

**Information Note**  
**Transitional Arrangement for Removing Security of Tenure**

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

**Purpose**

This paper sets out for Members' information-

- (a) the proposed transitional arrangement for removing the security of tenure for domestic tenancies through the Landlord and Tenant (Consolidation) (Amendment) Bill 2003, and arrangements for terminating tenancies under the proposal;
- (b) the suggested measure to further streamline the procedure for landlords to repossess premises after a tenancy has run its course following the removal of security of tenure; and
- (c) the outcome of the Administration's consideration on the need for transitional arrangement for removing the minimum notice requirement for non-domestic tenancies.

**(A) Transitional Arrangement**

*Upsurge in tenancy renewal*

2. As domestic tenancies will no longer be statutorily protected after the commencement of the Bill, in theory, all landlords can, shortly after the commencement of the Bill, notify the following two categories of tenants of termination of tenancy-

- (a) tenancies which have already run the course of their original terms but are statutorily continued under the present security of tenure regime; and
- (b) tenancies which will end within 4 months after the commencement of the Bill. Tenants of these tenancies will be able to satisfy the requirement in Part IV of the Landlord and Tenant (Consolidation) (Ordinance) (LTO) in respect of submission of tenancy renewal applications, i.e. not more than 4 months and not less than 3 months before the start date of the requested new tenancy.

3. To avoid such “eviction”, some tenants might make use of the existing tenancy renewal mechanism and submit, before the commencement of the Bill, applications to Lands Tribunal (LT) for a new tenancy (which is normally for two years). The savings provisions in the current version of the Bill provide that these applications submitted before the commencement date will be determined by the LT even after the Bill takes effect, as if the renewal mechanism has not been repealed.

4. While the precise number of such LT applications cannot be predicted, the Rating and Valuation Department (RVD) estimated that some 78,000 could be eligible to submit new tenancy requests, assuming the Bill commences operation on 1 June 2004. Even if, say, just one-tenth of them actually do so, there could be 7,800 cases, significantly higher than the average caseload of LT of 300 applications a year. This could drastically prolong the current lead time of around two months required by LT to process applications, creating a serious backlog of cases. In such cases, it could take a long time for the landlords to recover their premises.

*Proposed transitional arrangement*

5. To resolve this potential problem, it is proposed that a provision should be added to the Bill to the effect that after the commencement of the Bill, landlords of all existing tenancies will be required to serve a notice of termination no less than 12 months before the intended termination date. Should such notice (referred to as 12-month termination notice hereafter) be served by the landlord, the tenancy will continue to run on all existing terms (including the rental level) until it ends on the date specified in the notice.

6. The proposed arrangement will ensure all existing tenants will have at least 12 months to stay in their tenements after the removal of the statutory protection, hence reducing the need for them to rush in applications to LT for a new tenancy before the commencement of the Bill, and also giving the tenants more time to make relocation arrangements.

7. The salient features of the proposed arrangement are as follows-

- (a) the 12-month termination notice requirement will take precedence over any notice period agreed by the two parties before the commencement of the Bill, unless the contractual notice period is longer than 12 months;
- (b) however, the 12-month termination notice requirement will be overridden by any notice period agreed by the two parties after the commencement of the Bill;

- (c) as a transitional arrangement, the 12-month termination notice requirement should only apply to existing tenancies, but not to tenancies entered into after the commencement of the Bill;
- (d) in order to restore the free operation of the private rental market as soon as possible, the 12-month termination notice requirement will only be in force for 1 year after the commencement of the Bill;
- (e) any dispute that may arise from the 12-month termination notice requirement will be determined by the LT; and
- (f) tenants will also have the option of terminating the tenancy by serving a termination notice no less than 1 month before the day on which it is to take effect.

8. Apart from resolving the problem of creating a backlog of LT cases, the 12-month termination notice requirement would also ensure that a tenant will have enough time to find alternative accommodation before he has to move out of his present tenement. It should therefore help mitigate the impact of the removal of security of tenure on tenants who have been enjoying the statutory protection for many years. The 12-month termination notice requirement will “compensate” the existing tenants to a certain extent for their loss of “accrued” tenancy renewal rights.

#### *Protection to sub-tenants*

9. The proposed transitional arrangement also applies to sub-tenancies: a principal tenant who wants to terminate a sub-tenancy will also have to serve a 12-month termination notice to a sub-tenant. In case it is the landlord who wants to repossess the entire property, he would need to post the termination notice he serves to the principal tenant on the front door or entrance of the premises to terminate also any sub-tenancies created under the principal tenancy. This requirement will ensure that sub-tenants will also be informed of the landlord’s intention to repossess his premises.

#### *Termination arrangement*

10. The detailed steps that need to be taken by landlords and tenants to terminate different types of tenancies (existing tenancies and new ones) under the proposed transitional arrangement are set out in the Annex.

### **(B) Repossession Procedure**

11. As mentioned in paragraph 7(e), we propose that the LT will have

jurisdiction to determine any dispute that may arise from the 12-month termination notice requirement. In case the landlord has terminated the tenancy in accordance with the transitional arrangement but the tenant refuses to move out on the date specified in the notice, the landlord can apply for a possession order from the LT. As a related issue, we also propose that the LT should be empowered to grant possession orders to landlords in respect of tenancies coming to an end upon expiry (by effluxion of time). A landlord of a fixed-term tenancy which has run its course on a date 1 year after the commencement of the Bill (when the 12-month notice requirement will be lifted) will need to apply for such an order from LT in case the tenant refuses to move out.

12. As we advised Members before, the proposed repossession procedure for tenancies which have run their course is similar to the prevailing repossession procedure applicable to tenancy terminated in accordance with the statutory grounds provided under the current LTO such as forfeiture due to structural alteration to premises by the tenant. However, unlike in forfeiture cases, a tenant of a tenancy which has run its course should not have any legitimate grounds to stay in the same premises. In other words, he should have no reason not to move out. Therefore, we have been examining the possibility of reducing the period allowed for a tenant to file an opposition to landlord's repossession application.

13. Following consultation with relevant departments, we have come to a conclusion that the "opposition period" could be reduced from 14 days to 7 days. This shortened "opposition period" will, on the one hand, take into account the lack of obvious legitimate grounds for a tenant to stay in the premises after the tenancy has run its course, and provide a chance for the tenant to file an opposition (if there is any deserving ground) on the other.

14. In line with the notice requirement for the transitional arrangement as set out in paragraph 9 above, having consulted the Judiciary, we propose that a similar notice requirement should apply to applications for possession orders in future, i.e. the landlord should be required to post the application at the front door of the premises when he submits the application to the LT (at present, the landlord is required to post the possession order after it is granted). This will enable parties in occupation (including sub-tenants) to know about the possession proceedings at an early stage, and to take actions as deemed necessary. To tie in with this proposal, the Judiciary will review the current requirement of posting the notice of the possession order for 3 consecutive days at the premises, with a view to further streamlining the repossession procedure.

### **(C) Non-domestic tenancies**

15. The Bill also seeks to remove the current statutory 6-month notice requirement for terminating non-domestic tenancies. Some Members are concerned that the removal might cause hardship to small shopkeepers, who may not be aware of the legislative amendment. It was therefore suggested that a transitional arrangement should be put in place in removing the minimum notice requirement for non-domestic tenancies.

16. We consider that the removal of the minimum notice requirement, as compared to the abolition of the security of tenure protection, is a less drastic change. As the Administration will launch extensive publicity to inform the public of the removal before and after the Bill commences operation, we trust that landlords and tenants will be able to take necessary actions to prepare for the changes beforehand. Further, according to the Rating and Valuation Department's frontline experience, many non-domestic tenancies contain provisions requiring landlords to serve a prior termination notice to tenants. Even without the statutorily imposed notice requirement, such contractual notice requirement will ensure that tenants will be informed of landlords' intention to repossess his premises ahead of the termination dates.

### **Way Forward**

17. Subject to members' comments, we will prepare Committee Stage Amendments to give effect to the proposed transitional arrangement set out in paragraphs 5-9, to expand the jurisdiction of the LT to grant possession orders to tenancies terminated by effluxion of time, and to streamline the repossession procedure as suggested in paragraphs 11-14.

Housing, Planning and Lands Bureau  
February 2004

## **Termination Arrangements for Tenancies after Removal Of Security of Tenure**

### **(A) Existing Tenancies (tenancies in existence before the commencement of the Bill)**

For illustration purpose, it is assumed that the Bill will commence operation on 1 June 2004, and the 12-month termination notice requirement will be lifted on 1 June 2005.

#### From 1 June 2004 up to 31 May 2005

2. Regardless of whether there is any termination notice requirement in the tenancy, landlords of all types of tenancies (tenancies statutorily continued by virtue of the exiting security of tenure regime, fixed-term tenancies or periodic tenancies) who wish to end a tenancy would need to serve a 12-month termination notice with a termination date no earlier than the contractual end date. Tenants, on the other hand, will need to serve a 1-month notice. Alternatively, the notice period can be changed by mutual agreement reached after the commencement date.

3. In the case of periodic tenancy (with no contractual end date) and statutorily continued tenancy, the earliest termination date will be 31 May 2005 if the landlord serves a termination notice on 1 June 2004. During the 12-month period up to the end date specified in the termination notice, the tenancy will continue to run on all existing terms: a periodic tenancy will be continued as a periodic tenancy and a statutorily continued tenancy will be continued as a month-to-month tenancy.

4. As regards fixed-term tenancy, any contractual end date before 1 June 2005 will be overridden by a 12-month notice served by the landlord. In other words, a fixed-term tenancy whose contractual end date falls before 31 May 2005 will be statutorily continued as a month-to-month tenancy to at least 31 May 2005 if the landlord serves a termination notice on 1 June 2004. For instance, a fixed-term tenancy with a contractual end date of 30 April 2005 will be statutorily continued up to at least 31 May 2005. Between the contractual end date and the termination date specified in the termination notice, the tenancy will continue to run on all existing terms.

#### On or after 1 June 2005

5. The 12-month termination notice requirement will be lifted on 1 June 2005. There are primarily three types of tenancies which will still be in force by then-

- (a) an existing fixed-term tenancy whose contractual end date falls on or after 1 June 2005;
- (b) an existing periodic tenancy in respect of which no notice of termination has been served by the landlord or tenant; and
- (c) an existing fixed-term which has already expired but in respect of which the landlord has not yet served any termination notice or statutorily continued tenancy under the present Part IV of LTO in respect of which the landlord has not served any termination notice.

6. Tenancies in Category (a) and (b) above can be terminated according to the terms of the tenancy or as agreed between the two parties. For instance, a fixed term tenancy with a contractual end date of 30 June 2005 will end on that date (30 June 2005). The landlord does not have to serve any prior termination notice unless this is required by the tenancy. If it is a periodic tenancy, the landlord has to serve a notice to quit according to the common law. The length of the notice period is set in accordance with the length of tenancy period but can be varied by mutual agreement. In any case, it will not normally exceed 6 months.

7. Category (c) are fixed-term tenancies whose contractual end date falls on or before 31 May 2005, and tenancies which are statutorily continued by existing Part IV of the LTO. In either case, as no termination notice has been served by the landlord after the tenancy expires, the tenancy will be continued as a month-to-month tenancy after the commencement of the Bill. Hence, on or after 1 June 2005, the tenancy can be terminated as a month-to-month tenancy, i.e. a notice to quit has to be served by the landlord or the tenant one month before the termination date in accordance with the common law.

#### **(B) New tenancies (tenancies entered into after the commencement date)**

8. Tenancies entered into after the commencement of the Bill will not be subject to the 12-month termination notice requirement. They would therefore be terminated according to their terms of the tenancy or as agreed between the parties:-

- (a) a fixed term tenancy will end upon expiry, i.e. by effluxion of time, and the landlord does not need to serve a notice to quit, unless this is required by the tenancy;

- (b) for a periodic tenancy, the landlord must serve a notice to quit in accordance with the common law. The length of the notice period is set in accordance with the length of the tenancy period, but will not normally exceed 6 months.