

LEGISLATIVE COUNCIL BRIEF

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 1999

INTRODUCTION

A At the meeting of the Executive Council on 30 November 1999, the Council ADVISED and the Chief Executive ORDERED that the Landlord and Tenant (Consolidation)(Amendment) Bill 1999 (the Bill), at Annex A, should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

General Background

2. The Landlord and Tenant (Consolidation) Ordinance (LTO) was enacted in 1973 by consolidating all previous legislation relating to rent control and landlord and tenant matters. It consists of seven parts –

- (a) Parts I and II, which expired on 31 December 1998, dealt respectively with rent increase control and security of tenure of pre-war and certain post-war domestic tenancies;
- (b) Part III deals with distress for rent;
- (c) Part IV provides for security of tenure for most domestic tenancies and those domestic tenancies which used to be protected by Parts I and II;
- (d) Part V provides for notice of termination of tenancies of mostly non-domestic premises; and
- (e) Parts VI and VII are concerned with the recovery of small tenements and miscellaneous matters respectively.

Proposed Amendments

3. We have completed a review of the LTO, taking into account operational experience in past years. We propose to amend the LTO to simplify tenancy renewal procedures, improve the basis of calculating compensation for the tenant and sub-tenant occupying small premises repossessed by the landlord for redevelopment, increase penalties for harassment of the tenant and unlawful eviction. Amendments are also proposed to ensure that the provisions of the LTO are consistent with the human rights provisions in the Basic Law, and to improve the general administration of the LTO.

Tenancy Renewal Procedures under Part IV of the Landlord and Tenant (Consolidation) Ordinance

4. Part IV of the LTO covers most domestic tenancies and provides for security of tenure to the tenant who is willing to pay the prevailing market rent upon the expiry of the existing tenancy. The existing statutory procedures for renewing a tenancy under Part IV are complicated. Many tenants, especially those living in small flats and cubicles, have difficulty in following these procedures. There are also strict time limits on the exchange of statutory documents between the landlord and the tenant.

5. Failing to reach agreement with the landlord, the tenant may apply to the Lands Tribunal for granting of a new tenancy. The Lands Tribunal has also indicated that the complicated procedures and strict time limits stipulated under Part IV are preventing it from determining applications for new tenancy solely on their merits. Flowcharts illustrating the current tenancy renewal procedures and our proposed changes are at Annex B.

B

6. In order to streamline the tenancy renewal procedures so as to facilitate the landlord and the tenant in reaching agreement and to give the Lands Tribunal the discretion in handling tenancy renewal applications involving notices not served or submitted within statutory time limits, we **propose** that –

- (a) The lead time for the landlord to serve a notice of termination of tenancy on the tenant (Form CR101) and for the tenant to make a request for a new tenancy (Form

CR103) should be shortened, **from** not more than seven nor less than six months **to** not more than four nor less than three months before the date of termination or beginning of a new tenancy. The existing prolonged notice period prevents the landlord and the tenant from taking into account the rapidly changing circumstances nearer to the expiry of the existing tenancy.

- (b) The provision for the landlord to serve a notice to the tenant requiring the tenant to make an application to the Lands Tribunal in two months for granting a new tenancy (Form CR105) should be removed. Service of such a notice is considered redundant.
- (c) Provisions should be made to provide for the landlord and the tenant to apply to the Commissioner of Rating and Valuation for rental information of comparable premises at a fee. This will facilitate agreement between the landlord and the tenant on the level of rent for renewal of a tenancy without recourse to legal proceedings at the Lands Tribunal.
- (d) The landlord should be allowed to change or add grounds of opposition to a tenancy renewal application made by the tenant to the Lands Tribunal owing to change of circumstances arising after the service of notice of termination or opposition (Form CR 101 or Form CR 104). The Lands Tribunal can then determine the case on its full merits.
- (e) The Lands Tribunal should be empowered to hear cases in which the landlord or the tenant fails to observe statutory time limits in serving or submitting notices with good cause.

Penalties on Harassment of the Tenant and Unlawful Eviction

7. Under Part IV of the LTO, harassment of the tenant and unlawful eviction are offences liable on conviction to a fine of \$500,000 and, in addition, on a subsequent conviction, to imprisonment for 12 months. Legislative Councillors and the public have expressed concern in the past over the use of unlawful means to evict the tenant in order to

recover premises for redevelopment, and have suggested that heavier penalties should be imposed on such offences.

8. In order to deter such offences, we **propose** to impose heavier penalties - a fine of \$500,000 and imprisonment for 12 months on first conviction; and a fine of \$1 million and imprisonment for three years on a subsequent conviction. In order to facilitate prosecution, we also **propose** to amend the LTO to require the prosecution to prove that the defendant knows or has reasonable cause to believe that his/her act is likely to cause the tenant to give up occupation of the premises, rather than to prove the intent of the defendant.

Compensation for the Tenant and Sub-tenant upon Redevelopment

9. When premises are repossessed for redevelopment, the statutory compensation payable by the landlord to the tenant and sub-tenant under Part IV of the LTO is calculated according to a sliding scale of compensation levels as follows –

Rateable Value (RV)	Multiplier
For the first \$30,000 of the RV (where RV does not exceed \$30,000)	7
For the second \$30,000 of the RV (where RV exceeds \$30,000 but does not exceed \$60,000)	5
For the third \$30,000 of the RV (where RV exceeds \$60,000 but does not exceed \$90,000)	3
For the remainder of the RV (where RV exceeds \$90,000)	1

10. Where premises are partitioned and sub-let, compensation is calculated in accordance with the rateable value of the whole flat and then apportioned among the tenant and sub-tenant. Owing to the higher rateable value for the whole flat (as compared with that for a part or sub-let portion within the flat), the apportioned compensation to each tenant or sub-tenant is much reduced. This method of calculation is not consistent with the spirit that the tenant and sub-tenant occupying smaller areas should receive higher compensation to alleviate hardship arising from relocation.

C

11. We **propose** to improve the method of calculating compensation by making reference to the rateable value of the actual portion of the flat which the tenant or sub-tenant occupies. An example illustrating the existing and proposed methods of calculation and compensation is given at Annex C.

Facilitating Private Settlement in Redevelopment Cases

12. The process of redevelopment can be expedited if vacant possession can be obtained through voluntary surrender of premises by the tenant with an agreed level of compensation payable to affected tenants without the need to initiate any legal proceedings. However, in many cases, the tenants of premises do not have any idea of the amount of statutory compensation which they may obtain. To facilitate negotiation between the landlord and the tenant with a view to agreeing on a mutually acceptable amount of compensation, we **propose** to allow the Commissioner of Rating and Valuation to issue, on application at a fee, a certificate of the rateable value of the premises concerned and the amount of statutory compensation payable.

Ensuring Compliance with Human Rights Provisions in the Basic Law

13. Part V of the LTO provides for notice of termination of tenancies of mostly non-domestic premises and specifies a list of tenancies to which Part V will not apply. In case of dispute over whether a fixed term tenancy not exceeding one year should be excluded from Part V, the Commissioner of Rating and Valuation's decision will be final. As this does not provide parties aggrieved by the determination of the Commissioner any channel of appeal and in order to ensure consistency with the human rights provisions in the Basic Law⁽¹⁾, we **propose** to provide for an avenue of appeal to the Lands Tribunal.

14. Part III of the LTO stipulates that a person shall be deemed to be guilty of an offence for fraudulently removing movable properties

Note ⁽¹⁾: 'Right to fair and public hearing' as provided for under Article 14(1) of the International Covenant on Civil and Political Rights as applied by Article 39 of the Basic Law to Hong Kong and section 8 (Article 10) of the Hong Kong Bill of Rights Ordinance.

under distraint or liable to be seized for distress for rent. Under Part IV, a landlord may serve a notice of termination (Form CR101) or oppose an application for a new tenancy by a tenant (Form CR104) on the grounds of self-occupation or intention to rebuild and, if the landlord successfully opposes the grant of a new tenancy, he/she will be restricted from letting or assigning the repossessed premises for 24 months, contravention of which is a criminal offence. It is currently stipulated that even when such an application for a new tenancy made to the Lands Tribunal does not proceed and the tenant agrees to give up the possession of the premises, the landlord shall be deemed to be restricted in the same manner as if he/she has successfully opposed an application. We **propose** to amend the relevant provisions under Parts III and IV by removing the deeming provisions to ensure consistency with the human rights provisions in the Basic Law⁽²⁾.

Repealing Transitional Provisions under Part V in Respect of Business Premises Used Partly for Human Habitation

15. When business premises were excluded from the operation of Part I of the LTO in 1984, a number of provisions were introduced under Part V to give protection to those tenancies of pre-war business premises which were used partly for human habitation since 1979. With the passage of time, the number of such business premises has become very few and the Lands Tribunal has rarely handled any such cases in the past five years. We **propose** to repeal these provisions so that all tenancies of business premises will be subject to control under Part V.

Improving Operation of the Landlord and Tenant (Consolidation) Ordinance

16. We **propose** that the power to amend the Fourth and Fifth Schedules to the LTO (which stipulate fees and specified forms for distress for rent) be transferred from the Chief Executive to the Secretary for Housing. We **propose** to include provisions to specify forms for

Note ⁽²⁾: 'Presumption of innocence' as provided for under Article 14(2) of the International Covenant on Civil and Political Rights as applied by Article 39 of the Basic Law to Hong Kong and section 8 (Article 11) of the Hong Kong Bill of Rights Ordinance.

making various applications to the Commissioner of Rating and Valuation, and to provide for forfeiture of a tenancy under Part IV if the tenant fails to pay rent within 15 days of the due date. We **propose** to prescribe a fee for obtaining information on rateable values of premises for purposes specified under various Parts of the Ordinance. We also **propose** to empower the Financial Secretary to determine various fees by notice in the Gazette.

Technical Amendments

17. Other technical amendments include provisions to increase the specified level of rateable value as stipulated under certain provisions for determining the applicability of such provisions under Parts III and VI to the premises concerned. Under Part III, a landlord may apply for a warrant for repossession of deserted premises with rateable value below \$30,000 in respect of which the rent is in arrears for two months and there is insufficient distress left for recovery of the rent. Under Part VI, a landlord may apply to the District Court for repossession of premises with rateable value below \$30,000 in case of illegal occupation. We **propose** to increase the specified level of rateable value from \$30,000 to \$100,000 to cover most domestic units sized below 75m².

Consequential and Other Amendments

18. With the proposed jurisdiction of the Lands Tribunal in dealing with appeals against the Commissioner of Rating and Valuation's decision on exclusion of a tenancy from Part V, the expiry of Parts I and II on 31 December 1998, as well as the need to remove obsolete references such as "tenancy tribunal", we **propose** to make a number of consequential and related amendments to the Lands Tribunal Ordinance, Lands Tribunal Rules, Rating Ordinance, District Court Civil Procedure (General) Rules, District Court Civil Procedure (Forms) Rules, Government Rent (Assessment and Collection) Ordinance, Hop Yat Church of the Church of Christ in China Incorporation Ordinance and The Methodist Church, Hong Kong, Incorporation Ordinance.

THE BILL

19. The main provisions of the Bill are -
- (a) **Clauses 2, 31 and 34** provide for the issue of certain certificates by the Commissioner of Rating and Valuation at a fee to be determined by the Financial Secretary by notice in the Gazette. **Clauses 7, 8(b), 18(a) and 19** provide for fees for various existing services to be determined by the Financial Secretary by notice in the Gazette.
 - (b) **Clauses 4, 32 and 33** increase the ceiling of rateable value of premises from \$30,000 to \$100,000 which may be repossessed by means of the procedures stipulated under Parts III or VI.
 - (c) **Clauses 5 and 18(b)** remove the “deemed to be” reference from section 111 and repeal section 119H(7) containing the deeming provision which may be inconsistent with the human rights provisions in the Basic Law.
 - (d) **Clause 6** transfers the statutory powers under section 114 to amend the Fourth and Fifth Schedules from the Chief Executive to the Secretary for Housing.
 - (e) **Clauses 10, 11 and 14(b)** shorten the statutory periods for the service of notices relating to termination of a tenancy or request for a new tenancy. **Clause 14(c)** empowers the Lands Tribunal to entertain an application for a new tenancy lodged outside the time limits specified under section 119D(2) or (3). **Clause 15** empowers a landlord to oppose an application for a new tenancy under section 117(1) on any of the grounds specified in section 119E(1) notwithstanding that he/she has not stated such grounds in his/her notice served previously under section 119 or 119A(6).
 - (f) **Clause 12** empowers the Commissioner of Rating and Valuation to provide tenancy information of comparable premises to the landlord and the tenant on application at a fee.

- (g) **Clause 13** empowers the Lands Tribunal to determine the terms of a new tenancy where the landlord and the tenant are unable to reach an agreement.
- (h) **Clause 16(b)** amends section 119F(4) to change the method of calculation of compensation payable to affected tenants and sub-tenants where the premises are to be repossessed by the landlord for rebuilding.
- (i) **Clause 17** empowers the Commissioner of Rating and Valuation to issue certificates stating the rateable value of premises and the amount of statutory compensation payable to the tenant under section 119F(4) at a fee as if the landlord has successfully opposed the grant of a new tenancy by the Lands Tribunal on the ground of an intention to rebuild.
- (j) **Clause 23** clarifies the Commissioner of Rating and Valuation's power to disclose information to specified persons including the landlord and the tenant.
- (k) **Clause 25** repeals and replaces provisions dealing with harassment and unlawful eviction of the tenant (whether by the landlord or others) to impose heavier penalties for such offences and to remove the requirement for the prosecution to prove the intent of the defendant.
- (l) **Clauses 26, 28, 29 and 30** repeal transitional provisions under Part V so that all tenancies in business premises will be subject to the same provisions in respect of the notice of termination.
- (m) **Clause 27** provides for an appeal to the Lands Tribunal against the Commissioner of Rating and Valuation's decision under section 121(3) as to whether a non-domestic tenancy should be excluded from Part V.
- (n) **Clause 34 and the Schedule to the Bill** provide respectively for transitional provisions under the LTO and consequential and related amendments to various Ordinances.

PUBLIC CONSULTATION

20. The Legislative Council Panel on Housing was consulted in early November 1999 and expressed support in principle for the proposals.

BASIC LAW IMPLICATIONS

21. The Department of Justice advises that the Bill is consistent with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

22. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

23. The amendments will not affect the current binding effect of the LTO, Lands Tribunal Ordinance, Lands Tribunal Rules, Rating Ordinance, District Court Civil Procedure (General) Rules, District Court Civil Procedure (Forms) Rules, Government Rent (Assessment and Collection) Ordinance, Hop Yat Church of the Church of Christ in China Incorporation Ordinance and The Methodist Church, Hong Kong, Incorporation Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

24. Capital expenditure of about \$1 million (mainly in terms of non-recurrent staff costs) will be required to enhance existing computer systems to cope with the additional work. This will be absorbed through internal redeployment within the Rating and Valuation Department. There are no other significant financial or staffing implications. The estimated revenue to be generated from the proposed charging of fees is around \$1 million per annum.

ECONOMIC IMPLICATIONS

25. The Bill does not have any major economic implications. The improvement brought by the Bill will facilitate the landlord and the tenant in settling tenancy matters.

LEGISLATIVE TIMETABLE

26. The legislative timetable will be -

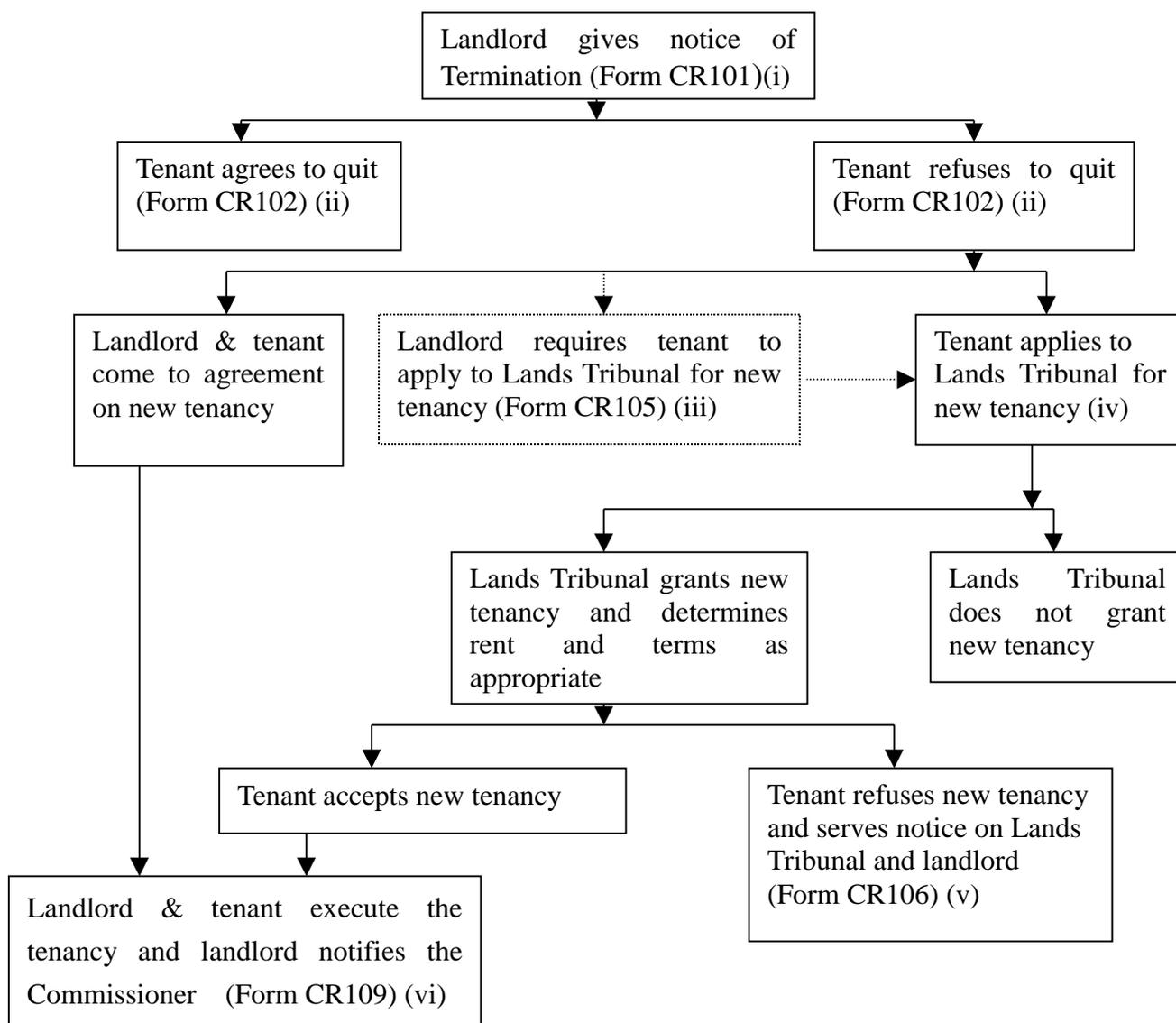
Publication in the Gazette	3 December 1999
First Reading and commencement of Second Reading debate	15 December 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

27. A Legislative Council brief and a press release will be issued on 3 December 1999. A spokesman will be available for answering media enquiries.

Housing Bureau
Government Secretariat
December 1999

File Reference : HB(CR) 7/5/1

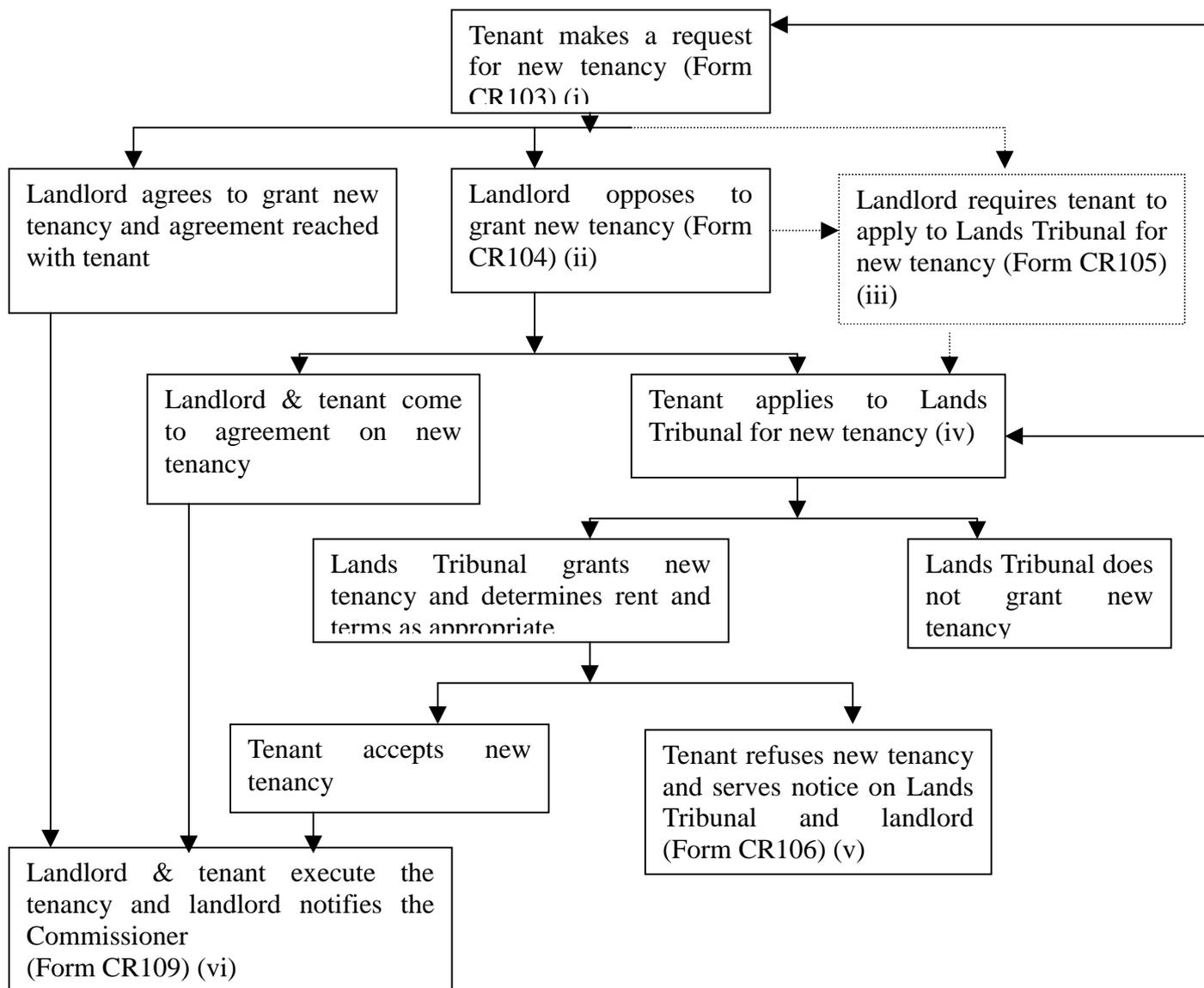
Renewal of Tenancies under Part IV of LTO – Action Initiated by Landlord**Notes :****Existing**

- (i) To serve not more than 7 nor less than 6 months before the date of termination of tenancy specified in the notice.
- (ii) To serve within 2 months of receiving Form CR101.
- (iii) To serve no sooner than 2 months after the date of Form CR101.
- (iv) To apply within 2 months from the date of Form CR105 or before the date of CR101 termination stated in Form CR101, whichever is the earlier.
- (v) To serve within 1 month after the determination.
- (vi) To serve within 1 month of execution.

Proposed

- Not more than 4 nor less than 3 months.
- Within 1 month.
- Form CR105 removed
- To apply after 1 month of receiving Form CR 101 and before date of termination stated in this Form.
- No change.
- No change.

Renewal of Tenancies under Part IV of LTO – Action Initiated by Tenant



Notes :

Existing	Proposed
(vi) To request a new tenancy commencing not more than 7 nor less than 6 months after the making of the request.	Not more than 4 nor less than 3 months.
(vii) To serve within 2 months of receiving Form CR103.	Within 1 month.
(viii) To serve no sooner than 2 months after the date of Form CR103.	Form CR105 removed
(ix) To apply after 2 months of making the request; and within 2 months from the date of Form CR105 or before the date for the commencement of the new tenancy, whichever is the earlier.	To apply after 1 month of making the request and before the date of commencement of the new tenancy.
(x) To serve within 1 month after the determination.	No change.
(vi) To serve within 1 month of execution.	No change.

Comparison of Compensations for Premises Let in Parts under Existing and Proposed Methods of Calculation

For a flat with a RV of \$96,000 (monthly rent of \$8,000), the existing statutory compensation will be \$456,000, as calculated below -

$$\$456,000 = \$30,000 \times 7 + \$30,000 \times 5 + \$30,000 \times 3 + \$6,000 \times 1$$

If the above flat is let in 4 parts with the following apportioned RVs, redevelopment compensations under the existing and proposed methods of calculation will be -

<u>Part</u>	<u>RV</u> (\$)	<u>Monthly Rent</u> (\$)	<u>Existing Compensation</u> (\$) ⁽ⁱ⁾	<u>Proposed Compensation</u> (\$) ⁽ⁱⁱ⁾	<u>Increase</u> (%)
A	12,000	1,000	57,000	84,000	(+47%)
B	18,000	1,500	85,500	126,000	(+47%)
C	30,000	2,500	142,500	210,000	(+47%)
<u>D</u>	<u>36,000</u>	<u>3,000</u>	<u>171,000</u>	<u>240,000</u>	<u>(+40%)</u>
Total	96,000	8,000	456,000	660,000	(+45%)

Notes :

- (i) Existing method of calculation is based on apportionment of the compensation as follows –

Part A	$\$12,000 \div \$96,000 \times \$456,000 = \$57,000$
Part B	$\$18,000 \div \$96,000 \times \$456,000 = \$85,500$
Part C	$\$30,000 \div \$96,000 \times \$456,000 = \$142,500$
Part D	$\$36,000 \div \$96,000 \times \$456,000 = \$171,000$

- (ii) Proposed method of calculation is based on apportionment of the RV as follows –

Part A	$\$12,000 \times 7 = \$84,000$
Part B	$\$18,000 \times 7 = \$126,000$
Part C	$\$30,000 \times 7 = \$210,000$
Part D	$\$30,000 \times 7 + \$6,000 \times 5 = \$240,000$