 19 December 2006 in *Appendix 6*, the **Director of Lands** replied that:

- using Case 1-2 in Table 1 in the Audit Report as an example, the Government did take legal proceedings against the tenant to recover the outstanding rent, mesne profits, site possession and interim payment. The Government had also applied for a court order requesting the bank to transfer the tenant's bank balance to the Government. Details of the actions taken by the Government in respect of the three STTs in this case were given in Annex A to the letter;
- if a tenant decided to take legal proceedings for any purpose including the avoidance of rent payment, the Government would invariably respond to the proceedings and Case 1-2 was again an example; and
- as to the application for summary judgement, there were a number of reasons why it might not be helpful. Firstly, an application for summary judgement would prolong the legal proceedings by putting the pre-trial process (exchange of facts and information between the parties) on hold pending the resolution of the application. If the application was unsuccessful, it might have the double effect of delaying the ultimate recovery of the premises and of the Government being ordered to pay costs. Secondly, the tenant, as plaintiff, would only have to demonstrate to the court that he had an arguable defence, which could happen in cases where the tenant's claim appeared to be plausible. In short, an application for summary judgement in a counterclaim should not be resorted to except in a clear case and unless the tenant's claim could be shown beyond dispute to be unsustainable. The Government, as defendant, might not be able to prove that there was no defence to the counterclaim.

15. The Committee noted from paragraph 2.18 of the Audit Report that, in June 2005, the Land Administration Meeting (LAM) carried out a review of the car-park STTs under litigation initiated by the tenants. It decided to introduce new measures to minimise the risk of legal challenges in future. However, Audit pointed out in paragraph 2.20 that up to mid-September 2006, the LandsD had not implemented all the improvements measures approved by LAM. The Committee asked whether the risk of tenants avoiding or delaying rent payment by taking legal action against the Government could be removed after all the improvement measures recommended by LAM and by Audit had been implemented.

16. The **Director of Lands** stated that the LandsD would have to wait until the measures had been put in place for some time to see if they could effectively reduce the risk of legal challenges.

17. In response to the Committee's concern that the Government's interests might not be protected, the **Director of Lands**, in his letter of 11 December 2006, stated that:

- it would not be correct or fair to say that the Government was unable to protect its interests. The Government could and did act to protect its interests but it was subject to the usual restraints imposed by court procedures on a private landlord; and
- the best protection lay in the proper monitoring of cases of default and prompt response to them, and many of the improvement measures as recommended by the Audit Report had been put in place. If the situation did not improve notwithstanding the improvement measures, a task force would be set up, which would include Counsel of the D of J, to review the issues.

18. In response to the Committee's further enquiry after the public hearing as to who gave the legal advice that rent demand notes should not be issued when there were ongoing legal proceedings, the **Director of Lands** informed the Committee that the advice was provided by the Legal Advisory and Conveyancing Office (LACO) of the LandsD, not by the D of J. As the Director of Lands had said at the public hearing that the advice was obtained by the LandsD after consulting the D of J, the Committee asked the Director of Lands why he had provided inconsistent information.

19. In his letter of 17 January 2007 in *Appendix 7*, the **Director of Lands** stated that:

- he would apologise to the Committee for giving Members the impression that there were inconsistencies between the information provided at the hearing on 28 November 2006 and subsequent written replies to the Committee. He had replied to the Committee's questions on the basis of his understanding and recollection of the facts and history of the cases. It was not until the time of the Clerk's letter of 21 December 2006 that he realised that the legal advice in question was provided by LACO of the LandsD and not by the D of J; and
- irrespective of who provided the legal advice, the difficulties that the LandsD faced in managing car-park STTs were real. As explained to the Committee at the hearing and in subsequent letters, the LandsD had taken due action to protect the Government's interests in specific cases, and was at the same time working on improving the administration of STTs.

20. As revealed in paragraph 2.24 of the Audit Report, there were four major car-park STT tenants, each holding 18 to 50 car-park STTs. Each year, they paid substantial STT rents. Audit pointed out in paragraph 2.25 that these four tenants' financial capability to successfully carry out their car-park operations warranted the

LandsD's attention because, given the scale of their operation, there could be a significant disruption to the supply of parking spaces if they discontinued their business, and a large amount of government revenue would be at stake if they did not pay rent.

21. The Committee also noted from paragraph 2.26 that unlike some other government departments, the LandsD did not check whether the tenderers holding a large number of STTs had the financial capability to successfully carry out the car-park operations. The Committee asked whether the LandsD would take measures to prevent the concentration of car-park STTs in a few major tenants, such as by subjecting such tenants to more stringent financial vetting before granting them new car-park STTs.

22. **The Director of Lands** responded that:

- the LandsD had not introduced financial vetting on tenderers of car-park STTs in the past because the rental payment record of the car-park STT tenants had been satisfactory. Also, the LandsD hoped that more small-scale operators could participate in the tendering of car-park STTs. However, in the light of changed circumstances, the LandsD was considering the way to implement Audit's recommendation on the introduction of financial vetting; and
- he considered it not appropriate for the Government to set a maximum number of STTs which a tenant would be allowed to hold, as such arrangement would not be in line with the principle of a free market economy.

23. In his letters of 11 December 2006 and 8 June 2007 (in *Appendix 8*), the **Director of Lands** supplemented that:

- the LandsD had decided to introduce financial vetting of the tenderers of major car-park STTs. The vetting would be carried out by an independent team formed by accounting staff. Details of the vetting mechanism were being worked out which would make reference to the guidelines laid down in the relevant Environment, Transport and Works Bureau<sup>1</sup> Technical Circulars on financial vetting for tender evaluation; and
- existing tenants would be asked to submit their company accounts to the LandsD for checking in order to ascertain their ability to tender for further STTs with the LandsD.

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<sup>1</sup> After the re-organisation of the Government Secretariat with effect from 1 July 2007, the policy portfolios of the Environment, Transport and Works Bureau have been redistributed to the new Development Bureau, Environment Bureau, and Transport and Housing Bureau respectively.

### **C. Monitoring of tenant's performance**

24. Paragraphs 3.5 to 3.13 of the Audit Report revealed that since June 2002, the LandsD had implemented a regulating measure for monitoring the performance of tenants (and their related parties) with tenancy breach records, i.e. LAM's assessment of the award of new STTs to such tenants. Effective implementation of this measure required timely dissemination of LAM's decision on these tenants (and their related parties). However, Audit found that in three cases, the DLOs had not been informed in time of the latest LAM decisions concerning these tenants, resulting in the granting of three STTs to these tenants and a related party without referring their tenders to LAM for review. In all three STT cases, the tenants' performance was subsequently found to be unsatisfactory. Audit also noted that in three other cases, some important LAM decisions were not disseminated to the DLOs until after a time lapse of 35 to 78 days (paragraph 3.13 of the Audit Report).

25. The Committee further noted from paragraph 3.15 that in September 2003, LAM decided to adopt a three-month review cycle for tenants with tenancy breach records. However, of the nine performance reviews conducted by the LandsD since then, there were delays of 28 to 85 days in conducting four reviews.

26. The Committee queried:

- why LAM's decisions were not disseminated to the DLOs in time;
- why the LandsD staff did not carry out performance reviews promptly; and
- how the LandsD could ensure that its staff would comply with LAM's decisions and follow the prescribed procedure to monitor those STT tenants with unsatisfactory performance.

27. The **Director of Lands** stated that:

- there had been problem in communicating LAM's decisions to DLOs. To rectify the problem, since January 2006, LAM decisions had been disseminated to DLOs immediately after ratification. Relevant DLO staff were now able to see all the decisions of LAM on STTs through the LandsD's intranet; and
- the workload of DLO staff was very heavy. Apart from STTs, they were also responsible for a wide range of duties, including dealing with complaints about parking on and occupation of government land, felling of trees and removing collection cages on the streets. It was inevitable that sometimes there might be delay in conducting performance reviews on STT tenants. Hence, the LandsD considered that while the three-monthly performance

review requirement was a guideline, the actual frequency of reporting to LAM could be changed depending on the situation and having regard to the economic significance of the STT concerned. For example, for those STTs which were straightforward or involving a small amount of rent, the DLOs should be given the discretion to report less frequently. For those STTs involving a large amount of rent, there might be a need to increase the reporting frequency.

#### **D. Enforcement action on unauthorised use of sites for car-park purposes**

28. According to paragraphs 4.8 to 4.10 of the Audit Report, three non-car-park STT tenants had breached the tenancy conditions by using the sites as fee-paying car-parks. After comparing the enforcement actions taken by the DLOs concerned in these three cases, Audit found that there were inconsistencies. For example, the time taken by the DLOs to issue notices to terminate the tenancies after discovering the breaches varied from 1 month to 35 months.

29. Paragraphs 4.11 and 4.12 also revealed that although inspections carried out outside office hours were more effective for obtaining evidence of unauthorised use of sites for car-park purposes, the LandsD's guidelines did not require the DLOs to carry out site inspections outside office hours. As a result, different DLOs adopted different approaches to carrying out site inspections outside office hours.

30. In the light of the above, the Committee asked:

- about the reason for the inconsistencies in the DLOs' enforcement actions and whether it was due to manpower shortage; and
- whether the LandsD would require its staff to conduct site inspections outside office hours.

31. The **Director of Lands** and the **Chief Estate Surveyor/Estate Management** said that:

- the LandsD indeed did not have sufficient manpower to carry site inspections as there were more than 4 000 STTs covering a vast area throughout the territory. As pointed out in the Audit Report, the breaches in question were unauthorised use of the respective sites as an overnight car park (Case 5-1) and as a car park during evenings and public holidays (Case 5-2). DLO staff were not required to perform shift duty and had no responsibility to carry out site inspections outside office hours. Nevertheless, he agreed that for cases

such as Cases 5-1 and 5-2, the staff concerned should inspect the sites during the alleged operating hours of the car parks; and

- the LandsD had already revised its departmental guidelines requiring its staff to conduct site inspections outside office hours when the situation warranted. The Director of Lands had also personally reminded the DLO staff of such a need and required them to take proactive enforcement action having regard to the circumstances of each case.

32. The Committee noted that for Case 5-1, the DLO concerned had issued 28 warning letters before taking tenancy termination action and it took 19 months from first discovery of the breach to the issuance of notice to terminate the tenancy. The Committee asked how the LandsD would:

- prevent the recurrence of similar situation; and
- deal with those tenants who, after rectifying a breach, repeated the same breach.

33. The **Chief Estate Surveyor/Estate Management** replied that, to address the above situation, the LandsD had formulated a set of guidelines for enforcement action, such that warning letters and notices of termination were issued within a specific time limit. Moreover, for recurring breaches, the LandsD would give the tenant a shorter period to rectify the breaches.

34. Referring to paragraph 4.4(a) of the Audit Report, the Committee noted that the LAO Instructions stated that “ideally” each STT site should be inspected once a year. The Committee asked whether the LandsD would consider making it mandatory that each site should be inspected at least once a year.

35. The **Director of Lands** responded that:

- the word “ideally” had been used because the LandsD did not want to give an instruction which could not be complied with given the manpower constraints of the DLOs. However, in view of the problems in the administration of the STTs and the public concern, the word “ideally” had been deleted; and
- to resolve the problem of manpower shortage, the LandsD was considering outsourcing part of the patrol and tenancy enforcement work with a view to conducting an inspection of every STT at least once a year. In taking forward the outsourcing proposal, the LandsD would take into account the

resources required for tendering and for monitoring the work of the contractors, etc.

36. Paragraphs 4.13 and 4.14 of the Audit Report revealed that in Case 5-2, the LandsD had refunded the deposit in full to the tenant without deducting from it the loss of rental income as a result of forfeiture of the STT. The Committee asked about the reason for the mistake and how the LandsD could ensure that its staff would comply with the department's instructions and guidelines.

37. The **Director of Lands** and the **Chief Estate Surveyor/Estate Management** said that:

- the mistake in question was due to negligence of the DLO staff concerned. It was clearly stated in the LandsD's internal guidelines that, before a refund of deposit was made, the DLO concerned should check to ensure that all the outstanding debts due from the tenant had been deducted. After consulting the D of J, the LandsD was taking action to recover the loss of rental income, which amounted to about \$38,000, from the tenant of Case 5-2;
- the LandsD would revise the standard tenancy conditions with a view to strengthening tenancy enforcement. This included the Government's right to set off rent arrears owed by a tenant against his rent deposits held for other STTs; and
- to improve the LandsD's performance of its various duties in the long run, the LandsD was considering setting up an internal audit team which would help identify issues of non-compliance in the department.

38. In response to the Committee's enquiry about the progress made in setting up the internal audit team, the **Director of Lands** stated, in his letter of 8 June 2007, that:

- the internal audit team, named as the management services team (MST), had been set up in May 2007. Its overall objective was to ensure that, in the LandsD's administration work, actions being or having been taken were in full compliance with the guidelines, procedures and prescribed timeframe that had been set down in departmental instructions; and
- at the organisational level, the MST would identify areas within the existing operation systems where changes could be made to enhance efficiency and effectiveness.

## **E. Enforcement action on unauthorised use of site for residential purposes**

39. As revealed in paragraphs 4.19 to 4.21 of the Audit Report, the LandsD had not taken rigorous enforcement action against the unauthorised use for residential purposes of an STT site in Sha Tin granted under three STTs (STT 2 to STT 4), which were under the LandsD's administration between April 1982 and August 2006. During the period, the LandsD had carried out 33 inspections (including re-visits) of the site. The tenant (of STT 3 and STT 4 who was also the actual user of the site during STT 2) was found during seven inspections to have breached the tenancy conditions by using the site for residential purposes. In addition, the tenant was found during six inspections to have occupied the adjoining government land without approval.

40. Against the above background, the Committee questioned:

- the LandsD's connivance in dealing with the tenant and whether it was due to insufficient departmental guidelines for handling such situation or negligence of duty on the part of some LandsD staff; and
- how the LandsD could prevent the recurrence of such incidents in future.

41. The **Director of Lands** responded that:

- this was indeed an odd and unprecedented case spanning more than two decades. It had been the Government's policy that minor breaches of tenancy conditions would be tolerated provided that the tenant took actions to purge the breach within a reasonable period of time. In the present case, problems had occurred because the tenant had breached the tenancy conditions on different occasions and he rectified the breaches every time after being warned. However, he committed the same breach again after rectifying the previous one;
- in the absence of file records in the LandsD, he could not speculate the reasons for taking or not taking certain actions, or the criteria adopted by the staff concerned for judging whether or not there was a breach during their inspection of the site. In his view, it was a matter of judgement of the responsible staff at that time;
- the LandsD had learned a lesson from this case. In the past, the LandsD had not set any indicator for completing the various steps of the enforcement procedure. It had now tightened up the enforcement action against recurring breaches of tenancy conditions by setting such indicators and shortening the warning period. For first-time breach, the LandsD would require the tenant to rectify it in 28 days. If the breach was not purged, the LandsD would issue a second warning letter, requiring the tenant to rectify the breach in

14 days. If the breach persisted, the LandsD would start action to terminate the tenancy. The LandsD would also increase the frequency of site inspections for such cases in future; and

- other improvement measures included conducting financial vetting on the tenderers of STTs and checking if a tenderer had previous records of tenancy breaches. The LandsD would consider not granting new STTs to a tenant who had repeatedly breached the conditions of a tenancy.

42. In view of the Director of Lands' reply, the Committee asked whether the LandsD had investigated if any staff had made wrong judgements and whether they would be subject to any penalty.

43. The **Director of Lands** stated that:

- most of the LandsD staff who handled the case at that time had already left the Government and he could not follow up on the question of their judgement. The Government had not suffered financial loss from this case. Under the current policy, the Government would not grant STTs for residential use. Hence, there was no established basis for assessing the residential rental for calculating the difference in rental due to change of land use. In fact, renting the site out under an STT and received rental in return was already a good way of using the site; and
- the site in question had been zoned as “Green Belt” since 2000. Therefore, after the tenancy was terminated in August 2006 at the tenant’s request, the LandsD did not rent it out under any STT.

44. Paragraph 4.21 of the Audit Report revealed a number of deficiencies in respect of the enforcement action taken by the LandsD in this case. The Committee asked about the causes of the deficiencies. The **Director of Lands** provided the replies in *Appendix 9*, as follows:

- regarding Audit’s observation in paragraph 4.21(a), the reason(s) for not issuing any warning letter to the tenant after detecting the breach on 20 October 1992 could not be traced. Enquiries had been made with the officers who dealt with the case at that time. None of them could recall why no warning had been issued;
- regarding Audit’s observation in paragraph 4.21(b) that on three occasions, the LandsD did not request the Housing Department to clear a car-port structure which was found occupying the adjoining government land without approval, enquiries had been made with the officers who dealt with the case

at that time. None of them could recall why such request had not been made;

- regarding Audit's observation in paragraph 4.21(d) that on three occasions, the LandsD did not seek advice from the Buildings Department upon finding building structures within the STT premises which might require the Buildings Department's approval, enquiries had been made with the subject officers. They either could not recall the details of the case or considered that the focus at that time was on the misuse of the premises; and
- regarding Audit's observation in paragraph 4.21(e), the LandsD's file records did not indicate whether the DLO/Sha Tin had required the tenant to demolish the domestic fixtures found within the premises on occasions other than 14 December 1999. Officers who dealt with the case at that time could not recall why there had not been such request.

45. According to paragraphs 4.24 and 4.25, despite the repeated breaches of the tenancy conditions during STT 2, in June 1993, the DLO/Sha Tin approved the granting of a new tenancy (STT 3) to the tenant, who had been the actual user during STT 2, without submitting the case to the District Lands Conference for making a recommendation. However, according to the LAO Instructions, a contentious case should be submitted to the Conference for a recommendation.

46. The Committee also noted from paragraph 4.25(a) and (d) that in giving the approval, the DLO/Sha Tin indicated that STT 2 would normally be terminated as the site was being used for residential purposes in breach of the tenancy conditions, and that the termination of STT 2 would not be in the Government's interest.

47. The Committee queried:

- the basis of the DLO/Sha Tin's view that it would not be in the Government's interest to terminate an STT for which repeated breaches had been detected; and
- whether, in deciding to approve the granting of STT 3 to the tenant, the DLO/Sha Tin had attached a greater weighting to the need to avoid leaving the site vacant as it would cause management problems and a loss of rental income, than the need to enforce tenancy conditions by terminating the tenancy.

48. The **Director of Lands** responded that:

- as set out in the Audit Report, when the matter was considered by the DLO/Sha Tin in 1993, the STT site had been used by the tenant for a long time. There had not been any complaint about the use of the site over the previous ten years other than the observed breach. The DLO/Sha Tin had consulted other government departments, including the Government Property Agency and the then Agriculture and Fisheries Department, to see if they wished to use the site and the reply was negative. Terminating the STT would result in a loss of rental income. Moreover, if the site was left vacant, due to its isolated location, the DLO/Sha Tin would have to spend manpower on managing and inspecting the site to prevent it from being occupied illegally. These were the considerations at that time; and
- nowadays, having regard to the public opinion that the Government should not tolerate those STT tenants who had breached tenancy conditions, the LandsD had adopted a different approach to dealing with such tenants. According to the LandsD's current guidelines, the LandsD would consider terminating the STT with a tenant who had repeatedly breached the tenancy conditions. Also, the LandsD would consider not granting new STTs to such tenant.

49. The Committee enquired about the progress made by the LandsD in checking other STTs to see if there were similar breaches of tenancy conditions, as recommended in paragraph 4.31(i) of the Audit Report.

50. The **Director of Lands** stated, in his letter of 8 June 2007, that the LandsD had completed a full survey on all STTs in the territory in January 2007. Out of 4 472 STTs surveyed, 2 034 STTs (i.e. about 45%) were detected with breaches. Actions on major breaches were being taken. As for other cases, in view of the substantial number involved and resources constraint, a practical and pragmatic approach to tackling the issue was being explored. This would be finalised within one month, i.e. by early July 2007.

51. In response to the Committee's question on the implementation of the audit recommendation in paragraph 4.53, the **Director of Lands** informed the Committee in the same letter that views from relevant government departments had been sought on the proposed sharing of tenants' information. LACO had expressed concern over privacy matters. The LandsD was seeking further advice from the D of J. Implementation of this proposed measure would depend on the D of J's advice.

52. The Committee referred to paragraph 4.28 of the Audit Report which revealed that the LandsD's copy of the STT 3 agreement (effective 1 January 1994) only bore the tenant's signature, but without the signature of the landlord (i.e. the Government's representative). The Committee asked whether this was normal and why the then District Lands Officer/Sha Tin did not sign on the agreement.

53. The **Director of Lands** replied that he did not understand why the officer concerned did not sign on the agreement at that time. He found it incredible that an agreement was not signed after the tenant had signed it. Enquiry had been made with the responsible District Lands Officer/Sha Tin, who had already left the Government, and no explanation was given.

54. In response to the Committee's request, **Mr CHAN Kwok-fai**, the responsible District Lands Officer/Sha Tin at that time, provided written statements on 15 December 2006 (in *Appendix 10*) and 12 April 2007 (in *Appendix 11*) respectively on the matter. He stated that:

- the paper provided to him by the LandsD did not mention the signing of tenancy. As the case happened many years ago, he could not recall the details;
- it was the LandsD's practice that the basic terms of a tenancy was offered to the tenant for acceptance. Upon receiving the tenant's acceptance, arrangement would be made for the legal advisers in the LandsD to scrutinise the tenancy documents. After the documents had been vetted by the legal advisers, the final documents would be sent to the tenant for execution. Having gone through these steps, the tenancy agreement, which had been signed by the tenant, would be submitted to the District Lands Officer for signing and completion of all legal formalities. There were well laid down administrative procedures in the DLOs for the management of tenancy agreements leading to its execution; and
- as regards whether it was normal for an STT agreement to be not signed on by the Government's representative, based on his experience on land matters, all legal documents, including the subject STT, were executed, i.e. signed. It was a procedural issue and should be executed under delegated authority when a submission was made by staff in a well established format to the signing officer.

55. The Committee then examined the effectiveness of the inspections conducted by the LandsD on the site in question. According to Table 8 in paragraph 4.19 of the Audit Report and the information provided in Appendix B to the Director of Lands' letter of 11 December 2006, four inspections had been carried out on the site from 22 October 2002 to 1 August 2006 and the details were as follows:

<b>Date</b>	<b>Finding</b>	<b>Action taken</b>	<b>Inspection conducted by</b>
22 October 2002	Breach of tenancy condition — using the site for residential purposes	Warning letter issued	Ms Yvonne CHENG, Estate Surveyor/South
4 December 2002	Site used for storage	Not applicable	Mr LEUNG Kwai-lam, District Lands Officer/Sha Tin, and Mr Peter TSANG, Senior Estate Surveyor/South East
28 September 2005	No irregularities found	Not applicable	Mr Peter HO, Project Surveyor, and Mr Raymond YU, Land Executive/East 1
1 August 2006	No irregularities found	Not applicable	Mr Raymond YU, Land Executive/East 1

56. As requested by the Committee, the **Director of Lands** provided, in his letter of 11 December 2006, the correspondence and inspection reports relating to the above four inspections, as well as the photographs taken during the inspections. He also provided the written statements by Mr Peter HO, Project Surveyor, and Mr Raymond YU, Land Executive, concerning the bases of their conclusion that there were no irregularities on the site on 28 September 2005 and 1 August 2006 when they inspected it.

57. The Committee noted from M.176 dated 9 December 2002 (in *Annex I of Appendix 5*) that the inspection on 4 December 2002 was conducted upon the request of the tenant, which meant that tenant had been notified of the inspection. As such, the Committee asked:

- whether the inspections carried out on 22 October 2002, 28 September 2005 and 1 August 2006 were conducted with prior notification given to the tenant and, if they were, why the LandsD did not conduct surprise checks on the site, given that the site had repeatedly been used for residential purposes in breach of the tenancy conditions; and
- according to the LandsD's normal practice, whether advance notice would be given to an STT tenant before a site inspection and the rationale behind the practice.

58. In his letter of 19 December 2006, the **Director of Lands** replied that:

- the inspections on 28 September 2005 and 1 August 2006 were conducted with prior notification given to the tenant. It was necessary to notify the tenant to ensure that the LandsD's staff could enter the STT premises to facilitate inspection of the interior and avoid futile visits to the remote site. Regarding the inspection made on 22 October 2002, there was no file record on whether prior notification had been given to the tenant; and
- it was the LandsD's normal practice, where buildings were allowed to be erected on site under an STT, to notify the tenant before an inspection was conducted to ensure that staff could gain entry into the buildings to conduct internal inspection whilst respecting the tenant's right of peaceful enjoyment of the premises during the tenancy term. Considering the Government's role as a private landlord in the administration of STTs, this practice was consistent with the contractual rights and obligations of the landlord in private tenancy agreements.

59. The Committee observed from the photographs taken during the inspections on 22 October 2002 (in *Appendix 12*) and 4 December 2002 (in *Appendix 13*) that the situation of the premises was similar on these two days. The Committee asked:

- why Ms Yvonne CHENG, the then Estate Surveyor/South who inspected the site on 22 October 2002, considered that the site was used for residential purposes in breach of the tenancy conditions, whereas Mr LEUNG Kwai-lam, the then District Lands Officer/Sha Tin who inspected the site on 4 December 2002, considered that the site was used for storage of non-dangerous goods and kennel use in accordance with its permitted use; and
- whether the LandsD had issued any guidelines on the circumstances under which an STT site should be regarded as being used for residential purposes or for storage purposes.

60. In his letter of 19 December 2006, the **Director of Lands** stated that:

- based on the photographs taken, the internal situation of the premises on 4 December 2002 was different from that on 22 October 2002. The tenant's belongings were stacked up or covered up during the inspection on 4 December 2002; and
- there was no specific guideline on the circumstances under which an STT site should be regarded as being used for residential purposes or for storage purposes. Such determination would depend on the facts of each case. In the light of the experience with the case in question, the LandsD had added a

new provision to the LAO Instructions that where some extensive fixtures or equipment were found during inspection, which were obviously not in compliance with the terms of the tenancy, the tenant should be requested to remove them.

61. The Committee noted from paragraph 2.3 of M.168 dated 24 October 2002 (in *Annex I of Appendix 5*) that the tenant had previously submitted an application to regularise the domestic use of the premises. The Committee asked about the details of the application and, in the LandsD's view, what the use of the premises was when the tenant made the application.

62. In his letter of 19 December 2006, the **Director of Lands** stated that the tenant requested the then District Lands Officer/Sha Tin to consider regularising the domestic use of the premises during a meeting on 22 December 1999 and the request was rejected on 1 February 2000. During the period between 22 December 1999 and 1 February 2000, the premises were perceived to be used for residential purpose.

63. The Committee noted that the inspection by Mr LEUNG Kwai-lam was conducted shortly after the previous inspection by Ms Yvonne CHENG and the photographs taken during the inspection on 4 December 2002 showed that the furniture and fixtures on the premises were substantially the same as those on 22 October 2002, except that some were stacked up or covered up by plastic sheets. However, the two officers made different conclusions as to whether there was breach of tenancy conditions.

64. Under the circumstances, the Committee queried:

- why Mr LEUNG, being the District Lands Officer/Sha Tin, personally inspected the site shortly after the previous one by his subordinate;
- whether it was unusual for Mr LEUNG to inspect the site again in less than two months; and
- during the period from 22 October 2002 to 4 December 2002, whether Mr LEUNG had had any communication or contact with the tenant.

65. At the request of the Committee, **Mr LEUNG Kwai-lam**, who had already retired from the civil service, provided a written reply to the Committee on 11 April 2007 (in *Appendix 14*). In his reply, he set out the background to his inspection. He also stated that:

- on 4 December 2002, whilst he was conducting site visits of a land control action case and some other cases in the same area, Mr Peter TSANG, the then Senior Estate Surveyor/South East, arranged a site inspection on the subject premises for a second check on the rent review assessment previously submitted by Ms Yvonne CHENG;
- it was not unusual for him, as the District Lands Officer/Sha Tin, to personally conduct site visits. A number of senior officers of the LandsD, including another former District Lands Officer/Sha Tin and an Assistant Director, had also visited the premises in question; and
- he had never communicated with or contacted the tenant concerned during the period between 22 October 2002 and 4 December 2002. As a matter of fact, he had never seen the tenant at any time.

66. The Committee also asked Mr LEUNG about the basis of his conclusion that the site was used for storage of non-dangerous goods and kennel use on the day of his inspection and whether it was only because the furniture and the tenant's belongings in the premises were stacked up or covered up by plastic sheets.

67. **Mr LEUNG Kwai-lam** replied in the same letter that:

- after his inspection of the site on 4 December 2002, he had a discussion with Ms Yvonne CHENG and Mr Peter TSANG on 9 December 2002. At the discussion, they reviewed photographs of the premises taken on 4 December 2002 and the written explanation from the tenant dated 26 November 2002 (given in response to the LandsD's warning letter of 24 October 2002). From his observation, he considered that:
  - (a) there was no storage of any dangerous goods although dogs were kept in the porch;
  - (b) there was not any sight of human habitation and bathroom facilities, except a watchman staying overnight on the subject premises which had previously been approved by the former District Lands Officer/Sha Tin;
  - (c) the use of the site was consistent and compatible with the permitted use under the tenancy agreement, i.e. storage of non-dangerous goods and a kennel;
  - (d) as goods would necessarily include, *inter alia*, disused furniture and garden tools, their presence could not be relied upon as a ground to challenge the tenant's use of the site; and

- (e) from the available documents, there was no material before him to form any view that there had been a continuous breach of the tenancy agreement; and
- he remained of the view that his assessment was correct given that the information available to him did not point to a breach of the tenancy agreement as to use.

68. Regarding the basis of Mr LEUNG's conclusion, the Committee asked:

- given that the inspection on 4 December 2002 was conducted at the tenant's request, whether Mr LEUNG agreed that the plastic sheets could have been put up before the inspection and could be removed easily, and the furniture and fixtures could be reinstated for residential purposes after the inspection; and
- whether he agreed that he should have checked the previous inspection records of the site to assist him in forming a view as to whether there was any tenancy breach on the site.

69. In his letter of 2 May 2007 in **Appendix 15**, **Mr LEUNG Kwai-lam** said that:

- it was the practice that the LandsD staff did not assume that all tenants were not honest and not trustworthy, and that they would breach the tenancy conditions; and
- the purpose of his visit was rent review. Prior to the visit he had already been assisted by the recommendation of Mr Peter TSANG, the then Senior Estate Surveyor/South East, who had formed an opinion as to the open market rent payable for renewal of the tenancy. His role on that visit was to confirm Mr TSANG's rent review assessment and not for any other purpose. File records showed that actions had been taken separately to deal with any breach.

70. The Committee further asked Mr LEUNG:

- before inspecting the site on 4 December 2002, whether he knew that the tenant had records of repeatedly using the site for residential purposes in breach of the tenancy conditions and had previously applied for regularising the domestic use of the premises;
- about the duration of the inspection on 4 December 2002;

- during the inspection, whether he had lifted the plastic sheets to check the condition of the furniture and fixtures being covered up; and
- whether he had compared the situation of the site and premises on the day of his inspection with that shown in the photographs taken during previous inspections to ascertain if there had been any change.

71. **Mr LEUNG Kwai-lam**, in his letter of 2 May 2007, stated that:

- due to the lapse of time, he had no recollection as to whether, at the time of his inspection on 4 December 2002, he had any knowledge that the tenant had previous records of tenancy breaches or that the tenant had applied for regularisation of the domestic use of the premises. Neither could he remember whether or not he had made comparison of the photographs taken during previous inspections; and
- he could not recollect the time spent on the site inspection. Nevertheless, he did not believe that he had lifted the plastic sheets during the inspection as it had been a long-standing tradition and practice of the LandsD that no part of the private properties belonging to any tenants should be interfered with. This tradition and practice were founded upon the need to avoid misunderstanding of the tenants and complaints, and possibly legal action.

## F. Conclusions and recommendations

72. The Committee:

### Administration of rent arrears

- expresses astonishment and serious dismay that:
  - (a) once a tenant of a short term tenancy (STT) had commenced legal proceedings against the Government, the Lands Department (LandsD) had difficulties in recovering the rent arrears. The tenant could continue occupying the sites without paying rent for a lengthy period;
  - (b) the LandsD had difficulties in repossessing the sites even after termination of the tenancies because of the ongoing legal proceedings; and
  - (c) the LandsD's practice of not issuing rent demand notes to an STT tenant while there were ongoing legal proceedings between the tenant and the Government might create an impression that a tenant could avoid paying rent by taking legal action against the Government;

- notes that to enforce the payment of rent by a tenant during the course of legal proceedings, in some cases, the Government had applied to the court for interim payment of rent;
- expresses dismay and serious concern that:
  - (a) the LandsD had not included four significant STT rent arrears cases in the annual returns of arrears of revenue, which was at variance with Standing Accounting Instruction 1020;
  - (b) up to 30 June 2006, the action to write off four long outstanding rent arrears cases had not been completed despite indications that recovery actions would not be fruitful;
  - (c) the LandsD's rent arrears increased significantly from \$42 million as at 31 March 2004 to \$163 million as at 31 March 2005, mainly due to rent arrears from five car-park STT cases;
  - (d) up to mid-September 2006, the LandsD had not implemented all the improvement measures approved by the Land Administration Meeting (LAM) in 2005;
  - (e) unlike some other government departments, the LandsD did not have a policy of checking whether the tenderers holding a large number of STTs had the financial capability to successfully carry out the car-park operations; and
  - (f) the LandsD had not issued internal guidelines on the level of authority that the District Lands Offices (DLOs) should seek before accepting a tenant's settlement proposal or making a counter-offer, resulting in inconsistent practices among different DLOs;
- notes that the Director of Lands:
  - (a) has implemented the audit recommendations in paragraphs 2.12 and 2.21 of the Director of Audit's Report (Audit Report); and
  - (b) has agreed to implement the audit recommendations in paragraph 2.29 of the Audit Report. Regarding the recommendation in paragraph 2.29(a), the LandsD will ask existing tenants to submit their company accounts for checking in order to ascertain their ability to tender for further STTs with the LandsD;

Monitoring of tenants' performance

- expresses dismay that:
  - (a) in three cases, the LandsD had not informed the DLOs in time of the latest LAM decisions concerning tenants with tenancy breach records, resulting in the granting of three STTs to these tenants and a related party without referring their tenders to LAM for review. In all three STT cases, the tenants' performance was subsequently found to be unsatisfactory; and
  - (b) on four occasions, there were delays of 28 to 85 days in conducting the LandsD's three-monthly performance reviews of tenants with tenancy breach records;
- notes that the Director of Lands has implemented the audit recommendations in paragraph 3.17 of the Audit Report;

Enforcement action on unauthorised use of sites for car-park purposes

- expresses grave dismay and finds it unacceptable that:
  - (a) three non-car-park STT tenants had breached the tenancy conditions by using the sites as fee-paying car-parks;
  - (b) there were variations among different DLOs in taking enforcement actions against tenants in breach of STT conditions. For example, in the three cases involving unauthorised use of sites for car-park purposes, the time taken by the DLOs to issue notices to terminate the tenancies after discovering the breaches varied from 1 month to 35 months;
  - (c) the LandsD guidelines did not require the DLOs to carry out site inspections outside office hours, although inspections carried out outside office hours were more effective for obtaining evidence of unauthorised use of sites for car-park purposes; and
  - (d) in one case, the LandsD had refunded the deposit in full to the tenant without deducting from it the loss of rental income as a result of forfeiture of the STT;
- notes that the Director of Lands:
  - (a) has implemented the audit recommendations in paragraph 4.16, except 4.16(b), of the Audit Report. Regarding the recommendation in paragraph 4.16(b), the LandsD will finalise, by early July 2007, the approach to tackling the issue; and

- (b) has set up a management services team in May 2007 with the overall objective to ensure that, in the LandsD's administration work, actions being or having been taken are in full compliance with the guidelines, procedures and prescribed timeframe set down in departmental instructions;
- urges the Director of Lands to ensure that the LandsD staff will diligently comply with all the guidelines and instructions on monitoring tenants' performance in fulfilling tenancy conditions;

Enforcement action on unauthorised use of site for residential purposes

- finds it unacceptable and inexcusable that the LandsD had failed to take rigorous enforcement action against the unauthorised use for residential purposes of an STT site in Sha Tin granted under three STTs (STT 2 to STT 4), which were under the LandsD's administration between April 1982 and August 2006, in that:
  - (a) the tenant (of STT 3 and STT 4 who was also the actual user of the site during STT 2) was found during seven site inspections by the LandsD to have breached the tenancy conditions by using the site for residential purposes;
  - (b) the tenant was found during six inspections by the LandsD to have occupied the adjoining government land without approval;
  - (c) on one occasion, the LandsD did not issue a warning letter to the tenant upon finding that he had used the site for residential purposes;
  - (d) on three occasions, the LandsD did not request the Housing Department to clear a car-port structure which was found occupying the adjoining government land without approval;
  - (e) on three occasions, the LandsD did not promptly carry out a follow-up inspection after finding that the tenant had breached the tenancy conditions or had occupied government land without approval;
  - (f) on three occasions, the LandsD did not seek advice from the Buildings Department upon finding building structures within the STT premises which might require the Buildings Department's approval;
  - (g) except on one occasion, the LandsD did not require the tenant to demolish domestic fixtures found within the STT premises;

- (h) despite the repeated breaches of the tenancy conditions during STT 2, in June 1993, the DLO/Sha Tin approved the granting of a new tenancy (STT 3) to a tenant (who had been the actual user during STT 2) without submitting the case to the District Lands Conference for making a recommendation. According to the Lands Administration Office (LAO) Instructions, a contentious case should be submitted to the Conference for a recommendation;
  - (i) in deciding to approve the granting of STT 3 to the tenant in June 1993, the DLO/Sha Tin had attached a greater weighting to the need to avoid leaving the site vacant as it would cause management problems and a loss of rental income, than the need to enforce tenancy conditions by terminating the tenancy;
  - (j) although the site had repeatedly been used for residential purposes in breach of the tenancy conditions, the LandsD had not implemented additional measures, such as increasing the frequency of inspections or terminating the tenancy, to ensure that the tenant would not use it for residential purposes; and
  - (k) the LandsD's copy of the STT 3 agreement (effective from 1 January 1994) had not been signed by the Government's representative (i.e. the then District Lands Officer/Sha Tin);
- finds it unacceptable and inexcusable that, as revealed by the above Sha Tin STT case, the LandsD's inspection of STT sites was not effective for checking if there was unauthorised use of the sites for residential purposes, as:
- (a) despite the fact that the tenant had a past record of tenancy breaches, the LandsD gave prior notification to the tenant before inspecting the site. For example, the inspections on 4 December 2002, 28 September 2005 and 1 August 2006, during which no irregularities were found, were all conducted with advance notice given to the tenant;
  - (b) the LandsD did not have specific guidelines on the circumstances under which an STT site should be regarded as being used for residential or storage purposes. As a result, the LandsD staff who inspected the Sha Tin STT site had to make subjective judgement as to whether there was any breach;
  - (c) some LandsD staff who conducted site inspections adopted a lenient standard in judging whether there was a tenancy breach. For example, the District Lands Officer/Sha Tin who inspected the Sha Tin STT site on 4 December 2002, which was shortly after an inspection by another LandsD staff on 22 October 2002 when the site was found to be used for residential purposes, considered that the site was used for storage in

accordance with its permitted use. However, photographs taken during the inspection on 4 December 2002 showed that the furniture and fixtures on the premises were substantially the same, except that some were stacked up or covered up by plastic sheets; and

- (d) the then District Lands Officer/Sha Tin judged that the site was used for storage on 4 December 2002, despite the fact that the inspection on that day was conducted at the request of the tenant, the plastic sheets could easily be removed, the furniture and fixtures could easily be reinstated for residential purposes, the tenant had a past record of tenancy breaches, and the tenant had even applied for regularising the domestic use of the premises previously;
- notes that:
  - (a) the Director of Lands has implemented the audit recommendations in paragraph 4.31 of the Audit Report, including:
    - (i) formulating a set of guidelines for enforcement action, such that warning letters and notices of termination are issued within a specific time limit;
    - (ii) for recurring breaches, giving the tenant a shorter period to rectify the breaches;
    - (iii) adding a new provision to the LAO Instructions that where extensive fixtures or equipment are found during an inspection, which are obviously not in compliance with the terms of the tenancy, the tenant should be requested to remove them;
    - (iv) reminding LandsD staff that all STT agreements must be promptly signed by the Government's representative; and
    - (v) conducting inspections of other STTs with a view to finding out unauthorised use of the sites. Of the 4,472 STTs surveyed, 2,034 (about 45%) are detected to have tenancy breaches. Actions on major breaches are being taken. As for other cases, in view of the substantial number involved and resources constraint, the LandsD is exploring a practical and pragmatic approach to tackling the issue, which will be finalised by early July 2007; and
  - (b) the LandsD will consider not granting new STTs to a tenant who has repeatedly breached the conditions of a tenancy;

- strongly urges the Director of Lands to:
  - (a) ensure that all LandsD staff will strictly comply with the LandsD's guidelines and instructions on the enforcement of tenancy conditions, including those on site inspection; and
  - (b) provide adequate training to LandsD staff who are responsible for carrying out inspection of STT sites;

**Other enforcement action**

- expresses serious concern that:
  - (a) in two cases, the DLO staff had not complied with LandsD guidelines on the proper serving of a Notice-to-quit, resulting in delay in repossessing the sites;
  - (b) the DLO's calculation of the mesne profits from a tenant, who remained in possession of an STT site after the expiry of the tenancy, was not consistent with the LAM decision, resulting in lesser mesne profits obtained; and
  - (c) there was no arrangement for sharing information on tenancy breaches among the LandsD and other relevant government departments;
- notes that:
  - (a) the Director of Lands has implemented the audit recommendations in paragraph 4.43 of the Audit Report; and
  - (b) the LandsD is seeking the Department of Justice's advice on the recommendations in paragraph 4.53 of the Audit Report concerning the sharing of tenants' information;

**Follow-up actions**

- wishes to be kept informed of:
  - (a) any measures taken by the Director of Lands to ensure that the LandsD staff will diligently comply with all the guidelines and instructions on monitoring tenants' performance in fulfilling tenancy conditions and on the enforcement of tenancy conditions, including those on site inspection; and
  - (b) the progress made in implementing the various audit recommendations.