

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

**List of follow-up actions arising from the discussion
at the meeting on 16 February 2004**

- (3) To advise the time frames for repossession procedures after the implementation of the new “callover” arrangement by the Lands Tribunal and the proposed reduction of the “opposition period” from 14 days to seven days. To follow up with the Judiciary Administrator the feasibility of extending such callover hearings to every day of the week rather than just once a week. To also consider whether the repossession process can be further expedited if the tenants have agreed to return the premises or have already left Hong Kong.

Administration’s response

Shortening repossession procedure

As we advised Members before, a landlord can currently apply for a repossession order from the Lands Tribunal in respect of a tenancy terminated in accordance with the statutory grounds under the Landlord and Tenant (Consolidation) Ordinance, such as forfeiture due to structural alteration to premises by tenants. The repossession procedure can be broadly divided into three stages: application stage, processing stage and execution stage. Depending on whether a notice of opposition to the landlord’s application is filed by the tenant, it would take 75 or 82 days to complete the procedure.

2. The proposed repossession procedure in respect of a tenancy which has run its course is modelled on the prevailing repossession procedure mentioned above. However, unlike in forfeiture cases, a tenant of a tenancy which has run its course should have no reason not to move out. Hence, following consultation with relevant departments, we considered it appropriate to shorten the “opposition period” in the application stage, which is a period allowed for a tenant to file an opposition to the landlord’s application, from 14 days to 7 days.

3. Separately, as the Judiciary Administrator informed Members of the Panel on Administration of Justice and Legal Services (AJLS) at the meeting on 29 January 2004, the implementation of business process re-engineering initiative has resulted in a reduction of average time required for Bailiffs to execute Writs of Possession from 30 days to 25 days.

4. Having regard to the above, the proposed repossession procedure will take around 63 or 70 days, depending on whether an opposition is filed by the tenant to the landlord's application. The time chart showing the repossession procedure is attached at Annex.

Call-over arrangement

5. Separately, according to the Judiciary Administrator, the Lands Tribunal has introduced since 5 January 2004 the "callover hearing" arrangement for processing repossession applications. One day a week is set aside for callover hearings of possession cases. Through this new measure, a large number of straightforward cases are disposed of expeditiously. The number of callover hearings required will depend on the caseload of pending possession cases and the length of court waiting time. The current court waiting time for possession cases in the region of 18 to 20 days is relatively short. Where necessary, consideration would be given to listing cases on another half day of the week. The Judiciary Administrator will monitor the situation closely having regard to the average court waiting time and the caseloads of other proceedings within the jurisdiction of the Lands Tribunal.

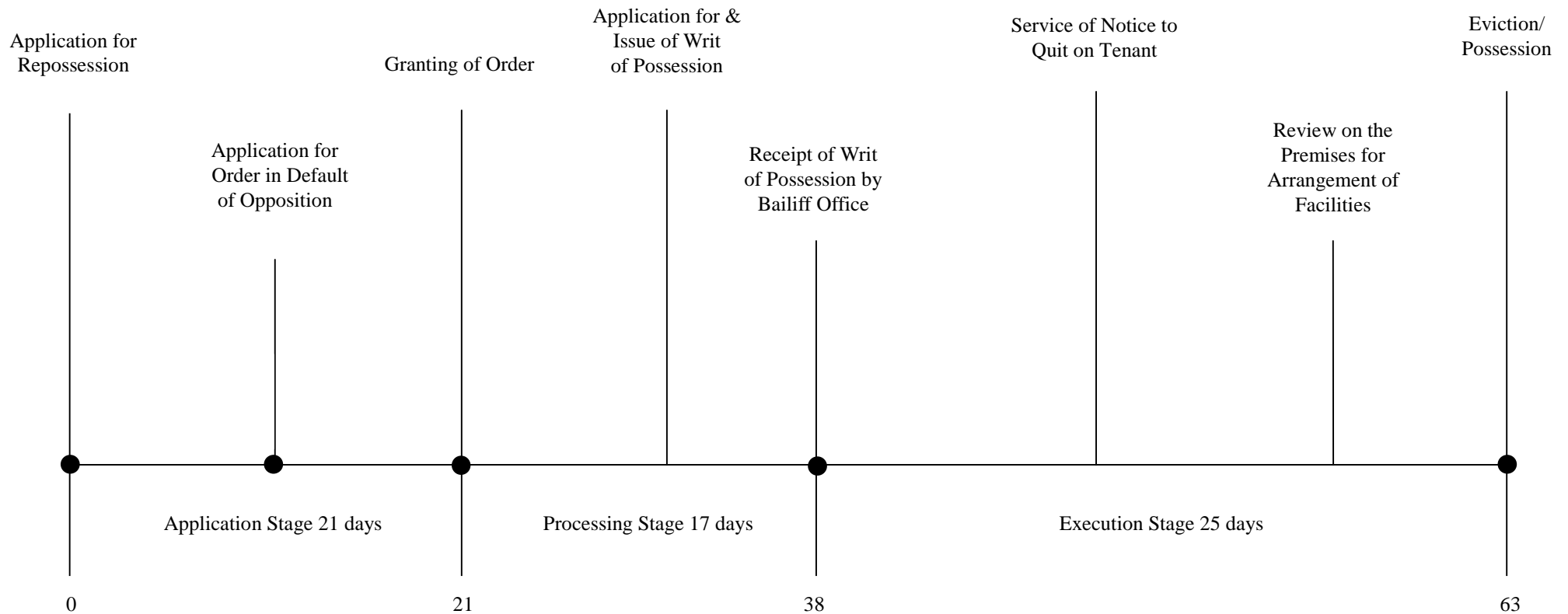
Repossession without court order

6. In theory, after a lease has expired but the tenant has not left the premise, a landlord may re-enter or re-possess his premises without a court order.

7. However, this re-entry must be peaceable. If force is used, the landlord may be guilty of an offence under section 23 of the Public Order Ordinance. Without the assistance from the Bailiff's Office, he would also be exposed of the risks of being accused of theft or sued for damage claims by a tenant as no body of authority could ascertain the condition of the premises left by the tenant.

8. On a related issue, the Department of Justice has advised that any legislative proposal authorizing forced entry by a landlord without a tenant's consent (following the expiry of tenancy) would have implication on Article 17 of the International Covenant on Civil and Political Rights, which prohibits arbitrary interference with one's privacy and home, and requires procedural safeguards and legal remedies for tenants affected. Such a legislative proposal will also have implication on Article 11 of the International Covenant on Economic, Social and Cultural Rights, which guarantees legal protection against forced eviction.

Time Chart
Repossession of Premises upon Expiry of Tenancy where a Notice of Opposition has not been filed

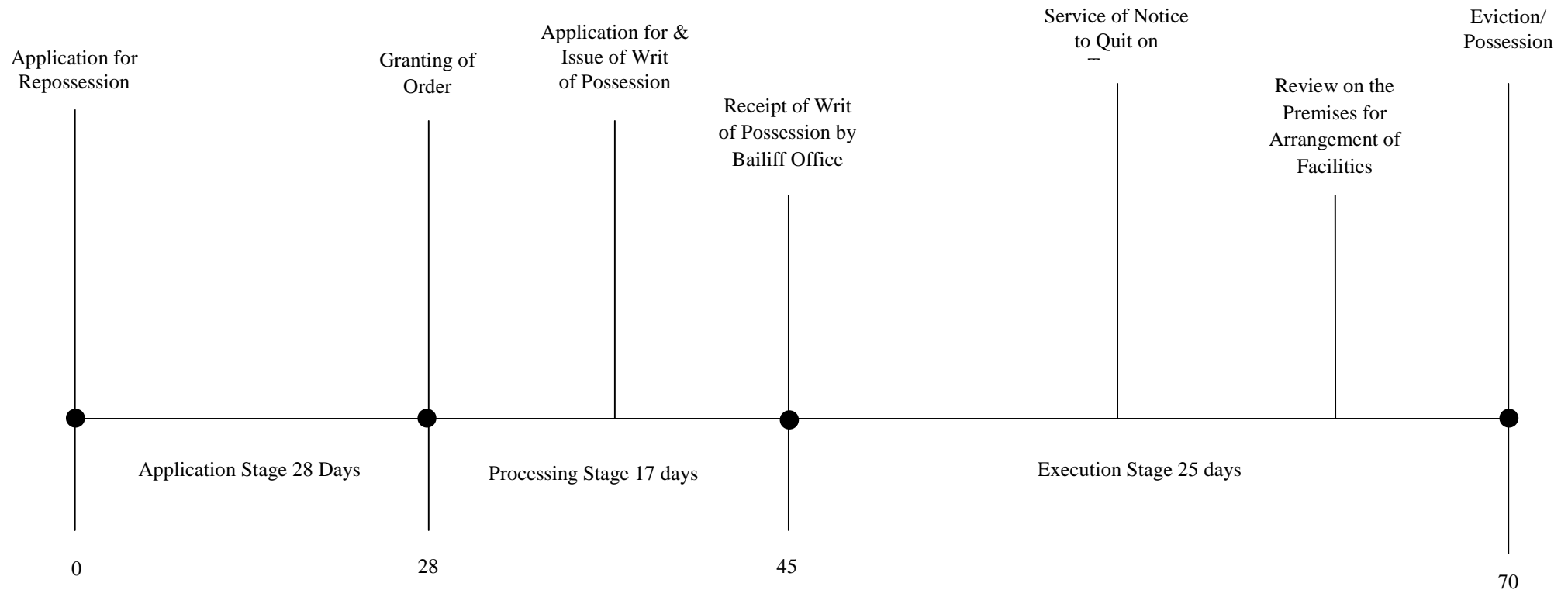


Note:

The Chart illustrates a straightforward case which takes a total of 63 days. The same process can take longer time depending on the circumstances of the case.

Time Chart

Repossession of Premises upon Expiry of Tenancy where a Notice of Opposition has been filed



Note:

The Chart illustrates a straightforward case which takes a total of 70 days. The same process can take longer time depending on the circumstances of the case.