1. Please provide a table showing the views of consultees on the Bill and the justifications for the Administration to accept or reject such views.

Suggestions that have not been adopted in the Landlord and Tenant (Consolidation) (Amendment) Bill 2001

The following list outlines suggestions that were not adopted in the Landlord and Tenant (Consolidation) (Amendment) Bill 2001. Other suggestions have already been adopted in the Bill.

Item	Ordinance Reference	Suggestion Not Adopted	Reason	Suggestion from
Landlord and Tenant (Consolidation) Ordinance, Cap.7				
1.	Part IV s.119D(3)(a)	To retain Form CR105 notice to enable landlord to impose on tenant a 2-month deadline to apply to Lands Tribunal.	Currently, the 2-month deadline set under Form CR 105 serves as to expedite the 6 to 7-month notification period of Form CR 101 or CR 103. Under the Bill, the notification period is reduced to 3 to 4 months, the purpose of the 2-month deadline would diminish significantly.	Malcolm Merry
2.	Part IV s.119F(4)(b)	To maintain existing rebuilding compensation to avoid additional burden on developers and possible abuse by tenants.	New compensation is fairer to part-let or sub-let tenancies. Abuse is not likely as claims will be subject to adjudication by Lands Tribunal.	Real Estate Developers Association

Item 1

Item	Ordinance Reference	Suggestion Not Adopted	Reason	Suggestion from
High Court Ordinance, Cap.4 (HCO) and District Court Ordinance, Cap.336 (DCO)				
3.	s.21F HCO & s.69 DCO	To abolish mandatory relief period against forfeiture for non-payment of rent. Court to be given discretion to grant relief as it thinks fit.	Not adopted because Court discretion will generate application for and opposition against relief. This will lengthen the process rather than shorten it.	Malcolm Merry

Note : Various suggestions concerning Parts I and II of the Landlord and Tenant (Consolidation) Ordinance have also not been adopted as they are no longer necessary with the expiry of the Parts on 31.12.1998.

Item 2

2. To consider extending the scope of Part V of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (LTO) to cover leasing of commercial premises, including those of the Housing Authority run by single operators, on licence terms instead of tenancy agreement.

The Policy

(a) It has always been the Government's policy to ensure minimum interference in the market mechanism. For disposals (buying, selling or letting) of commercial tenancies, landlords and tenants are on an equal footing to negotiate freely on the terms of tenancy based on their respective commercial interests. Intervention into their agreements should therefore be minimised.

(b) Part V of the LTO applies to commercial tenancies with terms shorter than three years (except tenancies not exceeding one year entered into under certain circumstances specified in s121(3)). Its main protection to tenants is the requirement for the landlord to serve a notice of termination on the tenant not less than 6 months before the end of the tenancy (s.122(1)).

Licence

(c) According to the Department of Justice, the main differences between a "licence" and a "tenancy" are that a tenancy confers an interest in land and a tenant has exclusive possession of the premises, whereas a licence is personal in nature and generally a licensee does not have exclusive

possession of the premises.

(d) The Administration considers that it is not necessary to extend Part V of the LTO to cover licences as freely negotiated contract should be given due respect. The parties should be allowed to choose whether to enter into a tenancy agreement (which is subject to the provisions of the LTO) or a licence agreement (which is not subject to the provisions of the LTO).

Item 3

3. To consider including in Part IV of LTO provisions to enable landlords to repossess properties which have been used for illegal purposes, or on which the tenant has constructed unauthorised building works (UBWs).

(a)The Administration agrees to amend the Bill to enable landlords to repossess properties which have been used for illegal purposes, or on which the tenant has constructed UBWs.

(b) The Administration is exploring the following two options of legislative amendments:

(i) To include illegal purposes and erection of UBWs as grounds for landlords to repossess rented properties

(1) A provision similar to s53(2)(f) of the expired Part II could be adopted in Part IV. Section 53(2)(f) provides that the Lands Tribunal might grant an order of possession if it is satisfied that "the tenant or the sub-tenant has suffered or permitted the use of, the premises of which he is the tenant or sub-tenant or any part thereof, for an immoral or illegal purpose."

(2) Such amendment will bring fundamental changes to the existing repossession mechanism under Part IV, as currently, landlords are not entitled to apply for repossession before end of tenancies.

(ii) To provide that the use of the property for illegal purposes or the

erection of UBWs will trigger an implied forfeiture clause in the lease

(1) Forfeiture arising out of the amendment would be subject to section 58 of the Conveyancing and Property Ordinance (Cap. 219). A landlord will have to observe the laid down notice formalities when he wishes to enforce this right of re-entry or forfeiture, and the tenant may apply to the court for relief against such forfeiture.

(2) The inclusion of such provisions will not affect the existing mechanism of Part IV.

Item 4

4. To seek legal advice on whether a landlord can include provision, such as suspension of water and electricity as well as changing of door lock, in the tenancy agreement for repossession of property in the event that the tenant fails to pay rent for a specified period of time.

(a) According to the Department of Justice, a term in the lease permitting the landlord to cut the electricity or water supply, or change the door lock in order to force the tenant who is in default of payment of rent to move out is unenforceable as it will amount to "harassment" under section 119V of LTO and clause 27 (amended section 119V) of the Bill. It makes no difference whether the landlord cancels the accounts or cuts the supplies direct.

(b) Section 119V of the LTO provides that it is an offence for: -

(i) Any person to unlawfully deprive a tenant of occupation of any premises;

(ii) Any person who, with intent to cause a tenant: -

(a) to give up occupation of any premises or part of a premises; or

(b) to refrain from exercising any right or pursuing any remedy in respect of any premises or part of premises,

does any act calculated to interfere with peace or comfort of the tenant or members of his household or persistently withdraw or withhold services reasonably required for occupation of the premises as a dwelling.

(c) Under the proposed Clause 27 of the Bill (amended section 119V(3)), the landlord does not commit an offence if he proves that he had

reasonable ground for doing the act, or withdrawing or withholding the services concerned. However, since there are legal procedures readily available for repossession of premises and claiming of rents in arrears, it is unlikely that the landlord could prove “reasonable grounds” for cutting of water or electricity supply.

Item 5

5. To consider expediting the statutory procedures for repossession of premises, and review the need for a landlord to obtain a court order when the tenant has already vacated the premises.

(a) In theory, if a tenant has moved out of the rented premises, the landlord may re-enter or re-possess his premises even if he had not applied for any order or leave.

(b) However, it is very difficult for landlords to ascertain that their tenants will not come back before end of the tenancies. Without assistance from the Bailiffs' Office, landlords would be exposed to the risks of being accused of theft or sued for damage claims from tenants as no body of authority could ascertain the condition of the premises left by the tenant.

(c) Under the LTO, a landlord has to apply to the court for an order for the recovery of possession. After the order has been granted, the landlord will have to apply to the court for leave to issue a Writ of Possession to execute the possession order. By virtue of Order 45 rule 3(2) of The Rules of the High Court, such leave shall not be granted unless it is shown that every person in actual possession of the premises (tenants and sub-tenants included) has received such notice of the proceedings. Upon successful application for the leave, the Court will dispatch the Writ directly to the Bailiffs' Office for execution.

(d) The Administration would explore whether it is feasible and desirable to remove the need for landlords to apply for leave to issue the Writ of Possession, which is intended to ensure that all concerned parties have

been properly notified of the possession order, in order to enable automatic execution of orders by bailiffs.

(e) The Working Group has also made the following recommendations to expedite the repossession procedures, which are now incorporated into the Landlord and Tenant (Consolidation) (Amendment) Bill 2001, namely: -

(i) To shorten the relief period following the granting of possession order from 4 weeks to 7 days.

(ii) To allow landlords to apply for a default order (where the tenant fails to respond to the "Notice of Application") without the need for an affidavit.

(iii) To empower the Lands Tribunal to order disposal of the properties of the tenants in the repossessed premises to remove difficulties in possession cases where the tenants have left belongings in the premises.

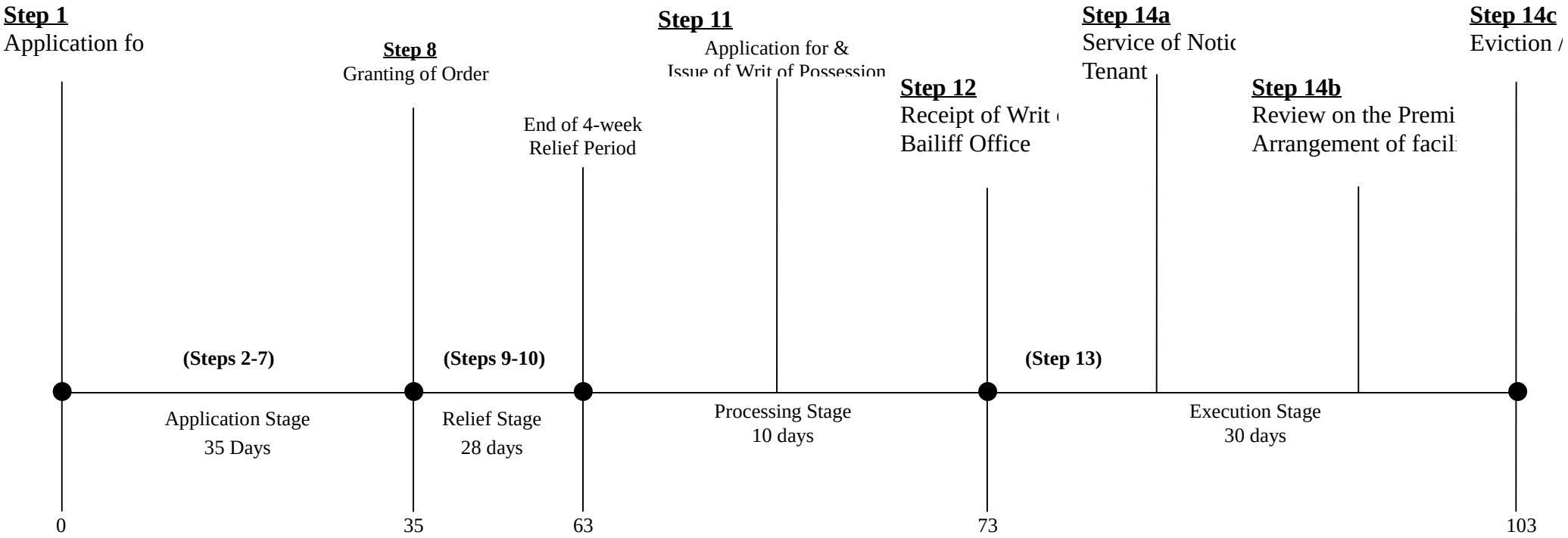
Item 6

6. To put down in the time charts on statutory procedures for repossession of premises (tabled at the meeting) references of the relevant ordinances, authorities and orders.

Time Chart

Repossession of Premises for Non-payment of Rent where a Notice of Opposition has been filed

(Lands Tribunal – existing relief period)



Notes :

1. The Chart illustrates a straightforward case which takes a total of 103 days. During the period an order is granted in about 35 days from the application date. The same process can however, take longer time depending on the circumstances of the case.

2. A relief period of 4 weeks will be granted following the order.

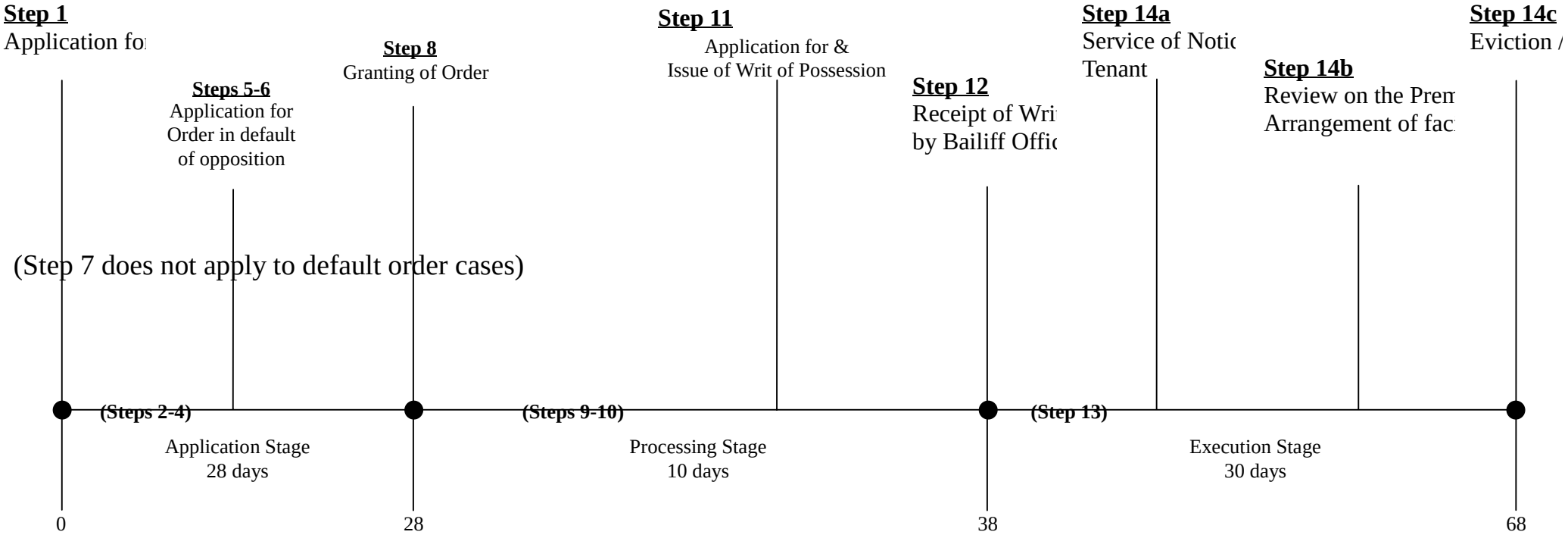
3. Please refer to attached table for details of steps and timings.

Item 6

Time Chart

Repossession of Premises for Non-payment of Rent where a Notice of Opposition has NOT been filed

(Default Order in Lands Tribunal with no relief period)



Notes :

1. The Chart illustrates a straightforward case which takes a total of 68 days. During the period an order is granted in about 28 days from the application date. The same process can however, take longer time depending on the circumstances of the case.

2. No relief period will be granted for default order cases.

3. Please refer to attached table for details of steps and timings.

Item 6

Time Limits for Repossession of Premises in the Lands Tribunal

Steps	**Statutory Procedure**		Ordinance **Reference**		Statutory **Time Limits**		Procedure **Stage**
1.	Applicant (landlord) to file an application form.		Lands Tribunal Rule 68(1)		-		**Application** Stage
2.	Applicant is required to serve a notice of the application on the respondent (tenant).		Lands Tribunal Rule 68(2)		Not later than 7 days after filing of application under step 1.		
3.	Applicant is required to file an affirmation of service.		Lands Tribunal Rule 10		Within 3 days from service of notice under step 2.		
4.	Respondent is given stipulated time to file a notice of opposition upon the service of the application form.		Lands Tribunal Rule 69		Within 14 days of service of notice under step 2.		
	In case where an opposition is filed within the above time limit.	**In case where no opposition is filed within the above time limit.**					
5.	Applicant / respondent to apply for setting down the case for hearing.	Applicant can apply for judgement in default of opposition by way of affidavit.	Lands Tribunal Rule 14(1) (a)	Lands Tribunal Rule 15	After oppos-ition under step 4 has been filed.	(After time limit under step 4 has elapsed.)	

Item 6

Steps	**Statutory Procedure**		Ordinance **Reference**		Statutory **Time Limits**		Procedure **Stage**
6.	The application is listed for hearing.	Applicant has to comply with all requisitions raised by the court before a court order can be made.	Lands Tribunal Rule 14(1) (b)	Practice	Not less than 3 days after appli-cation for hearing under step 5.	-	Application Stage
7.	Parties concerned will be given notice of the hearing.	-	Lands Tribunal Rule 14(1)(b) & Rule 16	-	Not less than 14 days of advance notice.	-	
8.	Court hearing and order for possession made.	Court order made.	Lands Tribunal Rule 23		-	-	Processing Stage
9.	Applicant to post up notice of the court order to the respondent.		Practice		(3 consecutive days)		

Item 6

Steps	**Statutory Procedure**		Ordinance **Reference**		Statutory **Time Limits**		Procedure **Stage**
10.	Respondent given relief period to pay all the rent in arrears and the costs of action.	Respondent given a stipulated period to move out.	Lands Tribunal Ordinance s.8(9) & High Court Ordinance. s.21F	Practice	Not less than 4 weeks from date of order.	7 days	Processing Stage
11.	If respondent fails to pay within relief period or to move out within the stipulated period, applicant can apply to the court for leave to issue a Writ of Possession or a combined Writ of Fi Fa and Writ of Possession to execute the court order.		Rules of High Court Order 45		-		Processing Stage
12.	Writ of Possession or combined Writ of Fi Fa and Writ of Possession issued by Court and dispatched to the Bailiffs' Office for execution.		Rules of High Court Order 46		-		
13.	Applicant to make appointment with the Bailiffs' Office for execution of the writ.		Practice		-		Execution Stage
14.	Execution of Writs by Bailiff.		Practice		-		

Note : Set aside order or stay execution of order

Respondent may apply to set aside order at any stage from step (9) to (13). He may also apply to stay execution of order in step (14).

Item 7

7. To respond to the submission of the Hong Kong Association of Landlords, particularly the case in which a landlord has to bear, the dire consequences of UBWs erected by the principal tenant.

(a) Upon the receipt of the submission of the Hong Kong Association of Landlords, which was first referred to the Administration at the meeting of this Bills Committee on 29 November 2001, the Administration has replied to the complaint letter from Mr. Ho, marked as Annex VII in the bundle of the first meeting of the Bills Committee on 29 November 2001. (Please see **Attachment I**)

(b) For other complaints from the Association, the Administration is unable to contact the complainants personally for further information. Due to the limited information, the Administration could only provide general comments on the issues raised by the Association. Whether the following sections are applicable would depend on the facts of individual cases.

(i) Damage caused by tenants to rented premises (paragraph 2(a) of the minutes of the case conference held on 13 July 2001):-

(1) The landlord should immediately report the matter to the police. After investigation, if there is sufficient evidence, consideration will be given to whether to bring prosecution under section 60 of the Crimes Ordinance (CO) (Cap. 200).

(2) Under section 60, "a person who without lawful excuse destroyed or damaged any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be damaged shall be guilty of an offence." Under section 63 of CO, if a person is guilty of section 60, he is liable on conviction upon indictment to imprisonment for 10 years.

(ii) Where a landlord urges the tenant to pay rent in arrears or to move out of the premises (paragraphs 2(b) and (c) of the minutes):-

In normal circumstances, negotiation between the landlord and the tenant, whether face to face or over the phone, is unlikely to constitute "harassment" (as under section 119V) to the tenant. However, consideration should be taken as to the frequency, timing, demeanour and the exact contents of such negotiation before it can be determined whether it constitutes "harassment".

(iii) Where a tenant calls the landlord (paragraph 2(a) of the minutes): -

Under section 20 of the Summary Offences Ordinance (Cap. 228), any person who –

(a) sends any message by telephone which is grossly

offensive or of an indecent, obscene or menacing character; or

(b) sends any message which he knows to be false, for the purpose of causing annoyance, inconvenience or needless anxiety to any other person; or

(c) persistently makes telephone calls without reasonable cause and for any such purpose as mentioned in (a) and (b),

he shall be liable to a fine of $1,000 and to imprisonment for 2 months.

(iv) Where a tenant threatens the landlord: -

Under section 24 of the Crimes Ordinance (Cap. 200), any person who threatens any other person –

(a) with any injury to him, reputation or property; or

(b) with injury to the person, reputation or property of any third party; or

(c) with any illegal act,

with intent: -

(I) to alarm the person so threatened or any other person; or

(II) to cause the person so threatened or any other person to do any act which he is not legally bound to do; or

(III) to cause the person so threatened or any other person to omit to do any act which he is legally entitled to do.

shall be guilty of an offence.

Under section 27 of CO, any person who commits an offence under section 24 shall be liable on summary conviction to a fine of $2,000 and to imprisonment for 2 years and shall be liable on conviction upon indictment to imprisonment for 5 years.

(v) Where a tenant erected UBWs in the rented premises (paragraphs 2(b) and (g) of the minutes):-

(1) The Administration agrees to amend the Bill to enable landlords to repossess properties which have been used for illegal purposes, or on which the tenant has constructed UBWs.

(2) Where any UBW is erected, the Building Authority (BA) may issue an order under section 24(1) of the Buildings Ordinance (BO) (Cap. 123) requiring the demolition/ removal of works and reinstatement of the affected parts.

(3) Under s24(2)(b), if the UBWs have been completed, the order shall be served on the owner thereof. If the UBWs have not been completed, the order shall be served on the person for whom the building works are being carried out (section 24(2)(d)). Hence, if the BA has sufficient evidence to prove that the tenant is carrying out the UBW, the BA will serve an order on the tenant instead of

landlord requiring its removal. So, once a landlord is aware that the tenant is erecting UBWs, he should report the case to BA as soon as possible.

(4) If the landlord is the one to be served with the order, under section 40(1B)(b) of the BO, BA may prosecute the landlord if he fails, without reasonable excuse, to comply with the order. It would however, be a defence for the landlord if he can prove that he has a reasonable excuse for not complying with the order, say for example if he has taken all reasonable steps to urge the tenant to demolish the UBWs which were erected by the tenant without his prior knowledge or consent. This would depend on the facts of different cases.

(5) At the same time, the BA may carry out the demolition work and subsequently recover the cost of the works from the landlord on whom the order was served (section 33 of the BO). Notwithstanding this, if such UBWs were erected by the tenant, the landlord may recover any cost or expense incurred in the removal of the UBW from the tenant through civil proceedings.

Attachment I (1/2)

差餉物業估價署
九龍長沙灣道303號長沙灣政府合署13樓
Rating and Valuation Department
13th Floor, Cheung Sha Wan Government Offices,
303 Cheung Sha Wan Road, Kowloon.

本署檔號 Our Ref.: (8) in RC G1/2 IX
來函檔號 Your Ref.:
電話號碼 Tel. No.: 2805 8585
圖文傳真號碼 Fax No.: 2152 0115

Attn: Miss Kwan Lai

致: 荃灣沙咀道45-53號
To: 荃運工業大厦1期13字樓K室
何慶明先生

何先生:

荃灣沙咀道45-53號荃運工業大厦1期13字樓D室

你較早前致函立法會，其後房屋局已把該函轉交本署處理，現謹作回覆。就上址租客的欠租事宜，本信代行人曾於去年11月29日及12月6日與令郎在電話商談。本署對於你的遭遇，深表同情，亦很高興獲悉你已成功收回物業。來信提出簡化追討欠租和收回樓宇程序、以及所需費用等建議，本署已經紀錄在案。事實上，房屋局及本署現正向立法會提出建議，簡化該等程序。

另外，你認爲應將欠租行爲列爲行騙罪，交由警方協助處理。在考慮是否將欠租行爲列爲刑事罪行時，我們必須平衡及兼顧業主與租客雙方面的利益。由於物業租賃協議是業主與租客之間的私人契約，欠租是違反契約責任的行爲，而且通常會涉及業主與租客間其他合約上的糾紛，故在排解這類糾紛方面，警方未必是最合適的部門。反之，我們認爲透過獨立的司法機構，進行民事訴訟，是比較適當的方法。進行訴訟時雙方要辦理各項手續，雖然需時，但其目的亦是爲了確保審訊能公平和公正地進行，給予有關雙方在法庭陳述的機會。此外，法院亦受制於繁重的工作量，故需把案件排期處理。

在一般情況下，業主應把出租物業的租金和按金分開處理，若租客欠租，業主可立刻採取法律行動，以減少損失。除非得到業主同意，否則租客不能要求業主從按金中扣除所欠租金。

20(a)

來信又提出政府應減收差餉，在這方面，行政長官在去年１０月的施政報告中，已宣佈於２００２年，減免每個物業應繳交的差餉不多於２０００元，以紓解市民的負擔。

謝謝你提出的意見，如仍有任何查詢或疑問，請致電本署，與本信代行人聯絡。

差餉物業估價署署長
（黃寶新 黃寶新 代行）

副本送：
《２００１年業主與租客(綜合)(修訂)條例草案》委員會
（檔號：議員參考資料摘要附錄 VII）（經辦人：Miss Becky YU 傳真號碼：2869 6794）
房屋局局長
（檔號：HB(CR) 7/5/1 Pt 32）（經辦人：Miss Drew LAI 傳真號碼：2509 3770）

２００２年1月9日

20(b)

Item 8

8. To consider whether landlords can be compensated by interest payment if the tenants pay up arrears of rent only when sued in court.

The High Court Ordinance, District Court Ordinance and Small Claims Tribunal Ordinance have such provisions of interest payment. By virtue of section 8(9) of the Lands Tribunal Ordinance, Lands Tribunal is empowered to apply sections 48 and 49 of the High Court Ordinance to grant interest payment to landlords.

Item 9

9. To consider measures to protect landlords when the tenants persistently delay payment of rent.

(a) The Administration proposes that a tenancy can be forfeited if a tenant fails to pay rent within 15 days of the due date. In other words, once a tenant fails to pay rent, persistently or not, the landlord can forfeit the tenancy 15 days after the due date and claim for repossession.

(b) The Administration agrees to include persistent delay in payment of rent when it is due as a statutory ground of repossession or as an implied forfeiture clause. This refers to cases where a tenant, though pays off the rent in arrears after having received warning from the landlord, continues to fail to pay rent punctually. The consideration for introducing such amendment is similar to that as described for Item 3.

Item 10

10. To consider whether there should be a criminal offence for tenants who provide false information to the landlords.

(a) The Administration does not agree to impose criminal liability on tenants who merely provide false information to the landlords.

(b) Currently, a tenant does not bear criminal liability under the present laws if he simply provides false information to the landlord. However, under section 16A of the Theft Ordinance, "if a person by any deceit (whether the deceit is the sole or main inducement) and with intent to induce another person to commit an act or make an omission, which results either –

(a) in benefit to any person other than the second-mentioned person; or

(b) in prejudice or a substantial risk of prejudice (i.e. any financial or proprietary loss) of the first-mentioned person

commits the offence of fraud and is liable on conviction upon indictment to imprisonment for 14 years."

(c) The Administration is of the view that section 16A of the Theft Ordinance could serve adequately as a deterrent against provision of false information by tenants for reaping of unlawful gain.

(d) Making mere provision of false information (without proving intent and causation) by the tenant a criminal offence will be too strict a liability and could result in miscarriage of justice. Moreover, for the sake of fairness, such provision should also apply to landlords who provide false information to tenants.