

**For information on
1 November 1999**

Legislative Council Panel on Housing

**Proposed Amendments to the
Landlord and Tenant (Consolidation) Ordinance**

PURPOSE

This paper informs Members of the major proposed amendments to the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (LTO) following a review of the Ordinance.

BACKGROUND

2. The LTO was enacted by consolidating various ordinances relating to landlord and tenant matters. It consists of seven parts. Parts I and II dealt respectively with rent increase control and security of tenure of pre-war and certain post-war domestic tenancies. Parts I and II expired on 31 December 1998. Part III deals with distress for rent. Part IV provides for security of tenure for most domestic tenancies, and since the expiry of Parts I and II, those domestic tenancies which used to be protected by the two Parts. Part V provides for notice of termination of tenancies. Parts VI and VII are concerned with recovery of small tenement and miscellaneous matters respectively.

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

PROPOSED AMENDMENTS

Tenancy renewal procedures under Part IV

4. Part IV of the LTO covers most domestic tenancies. The existing statutory procedures for renewing a tenancy under Part IV are complicated. Strict time limits on the exchange of statutory documents between the landlord and tenant have to be observed. Many tenants, especially those in small flats and cubicles, have neither the ability nor the experience to deal with the complex renewal procedures.

5. In order to streamline the tenancy renewal system and to facilitate the landlord and tenant to reach agreement on tenancy renewal matters, we propose -

- (a) to shorten the lead time for the landlord to serve a notice of termination of tenancy on the tenant and the tenant to serve a request for a new tenancy on the landlord from not less than six months to not less than three months before the expiry of the 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) to remove the provision for the landlord to serve a notice to the tenant requiring the tenant to make an application to the Tribunal in 2 months for granting a new tenancy. With the proposed shortening of the notice period for termination of or request for a tenancy, giving such a notice serves little practical purpose;
- (c) to provide for landlords and tenants to apply to the Commissioner of Rating and Valuation (CRV) for obtaining rental information of comparable premises at a fee. This will facilitate the reaching of agreement between the landlord and the tenant on the level of rent for renewal of a tenancy without recourse to legal proceedings at the Tribunal;
- (d) to allow a landlord to change or add grounds of opposition to a tenancy renewal application made by a tenant to the Tribunal. The landlord will then be able to include new grounds of opposition necessitated by circumstances which

may arise after he has served the notice of termination. The Tribunal can therefore determine the case by taking into full account of its merits. At present, the hearing is scheduled about nine months after serving of the notice; and

- (e) to empower the Tribunal to hear cases lodged by a landlord or tenant outside the specified time limits. The Tribunal will then have discretion in determining an application in which either party may have failed to observe the statutory time limits with good cause.

Penalties on harassment of tenants and unlawful eviction

6. Under Part IV of the LTO, harassment of tenants and unlawful eviction are offences liable on conviction to a fine of \$500,000 and, in addition, on a second or subsequent conviction, to imprisonment for 12 months. Legislative Councillors and the public have in the past expressed concern over the use of unlawful means to evict tenants in order to recover premises for redevelopment and suggested that heavier penalties be imposed on such offences. We propose to create a greater deterrent against such offences by imposing heavier penalties so that a person is liable to a fine of \$500,000 and to imprisonment for 12 months on first conviction; and, on a second or subsequent conviction, to a fine of \$1 Million and to imprisonment for three years. Amendments are also proposed to the offence provisions by requiring the prosecution to prove 'knowing or having reasonable cause to believe that any act done is likely to cause the tenant to give up occupation or refrain from exercising any right or pursuing any remedy in respect of the premises', instead of proving intent, in order to facilitate prosecution.

Compensation for tenants upon redevelopment

7. When premises are repossessed for redevelopment, a statutory compensation payable by the landlord to tenants and sub-tenants under Part IV of the LTO is calculated according to a sliding scale with diminishing multipliers being applied to brackets of higher rateable values as follows -

<u>Rateable Value (RV)(see Note 1)</u>	<u>Multiplier</u>
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

For example, for a flat with a RV of \$96,000 (monthly rent of \$8,000), the existing statutory compensation will be \$456,000 (see Note 2).

8. Where premises are partitioned and sub-let, compensation is calculated in accordance with the rateable value of the whole flat and then apportioned to tenants and sub-tenants. Owing to the higher rateable value for the whole flat (as compared with a lower apportioned rateable value for a sub-let portion within the flat), a lower average multiplier will be applied to the overall rateable value for the calculation of compensation. This method is not consistent with the spirit that tenants and sub-tenants occupying smaller premises (with lower rateable value) should be given a proportionately higher compensation, as enshrined in the existing formula. A proportionately higher compensation will help alleviate the hardship of those tenants and sub-tenants occupying bedspaces or cubicles arising from relocation.

9. We propose to amend the method of calculating compensation payable to a tenant or sub-tenant by making reference to the rateable value of the respective portion of the flat which he/she occupies so that a higher average multiplier will apply in calculating the amount of compensation.

Ensuring compliance with human rights provisions in the Basic Law

10. Part V of the LTO provides for notice of termination of tenancies. However, it does not provide parties aggrieved by the determination of CRV in respect of the exclusion of a tenancy from Part V any channel of appeal. In order to ensure consistency with the human

Note 1 : Rateable value is an estimate of the annual rental value of premises on vacant and to-let basis assessed under the Rating Ordinance.

Note 2: $\$456,000 = \$30,000 \times 7 + \$30,000 \times 5 + \$30,000 \times 3 + \$6,000 \times 1$

rights provision of the Basic Law (see Note 3), we propose that such an avenue of appeal to the Tribunal should be provided.

Facilitating private settlement in redevelopment cases

11. The process of redevelopment can be expedited if vacant possession can be obtained through voluntary surrender of the premises by the tenants with an agreed level of compensation payable to the affected tenants without the need to initiate any legal proceedings. However, in many cases, the tenants 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 CRV to issue on application at a fee a certificate of the rateable value of the premises concerned and the amount of statutory compensation payable.

Repealing transitional provisions under Part V in respect of business premises used partly for human habitation

12. 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 alleviate the impact of the exclusion on those tenancies of pre-war business premises which were used partly for human habitation. They were meant to be transitional provisions to afford due protection to those tenancies of pre-war business premises partly inhabited since 1979. With the passage of time, the number of such business premises has become very few. This is reflected by the fact that the Tribunal has rarely received any application under the relevant sections of Part V in the past five years. We propose to repeal these provisions so that all tenancies of business premises will be subject to equal treatment regarding notice of termination for tenancies stipulated under Part V.

Improving the administration of the LTO

13. We propose that the power to amend certain Schedules to the LTO be transferred from the Chief Executive to the Secretary for Housing. Other proposals include technical amendments to the LTO for improving the general operation of the Ordinance.

Consequential and related amendments

Note 3: '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.

14. With the proposed jurisdiction of the Tribunal of dealing with appeals against CRV's decision on exclusion of a tenancy from Part V and the expiry of Parts I and II on 31 December 1998, as well as the need to remove obsolete references such as "tenancy tribunal", a number of consequential and related amendments will be required to be made to the Lands Tribunal Ordinance (Cap. 17), the Lands Tribunal Rules (Cap. 17 sub. leg.), Rating Ordinance (Cap. 116), District Court Civil Procedure (General Rules)(Cap. 336 sub. leg.), District Court Civil Procedure (Forms) Rules (Cap. 336 sub. leg.), Government Rent (Assessment and Collection) Ordinance (Cap. 515), Hop Yat Church of the Church of Christ in China Incorporation Ordinance (Cap. 1027) and The Methodist Church, Hong Kong, Incorporation Ordinance (Cap. 1133).

LEGISLATIVE TIMETABLE

15. We propose to introduce the Landlord and Tenant (Consolidation)(Amendment) Bill into the Legislative Council in December 1999.

Housing Bureau
Government Secretariat
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