

**Information Paper on the
Transitional Arrangement for Removing Security of Tenure
for Domestic Tenancies**

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

Purpose

This paper informs Members of the proposed modifications to the transitional arrangement for removing security of tenure for domestic tenancies.

Background

2. At the Bills Committee meeting held on 16 February 2004, the Administration advised Members on its proposed transitional arrangement for removing security of tenure for domestic tenancies through the Landlord and Tenant (Consolidation) (Amendment) Bill 2003. It was proposed that within the first year after the commencement of the Bill, landlords of existing tenancies who want to end their tenancies would have to serve on tenants a termination notice at least 12 months in advance.

3. Members accepted that the proposal has the advantages of:

- (a) avoiding a sudden upsurge in tenancy renewal applications to the Lands Tribunal (LT); and
- (b) ensuring that tenants would have enough time (at least 12 months) to find alternative accommodation, hence mitigating the impact of the removal of security of tenure on tenants who have been enjoying the statutory protection for many years.

4. However, some Members considered our proposal somewhat complicated as landlords would have to figure out by themselves the best timing for action: whether to serve a 12 months' termination notice early or do nothing (i.e. just wait till the one-year transition period runs out). To address these concerns, some Members asked the Administration to consider:

- (a) simplifying the transition arrangement by not requiring landlords

to serve prior notice and allowing all existing tenancies to be **automatically** protected from termination for one year after the commencement of the Bill; and

- (b) giving landlords the option of applying to LT for repossession of premises on statutory grounds (e.g. self-residence, redevelopment, etc.), hence no need to wait till the expiry of the 12-month notice period.

5. Having considered Members' views, we propose to make three modifications to the proposed transitional arrangement as set out below.

Proposals

(A) Time limit

6. Under our original proposal, the 12 months' notice requirement would be applicable only during the first year after the commencement of the Bill. A landlord who wants to end the tenancy may choose to:

- (a) serve a 12 months' termination notice right after the Bill comes into effect; or
- (b) wait for the one-year transitional period to pass and then serve one month's notice to quit.

In other words, the tenancy would come to an end 12 months later in scenario (a) and 13 months later in scenario (b). A maximum time difference of one month is indeed small. As some Members have pointed out, some landlords might find it too cumbersome to have to figure out a timing for action that is to their best advantage.

7. To simplify matters, **we propose to remove the one-year time limit to make it an open-ended approach.** This means after the commencement of the Bill, no matter when the landlord of an existing tenancy wants to terminate the tenancy, he would have to serve a 12 months' termination notice. The requirement is **mandatory** for landlords of **all existing tenancies.**

8. We have considered but do not support the suggestion of allowing all tenancies to be automatically protected from termination for one year after the commencement of the Bill. Such protection could result in a rush in the number of tenants seeking new rental accommodation, thus putting pressure on the private rental market. More importantly, such automatic protection would mean that landlords would not be required to indicate their intention early, and tenants would have little time to make relocation arrangements.

(B) Timing to serve termination notice

9. Under our original proposal, a landlord can serve a 12 months' termination notice any time after the commencement of the Bill. This might cause confusion to landlords: a landlord of a fixed-term tenancy can serve a termination notice while the tenancy is still running, but a landlord of a tenancy statutorily continued under the existing security of tenure regime could do so only after the tenancy has expired. To simplify matters, **we propose that the 12 months' termination notice can be served by the landlord only on or after the contractual end date of a tenancy.** In the case of a periodic tenancy which does not have a contractual end date and is automatically renewed at the end of each term, the landlord can serve a termination notice on or after the end date of the first term following the commencement of the Bill.

(C) Repossession of premises on statutory grounds

10. Under the current security of tenure regime, a landlord can object to a tenancy renewal request (made by a tenant) on such statutory grounds as self-residence, redevelopment, non-payment of rent by the tenant, immoral/illegal use of premises by the tenant, etc. Our original proposal obliges a landlord to wait for one year after serving a termination notice even if he has an urgent and genuine need to get his property back sooner (e.g. for self-residence).

11. As some Members have pointed out, we agree that this might cause hardship to some landlords. We therefore **propose that after a tenancy has expired, if the landlord needs to repossess his property for self-residence (or residence by his immediate family members), he can apply to LT for immediate repossession without having to serve a 12 months' termination notice.** If LT grants him such early repossession, he would be subject to the restrictions applicable to landlords who successfully

object on self-residence ground to tenancy renewal requests made by tenants under the existing security of tenure regime, e.g. he cannot let or assign the premises within two years after repossession.

12. We are not in favour of exempting landlords from the 12 months' termination notice requirement on the ground of redevelopment. As redevelopment usually involves a lengthy planning process, the transitional requirement should not cause any real hardship to landlords planning to redevelop their properties.

13. As regards the other statutory grounds available under the current security of tenure regime (e.g. non-payment of rent by the tenant, immoral/illegal use of premises by the tenant, etc.), there are already statutory provisions under section 117(3) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) which allow landlords to apply to LT to forfeit a tenancy on these grounds. There is hence no need to make separate provisions under our proposed transitional arrangements to cater for these situations.

14. It should be pointed out that a landlord can apply for a repossession order any time after the tenancy has expired, irrespective of whether he has or has not served a 12 months' termination notice. Once granted, the repossession order will override any termination notice the landlord may have served.

15. In sum, the above modifications to our original proposal will mean that **after the commencement of the Bill, a landlord of an existing tenancy who wants the tenancy to end must, on or after the tenancy's expiry date, serve a termination notice on the tenant at least 12 months before his intended termination date. Regardless of whether he has served a 12 months' termination notice, he may apply to LT for immediate repossession on the ground of self-residence.**

16. For the sake of completeness and Members' easy reference, other salient features of the proposed transitional arrangement set out in the last information note provided to Members are recapitulated below –

- (a) the 12 months' termination notice requirement will take precedence over any notice period requirement agreed by the

two parties before the commencement of the Bill;

- (b) however, the 12 months' termination notice requirement will be overridden by any notice period agreed by the two parties **after** the commencement of the Bill;
- (c) the 12 months' termination notice requirement should only apply to existing tenancies, but not to tenancies entered into after the commencement of the Bill;
- (d) until the termination date as specified in the 12 months' termination notice, the tenancy will continue to run on all existing terms, including the rental level. The two parties can decide to vary the rental level, but the amended tenancy will be regarded as a new one and will not be subject to the 12 months' termination notice requirement;
- (e) any dispute that may arise from the 12 months' termination notice requirement will be determined by the LT;
- (f) tenants will 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; and
- (g) the arrangement will also apply to sub-tenancies: a principal tenant who wants to terminate a sub-tenancy will also have to serve a 12 months' termination notice on 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 on the principal tenant on the front door for 3 consecutive days to terminate also any sub-tenancies created under the principal tenancy.

Termination arrangement

17. There will be three types of tenancies in force after the commencement date- (a) fixed-term tenancy (with an end date falling after the commencement date), (b) statutorily continued tenancy (fixed-term tenancy which has ended before the commencement date but is statutorily continued under the existing security of tenure regime), and (c) periodic

tenancy.

18. Regardless of the type of the tenancy, the termination arrangement will be the same. A landlord who wishes to terminate a tenancy after the contractual expiry date must serve on the tenant a termination notice at least 12 months before the intended termination date. Assuming that the Bill will take effect on 1 June 2004, examples of how different tenancies can be terminated under the transitional arrangement are set out below for illustration –

(a) *Fixed-term tenancy ending on 30 June 2004 (1 month after the commencement date)*

- The landlord can serve a 12 months' termination notice anytime **on or after** the tenancy's expiry on 30 June 2004. For instance, if he wants to terminate it as soon as possible, he can serve a termination notice on 30 June 2004 and terminate it on 30 June 2005.
- However, if the landlord chooses to serve a termination notice on, say 30 November 2004, the tenancy will end on 30 November 2005. During the period from 1 July 2004 (after the contractual expiry date) to 30 November 2005 (when the termination notice takes effect), the tenancy will continue to run on all existing terms including the rental level.

(b) *Fixed-term tenancy ending on 30 April 2004 (1 month before the commencement date), i.e. statutorily continued tenancy*

- The tenancy will be statutorily continued under the current security of tenure regime if the landlord and the tenant have not started the existing tenancy renewal procedure before the commencement date. After the commencement date, the landlord can terminate the tenancy by serving a 12 months' termination notice. For instance, he can serve a termination notice on 30 June 2004 to terminate the tenancy on 30 June 2005, or a termination notice on 31 August 2005 to terminate the tenancy on 31 August 2006.

(c) *Bimonthly periodic tenancy commencing on 1 May 2004*

- A periodic tenancy does not have a contractual end date and will be automatically renewed at the end of each term. After the commencement date, landlords of this kind of tenancy can serve a 12 months' termination notice **on or after** the end day of the current term. For instance, for a bimonthly tenancy commencing on 1 May 2004, the landlord can serve a termination notice on 30 June 2004 to end it on 30 June 2005.

Termination arrangement for new tenancies

19. As mentioned above, tenancies entered into after the commencement of the Bill will not be subject to the 12 months' termination notice requirement. They would therefore be terminated according to the terms of the tenancy or as agreed between the two parties. In the absence of a contractual notice requirement or mutual agreement –

- (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; and
- (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.

Advice sought

20. Members are advised to consider the modifications to the transitional arrangement set out in paras. 6-15.

**Housing, Planning and Lands Bureau
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