

**Bills Committee on
Landlord and Tenant (Consolidation) (Amendment) Bill 2003**

Follow-up to meeting on 9 January 2004

- (4) To obtain from the Police the following information-
- (a) number of reports of alleged offences which emanate from tenancy disputes between landlords and tenants, such as vandalization and default in rent payment, over the past five years;
 - (b) number of prosecution against the provision of false information by both landlords and tenants under the Theft Ordinance (Cap. 210) over the past five years; and
 - (c) revised internal guidelines on the procedures to be adopted in dealing with tenancy disputes in the light of the Landlord and Tenant (Consolidation) (Amendment) Bill 2001.

Reply

- (a) The statistics provided by the Police are at Annex I.
- (b) The Police is collating the statistics on the number of prosecution against the provision of false information by both landlords and tenants under the Theft Ordinance over the last two years, and would provide them to Members as soon as practicable.
- (c) A copy of the revised guidelines is attached at Annex II.

Annex I

(i) Reported Crimes Related to Harassment of Tenants

Crime	1999	2000	2001	2002	2003
Harassment of tenant	2	1	5	2	1
Wounding & serious assault	2	3	2	1	6
Criminal intimidation	2	8	6	4	2
Arson	1	-	1	1	1
Criminal damage	7	10	18	5	14
Total	14	22	32	13	24

(ii) Offenders Arrested for Crimes Related to Harassment of Tenants

Crime	1999	2000	2001	2002	2003
Harassment of tenant	2	-	4	2	1
Wounding & serious assault	1	2	1	-	6
Criminal intimidation	3	5	-	2	1
Criminal damage	5	6	5	2	8
Total	11	13	10	6	16

(iii) Reported Crimes Related to Harassment of Landlords

Crime	2003
Wounding & serious assault	5
Criminal intimidation	2
Arson	1
Criminal damage	15
Total	23

(iv) Offenders Arrested for Crimes Related to Harassment of Landlords

Crime	2003
Wounding & serious assault	2
Criminal intimidation	2
Criminal damage	5
Total	9



FOR POLICE USE ONLY

HEADQUARTERS ORDER NO. 9 OF 2003

BY

MR TSANG YAM-PUI, COMMISSIONER OF POLICE

LANDLORD AND TENANT DISPUTESPurpose

The purpose of this Order is to set out the procedures to be adopted by the Force in dealing with reports of alleged offences which emanate from disputes between landlords and tenants.

Introduction

2. Landlord and tenant matters are primarily governed by the Landlord and Tenant (Consolidation) Ordinance, Cap. 7.

3. The responsibility for the enforcement of the Ordinance lies principally with the Commissioner of Rating and Valuation but certain provisions in the Ordinance, especially those relating to harassment of tenants, can be enforced by Police in appropriate circumstances. Nevertheless, it is important to note that there are other criminal offences that could be committed by either the landlord or tenant in a tenancy dispute. Should sufficient evidence exist to prove a criminal offence, such as Blackmail, Criminal Intimidation, Criminal Damage or Serious or Minor Assault etc., such charges should be laid where appropriate in preference to offences contained in Cap. 7. This also applies to miscellaneous offences, such as telephone nuisance etc.

Background

4. It is not uncommon, particularly during periods when the local property market is volatile, for unscrupulous landlords, or persons acting on their behalf, to use unpleasant methods to induce tenants to surrender possession of premises so that they may be repossessed for redevelopment or releasing at higher rents.

5. It is also common for some tenants to report intimidation by landlords as a means of obtaining higher compensation for vacating premises. There have also been instances of tenants topping payment of rents and sub-letting premises. Compensation is later demanded to vacate such premises.

6. Recently, there is also a notable trend that some tenants harass their landlords by a variety of illegal acts. The harassment under these circumstances includes intimidation, threats, removing windowpanes and cubicle partitions and taking away property belonging to the landlords. A degree of triad involvement may surface in this kind of activity.

The Landlord and Tenant (Consolidation) Ordinance, Cap. 7

7. The Landlord and Tenant (Consolidation) Ordinance, Cap. 7 comprises the following seven Parts:-

(a) Parts I and II cover rent controls and security of tenancy for pre-war and certain post-war tenancies respectively; however most of the provisions have expired on 31 December 1998 subject to certain exceptions;

(b) Part III deals with distress for rent;

(c) Part IV provides security of tenure for most domestic tenancies including those tenancies which used to be protected by Parts I and II;

(d) Part V provides for notice of termination tenancies of mostly non-domestic premises; and

(e) Parts VI and VII deal respectively with the recovery of small tenements and miscellaneous matters.

8. Complaints arising from tenancy disputes can present problems because there is often confusion as to whether the facts presented bring the case within the jurisdiction of the civil law, the criminal law, or both; and, when Cap. 7 is applicable, what type of premises are the subject of the dispute. In all cases where Police involvement is likely, the Rating and Valuation Department should be consulted in the first instance to ascertain the status of the premises in question and the applicable Part of Cap. 7 governing them.

9. The Commissioner of Rating and Valuation is specifically empowered to enforce Cap. 7 which provides a host of offences which he can invoke where necessary. However, certain sections will inevitably require Police intervention and prosecution.

GUIDELINES ON POLICE ACTION

General

10. Police should not intervene in any dispute, except where a breach of the peace may occur or an offence is disclosed. In all other cases, both parties should be referred for mediation to the Landlord and Tenant Services Division of the Rating and Valuation Department.

Possible Offences Relating to Tenancy Disputes

(i) Harassment

11. Section 119V which cover harassment of tenants, with a view to inducing the lessee to surrender possession of his tenancy, is the most likely to require direct Police involvement and where triad involvement may be encountered. Where a tenancy dispute is reported and the premises in question falls under Part IV of the Ordinance, Section 119V can be invoked.

12. Section 119V Sub-Section (1) deals with the unlawful depriving of a tenant or sub-tenant of occupation of any premises. Sub-Section (2) covers the offence where any person does any act calculated to interfere with the peace or comfort of the tenant or sub-tenant or member of his household or persistently withdraws or withholds services reasonably required for occupation of the premises as a dwelling. The intent to be proved is that the person's objective was to cause the tenant or sub-tenant: -

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

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

13. Note that "any person" can be prosecuted, so there is no requirement to prove that the defendant is the landlord.

14. Section 119V offences are indictable with offenders liable to a fine of \$500,000 and to imprisonment for 12 months, in addition, on a second or subsequent conviction, to a fine of \$1,000,000 and to imprisonment for 3 years. There is no definition of "peace or comfort" in the Ordinance but for the purpose of enforcing of this Ordinance, the term may be construed as meaning "quiet enjoyment of the tenancy without unreasonable inconvenience caused". "Services reasonably required for occupation" would include the supply of electricity and water but it is difficult to define which other services may be included in this criteria, and each case should be treated on its own merits.

15. Where there is a reasonable amount of evidence of harassment in a particular case, legal advice should be sought regarding possible charges.

(ii) Rent Arrears

16. In addition to the harassment offences, under Section 78(2) it is an offence for any person, who is not a bailiff or authorised under the Ordinance, to levy or attempt to levy any distress for arrears of rent. The maximum penalty for this offence on summary conviction is a fine of \$500 or to imprisonment for 3 months, in addition to any other liability which may be incurred as a result of the course of action followed. This section is self-explanatory and is available for use where, for example, coercion is used to force a tenant to pay up, possibly by triad members. As the offence can attract a term of imprisonment on first conviction, the power of arrest is available under Section 50(1) of the Police Force Ordinance, Cap. 232.

(iii) Other Offences

17. Whilst handling tenancy disputes, officers should also consider, if evidence suggests, whether the following offences have been committed by the landlord, tenant or any other person:-

- Criminal Intimidation, Section 24, Crimes Ordinance, Cap 200
- Assaults with intent to cause certain acts to be done or omitted, Section 25, Crimes Ordinance, Cap. 200
- Criminal Damage, Section 60, Crimes Ordinance, Cap 200
- Fraud, Section 16A, Theft Ordinance, Cap 210
- Obtaining pecuniary advantage by deception, Section 18, Theft Ordinance, Cap. 210
- Evasion of a liability by Deception, Section 18B, Theft Ordinance, Cap. 210
- Blackmail, Section 23, Theft Ordinance, Cap 210
- Assault Occasioning Actual Bodily Harm, Section 39, Offences Against The Person Ordinance, Cap 212
- Common Assault, Section 40, Offences Against The Person Ordinance, Cap 212
- Disorderly Conduct, Section 17B, Public Order Ordinance, Cap 245
- Offences in connection with telephone calls or messages or telegrams, Section 20, Summary Offences Ordinance, Cap. 228.

PROCESSING TENANCY DISPUTE CASES

18. All reports received of disputes arising from occupation, possession of premises or rent arrears between landlord and tenant will in the first instance be examined by the Duty officer of the Police Station to which the report is made. The following steps should be taken:-

- (a) Where the Duty Officer is satisfied that no offence is disclosed, he/she will refer the dispute to the Commissioner of Rating and Valuation for mediation by using the memo format at Annex A through fax;
- (b) In cases where it is reasonably believed that an offence has been committed, the case will be referred to the Divisional Crime Formation or a UB Unit as appropriate;
- (c) The OC Case will ascertain whether sufficient evidence exists of any offence(s), such as those mentioned in para. 17, and/or the offence of harassment under Section 119V of Cap. 7. The respective Rent Officer as listed in Annex B of the Landlord and Tenant Services Division, Rating and Valuation Department, is to be approached for appropriate assistance;
- (d) In a case involving the levy of distress for arrears of rent by person(s) other than a bailiff or person(s) authorized under Cap. 7, he will consider the summary offence under Section 78(2), in particular with a view to ascertaining whether triad influence has been exerted;

- (e) He will refer any case in which he suspects triad involvement to the District Anti-Triad Section in consultation with his ADVC Crime;
- (f) Where no evidence of criminal liability is disclosed, he will refer the case back to the Commissioner of Rating and Valuation as in (a) above.

19. Where evidence of a criminal offence becomes apparent, action is to be taken in accordance with FPM/PGO 21 'RECORDING AND PROCESSING OF CRIME, MISCELLANEOUS OFFENCES AND REPORTS'.

20. Where an investigation is directed towards harassment offences or levy of distress for rent arrears under Cap. 7, the OC Case will ensure where appropriate that: -

- (a) enquiries are made of tenants to ascertain previous attempts by the landlord to repossess the premises, and whether similar incidents had occurred and were reported in the past;
- (b) a detailed catalogue of acts of harassment, from which a court can draw the necessary inference of the intention to harass, is compiled;
- (c) if after investigation there is insufficient evidence to prosecute, the case is reported to the Commissioner of Rating and Valuation for updating his records for review purposes; and
- (d) the Senior Valuation Surveyor of the Landlord and Tenant Services Division is notified in writing of the outcome of any court proceedings at the conclusion of the case, so that he can update his record for future review of the relevant provisions.

21. Officers should note that although Cap. 7 does not make any provision for offences to deal with rough tenants, a tenant may still be liable for an offence under other Ordinances if, for example, he has caused damages to the rented flat. In this respect, the offences listed in paragraph 17 above can be taken into consideration and police action specified in paragraphs 18 and 19 should be followed

Implementation

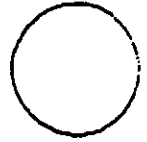
22. This Order is implemented with immediate effect.
23. Relevant sections in FPM/PGO and PM 28 will be amended in due
24. This HQO has replaced HQO No. 91 of 2000 Part One dated 26th May 2000.

(CID/CON/135/64 Pt. 3)
(Chinese translation attached)

(WONG Pak-nin)
for Commissioner of Police

HONG KONG 24 APRIL 2003

Annex A

BY FAX**MEMO**

From Duty Officer DIV
 Ref. RN
 Tel. No. _____
 Fax. No. _____
 Date _____

To Commissioner of Rating and Valuation
 (Attn.: Senior Valuation Surveyor)
 Your Ref. _____ in _____
 dated _____ Fax. No. 2152 0125
 Total Pages _____

Report of Tenancy Dispute

Please be informed that a tenancy dispute took place in the following location/date/time with no criminal offence disclosed: -

Location : _____

Particulars of landlord
 or principal tenant : Name, HKID No., Contact telephone, address

Particulars of tenant
 or sub-tenant : Name, HKID No., Contact telephone, address

Nature of dispute and
 advice given : _____

Police officer handling
 the dispute : Name/UI/Post/Contact telephone

2. For your information and necessary action, please.

 Duty officer :

Annex B

Telephone Number of Rent Officers
Rating and Valuation Department

Rent Officer Team	Telephone Number
Hong Kong East (North Point, Shau Kei Wan & Chai Wan)	2150 8589
Hong Kong North and West (Western, Sheung Wan, Central, Wanchai, Causeway Bay, Happy Valley & Tai Hang)	2150 8588
Hong Kong Mid-Level and South (Mid-levels, Peak & South)	2150 8584
Yau Tsim Wong and Ho Man Tin (Tsim Sha Tsui, Yau Ma Tei, Mongkok & Ho Man Tin)	2150 8557
Kowloon West and NT West (Sham Shui Po, Kowloon Tong, Yau Yat Chuen, Tsuen Wan, Tuen Mun & Yuen Long)	2150 8555
NT East (New Territories & Outlying Islands [except Tsuen Wan, Tuen Mun & Yuen Long])	2150 8585
Kowloon East (Hung Hom, Kowloon City, San Po Kong & Kwun Tong)	2150 8559