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Panel on Housing

Meeting on 1 February 2010

**Updated background brief on removal of security of tenure
prepared by the Legislative Council Secretariat
(position as at 26 January 2010)**

Purpose

This paper sets out the background on the removal of security of tenure, and gives a brief account of the views and concerns expressed at meetings of the Council and various committees.

Background

2. The Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (the Ordinance) was enacted in 1973 to consolidate all previous legislation relating to landlord and tenant matters, protection and determination of tenancies as well as control and recovery of rent.

3. Security of tenure for domestic tenancies was introduced in 1981 when there was a serious shortfall of domestic accommodation leading to significant rental increases upon renewal of tenancies. Under the security of tenure provisions, if a tenant sought to renew the tenancy and was willing to pay the prevailing market rent, the landlord would have to agree to the tenancy renewal. Only on certain statutory grounds, such as default of rent payment by tenant or self-occupation or redevelopment of premises by landlord, could the landlord refuse to renew the tenancy. These restrictions aimed to protect tenants from eviction by unscrupulous landlords, and impose a right of renewal of tenancies at prevailing market rent. While security of tenure had helped protect the interest of tenants when their bargaining power were weak at the time when there was a serious shortfall of domestic accommodation, it also impeded the free operation of the private rental market and discouraged investors from renting out their properties.

4. In the light of the changed circumstances where there was ample supply of flats and rentals had dropped, the Administration introduced the Landlord and Tenant (Consolidation) (Amendment) Bill 2003 in May 2003 to -

- (a) remove security of tenure provisions for domestic tenancies under Part IV of the Ordinance; and
- (b) remove the minimum notice requirement for terminating non-domestic tenancies under Part V of the Ordinance.

The Bill was passed in June 2004.

Major concerns raised at meetings of the Council and various committees

5. In the course of deliberation of the Landlord and Tenant (Consolidation) (Amendment) Bill 2003, some members of the Bills Committee expressed concern that the removal of security of tenure might push up rents in the private market, thereby unduly affecting tenants, particularly those underprivileged groups such as elderly singletons, dwellers living in cubicles and bedspace apartments and those with chronic illness who might have difficulties in finding suitable alternative accommodation. Apart from security of tenure, payment of statutory compensation by landlords, including developers and the Urban Renewal Authority (URA), to tenants in acquisition of domestic properties for redevelopment would also be removed. Some members pointed out that the removal would not only run contrary to the legitimate expectation of tenants, particularly those of the remaining projects announced by the former Land Development Corporation (LDC) who had been waiting for redevelopment for so long, but was also at variance with the people-oriented approach advocated by URA. They also expressed concern that many evicted tenants, particularly those past beneficiaries of subsidized home ownership schemes (SHOS), would not be eligible for public rental housing (PRH) given the stringent prevailing eligibility criteria for PRH. Tenants affected by URA redevelopment projects would also face the same problem. In this connection, both Government and non-governmental organizations should assist those past SHOS beneficiaries who could not afford rented accommodation in the private sector. After repeated requests from members, the Administration had finally obtained the agreement of URA to adopt the existing compensation formula under the Ordinance on an ex gratia basis, and retain the minimum payments currently payable under URA policy. While welcoming the revised arrangement, members pointed out that this only dealt with the part on statutory compensation, and that the part on non-statutory compensation would have to be followed up by the relevant Panel with URA.

6. A question on the compensation and rehousing for tenants affected by URA projects was raised at the Council meeting on 4 November 2009. The question and the Administration's response are hyperlinked below for ease of reference.

7. When the subject of "Landlord and Tenant (Consolidation) Ordinance (Cap. 7) and measures to assist low-income persons in meeting their housing needs " was discussed at the meeting of the Panel on Housing (the Panel) on 7 December 2009, some members pointed out that the removal of security of tenure had affected the tenants' right to renew tenancies even if they were willing to pay prevailing market

rents. As a result, many tenants were forced to move out of the districts they used to live, and sever the ties which they had built up in the neighborhood. The removal had also affected the rehousing eligibility of tenants affected by URA projects for PRH because they were evicted upon expiry of tenancies. Some members also pointed out that tenants were having a hard time finding affordable accommodation in view of the significant increase in rents following the removal of rent control. Given the host of tenancy problems arising from the removal of security of tenure and rent control, members were disappointed that the Administration had no plans to review the Ordinance. In this connection, members agreed that another meeting would be arranged to exchange views with deputation on the subject.

Latest development

8. The Panel has invited deputations to express their views on the review of the Ordinance at its meeting on 1 February 2010.

Relevant papers

Report of the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2003 to the Council meeting on 30 June 2004

<http://www.legco.gov.hk/yr03-04/english/hc/papers/hc0611cb1-2090e.pdf>

Question raised by Hon Albert HO at the Council meeting on 4 November 2009

http://www.legco.gov.hk/yr09-10/english/counmtg/agenda/cm20091104.htm#q_11

Administration reply to question raised by Hon Albert HO at the Council meeting on 4 November 2009

<http://www.info.gov.hk/gia/general/200911/04/P200911040217.htm>

Information paper provided by the Administration for the Panel on Housing meeting on 7 December 2009

<http://www.legco.gov.hk/yr09-10/english/panels/hg/papers/hg1207cb1-534-4-e.pdf>

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