

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Secretary for Housing,
Planning and Lands

[Revised 05.05.04]

<u>Clause</u>	<u>Amendment Proposed</u>
1	(a) In the heading by deleting " and commencement ". (b) By deleting subclause (2).
2	By deleting the definition "appointed day" and substituting - "commencement date" (<i>生效日期</i>) means the date on which this Ordinance is published in the Gazette;".
5	(a) In subclause (1)- (i) by deleting "appointed day" wherever it appears and substituting "commencement date"; (ii) <i>by deleting "之前已存" and substituting "的前一天屬存"</i> . (b) In subclause (2)-

~~(i) by deleting "appointed day" wherever it appears and substituting "commencement date";~~

~~(ii) by deleting everything after "principal Ordinance" and substituting ", may only be terminated by a transitional termination notice as provided for by section 5A, unless on or after the commencement date the parties agree to some other period for notice of termination or alter any term of the tenancy.".~~

(b) By deleting subclause (2) and substituting -

"(2) On and after the commencement date, a tenancy to which Part IV applies and which is in existence on the day before the commencement date, but in respect of which no notice or request has been given or made before the commencement date under section 119 or 119A of the principal Ordinance, may, subject to subsections (2A) and (2B), only be terminated by a transitional termination notice as provided for by section 5A.".

(c) By adding -

~~"(2A) Subsection (2) is~~

~~without prejudice to~~

~~(a) section 5B(2) as to the~~

~~making of a possession~~

~~order; or~~

~~(b) section 117(3) of the~~

~~principal Ordinance as to~~

~~implied conditions for~~

~~forfeiture."~~

*"(2A) The requirement in
subsection (2) for a transitional
termination notice in respect of a
tenancy, and any such notice that has
been issued in respect of a tenancy,
ceases to apply if, on or after the
commencement date -*

*(a) the parties to the
tenancy -*

*(i) agree to some other
period for notice of
termination; or*

*(ii) alter any other term
of the tenancy;*

*(b) the tenancy is replaced by
a new tenancy; or*

*(c) there is a change of
tenant that does not
create a new tenancy.*

*(2B) Subsection (2) is without
prejudice to -*

*(a) section 5B(1) as to the
making of an order for
possession;*

*(b) any right of forfeiture
conferred on a landlord;*

*(c) any right of surrender or
early termination
conferred on a tenant.*

*(2C) On and after the commencement
date, a tenancy which would have
terminated, but for the requirement in
subsection (2) for a transitional
termination notice, shall, until
terminated by such a notice, but subject
to section 5B, continue at the same rent
and upon the same covenants, conditions
and other terms of the original tenancy as
are appropriate to a month to month
tenancy."*

(d) In subclause (3) -

(i) by deleting "appointed day" and
substituting "commencement date";

(ii) by deleting "that day" and
substituting "that date".

(e) In subclause (4) -

- (i) by deleting "appointed day" and substituting "commencement date";
 - (ii) by deleting "that day" and substituting "that date".
- (f) In subclause (5) -
 - (i) by deleting "appointed day" where it twice appears and substituting "commencement date";
 - (ii) by deleting "that day" and substituting "that date".
- (g) In subclause (6), by deleting "appointed day" and substituting "commencement date".

New

By adding immediately before Part 3 -

"5A. Transitional termination notice

(1) For the purpose of section 5(2), a "transitional termination notice" (過渡性終止通知書) means a written notice of termination of a tenancy served on or after the commencement date in accordance with this section.

(2) A transitional termination notice must be served -

- (a) by a landlord, not less than 12 months; or
- (b) by a tenant, not less than 1 month,

before the day on which it is to take effect.

(3) A transitional termination notice may be served at any time on or after the commencement date, but -

(a) in respect of a fixed term tenancy which was in existence on the day before the commencement date, may not be served earlier than the last day of the term;

(b) in respect of a periodic tenancy which was in existence on the day before the commencement date, may not be served earlier than the last day of the period of the tenancy current at the commencement date.

(4) A transitional termination notice may be served in any of the ways specified in section 119Y(1) of the principal Ordinance and subsection (2) of that section applies to such service.

(5) Where a transitional termination notice is served on a tenant, if -

(a) the notice is in both Chinese and English; and

(b) the notice is posted ~~for~~ **on** 3 successive days upon the main

door or entrance of the
premises affected,
the notice shall take effect terminating also
any sub-tenancies created out of the tenancy
to which it relates.

(6) A transitional termination notice
duly served in respect of a tenancy in
accordance with this section takes effect
according to its terms, notwithstanding -

(a) ~~any change in the parties to
the tenancy;~~

**a change of landlord that does
not create a new tenancy;**

(b) any express or implied
provision in the tenancy
regarding the giving of notice
of termination (**subject to
section 5(2B)(c) as to early
termination**); or

(c) any **other** rule of law regarding
the date on which a termination
notice takes effect.

5B. Other transitional provisions

~~(1) On and after the commencement date,
a tenancy which would have terminated, but for
the requirement in section 5(2) for a
transitional termination notice, shall, until~~

~~terminated by such a notice, but subject to the following subsections, continue at the same rent and upon the same covenants, conditions and other terms of the original tenancy as are appropriate to a month to month tenancy.~~

(2 1) During the continuance of a tenancy as described in ~~subsection (1)~~ **section 5(2C)**, the Tribunal may, on the application of the landlord, make an order for possession of the premises to which the tenancy relates, or any part of them, notwithstanding that a transitional termination notice in respect of the premises has not been served, or has been served but has not expired, if the Tribunal is satisfied that the premises are, or that that part of them is, reasonably required by the landlord for occupation as a residence for himself, his father, his mother or any son or daughter of his over the age of 18.

~~[cf. Section 119E(b) and 119FA of Cap. 7]~~

(2 3) The Tribunal shall not make an order for possession under subsection ~~(2)~~(1) if -

- (a) in the case of a tenancy, the tenant satisfies the Tribunal that, in all the circumstances of the case, it would

manifestly not be just and equitable to make the order; or

- (b) in the case of a sub-tenancy, the Tribunal is satisfied in all the circumstances of the case, including whether other accommodation is available for the principal tenant or the sub-tenant, greater hardship would be caused by making the order than by refusing it.

~~[Cf. Section 119E(1)(b)(i) and (ii)]~~

~~(3)~~~~(4)~~ If the Tribunal makes an order for possession under subsection ~~(2)~~ **(1)** -

- (a) the Tribunal must specify the name of the person for whose occupation it is satisfied the premises are, or the part of the premises is, required;

~~[Cf. Section 119G(2)]~~

- (b) subject to subsection ~~(3)~~**(4)**, the landlord must not, for a period of 24 months after the date of the order, use, or allow the use of the premises, or the part of the premises, other than as a residence for

the person specified under
paragraph (a);

~~{Cf. Section 119H(1)(b)}~~

(c) subject to subsection ~~(5)~~ (4),
the landlord must not, for a
period of 24 months after the
date of the order -

(i) let the premises or
any part of them; or

(ii) assign, transfer or
part with possession
of the premises or
any part of them.

~~{Cf. Section 119H(1)(a)}~~

(4)~~(5)~~ If the Tribunal makes an order
for possession under subsection ~~(2)~~(1), the
Tribunal may authorize the landlord to -

(a) let the premises or any part of
them;

(b) assign, transfer or part with
possession of the premises or
any part of them; or

(c) use, or allow the use of, the
premises, or any part of them,
other than as a residence for
the person specified under
subsection ~~(4)~~(3)(a).

~~{Section 119H(2)(a)}~~

(5) ~~(6)~~The Tribunal, when granting an authority under subsection ~~(5)~~ (4) to let, must specify the terms, including the rent, on which the premises are, or the part of the premises is, to be let, and the rent must not be more than that payable by the tenant last in possession.

~~[Cf. Section 119H(2)(b)]~~

(6)~~(7)~~ Without prejudice to subsection ~~(7)~~(8), a landlord who contravenes subsection ~~(4)~~(3)(b) or (c) commits an offence and is liable on conviction on indictment -

- (a) to a fine of \$500,000;
- (b) in addition, on a second or subsequent conviction, to imprisonment for 12 months;
- (c) in any case, to forfeit a sum not exceeding the equivalent of -

- (i) in the case of a contravention of subsection ~~(4)~~(3)(c)(i), 2 years' rent calculated at the rate at which the premises were let

without the authority
of the Tribunal; or
(ii) in the case of a
contravention of
subsection
~~(4)~~(3)(c)(ii), the
difference, at the
date of the
contravention,
between the market
value of the premises
with vacant
possession and the
market value of the
premises with the
former tenant in
possession.

~~{Cf. Section 119H(3)}~~

~~(7)~~(8) A court which sentences a landlord
for an offence under subsection ~~(7)~~ (6) may,
in addition to imposing a penalty under that
subsection, make an order under subsection
~~(9)~~(8) after hearing the former tenant and the
landlord.

~~{Cf. Section 119H(4)}~~

~~(8)~~(9) If -

- (a) an application for a possession
order by the landlord is made

under subsection ~~(2)~~(1) and it is subsequently made to appear to the Tribunal that the application was successful by reason of the misrepresentation or concealment of material facts by the landlord; or

(b) the landlord is shown to have acted in contravention of subsection ~~(4)~~ (3)(b) or (c),

the Tribunal or, as the case may be, the court referred to in subsection ~~(8)~~(7) may order the landlord to pay to the former tenant such sum as it thinks fit by way of compensation for damage or loss sustained by that tenant as a result of the application.

—————~~[Cf. Section 119H(9)]~~

(9)~~(10)~~ A letting, assignment, transfer or parting with possession of premises or part of them shall not be void, voidable or unenforceable by reason only of a contravention of subsection ~~(4)~~(3)(b) or (c).

~~[Cf. Section 119(6)]~~

(10)~~(11)~~ A landlord who has been granted ~~a possession order~~ **an order for possession** pursuant to subsection (1) shall be presumed, until the contrary is shown, to have knowledge of the making of the order, of the terms of

the order, and of any consent given by the tenant or sub-tenant in connection with the delivery of vacant possession.

~~{Cf. Section 119H(8)}~~

(11)~~(12)~~ For the purpose of subsection ~~(2)~~(1) -

[Note - The 2 definitions are transposed from the original draft, to maintain alphabetical order.]

"his father, his mother or any son or daughter

of his" (其父親、母親、兒子或女兒) includes

the father, mother, son or daughter of

one or more landlords, holding the

premises jointly or in common, with the

other landlord or landlords so holding

assenting to the application for a

~~possession order~~**an order for possession;**

"landlord" (業主) includes one or more

landlords, holding the premises jointly

or in common, with the other landlord or

landlords so holding assenting to the

application for a ~~possession order~~ **an**

order for possession.".

~~{Cf. Section 119E(2A)}~~

- (i) by deleting "appointed day" and substituting "commencement date";
 - (ii) by deleting "that day" and substituting "that date".
- (b) In subclause (2)-
- (i) by deleting "appointed day" wherever it appears and substituting "commencement date";
 - (ii) **by deleting "之前已" and substituting "的前一天屬".**
- (c) In subclause (3) -
- (i) by deleting "appointed day" where it twice appears and substituting "commencement date";
 - (ii) by deleting "that day" and substituting "that date".
- (d) In subclause (4), by deleting "appointed day" and substituting "commencement date".

14 By deleting the clause.

Schedule,
section 1

By adding -

- "(11) The Tribunal shall have jurisdiction to make an order for possession -
- (a) upon the expiry of a transitional termination notice served pursuant to section 5(2)

of the Landlord and Tenant
(Consolidation) (Amendment)
Ordinance 2004 (of 2004);

- (b) upon an application by a
landlord for possession as
provided by section [5B(2)] of
that Ordinance;
- (c) upon the termination of a
tenancy to which section [7(2)]
of that Ordinance applies;
- (d) upon the termination by
effluxion of time of a new
tenancy entered into on or
after the commencement of that
Ordinance."

Schedule By adding immediately before section 4 -

"3A. Commencement of proceedings

***Rule 68 of the Lands Tribunal Rules (Cap.
17 sub. leg. A) is amended by adding -***

***"(1A) Proceedings for an order for
possession and other reliefs upon the
termination of a tenancy by a
transitional termination notice served
pursuant to section 5A of the Landlord
and Tenant (Consolidation)(Amendment)
Ordinance 2004 (of 2004) shall be
commenced by the applicant filing with***

the Registrar a notice of application substantially in accordance with Form 22A.

(1B) Proceedings for an order for possession and other reliefs under section 5B(1) of the Landlord and Tenant (Consolidation)(Amendment) Ordinance 2004 (of 2004) shall be commenced by the applicant filing with the Registrar a notice of application substantially in accordance with Form 22B."

3BA. Notice of opposition

~~Rule 69 of the Lands Tribunal Rules (Cap. 17 sub. Leg. A)~~ is amended -

- (a) by renumbering it as rule 69(1);
- (b) in subrule (1) by repealing "The" and substituting "Subject to subrule (2), the";
- (c) by adding -

~~"(2) If the application is for possession where~~
The period of 14 days mentioned in subrule (1) is reduced to 7 days in the case of an

*application for an order
for possession made on or
after the commencement of
the Landlord and Tenant
(Consolidation)(Amendment)
Ordinance 2004 (of
2004) if the tenancy has
been terminated by -*

- (a) notice of
termination
within the
meaning of
Part IV or
Part V of
the
**Landlord
and Tenant
(Consolida-
tion)**
Ordinance
(Cap. 7);
- (b) notice to
quit given
by the
landlord or
tenant;
- (c) surrender;

(d) a transi-
tional
termination
notice ~~as~~
~~provided by~~
~~section~~
~~5(2)~~ **served**
pursuant to
section 5A
of the
Landlord
and Tenant
(Consolida-
tion)
(Amendment)
Ordinance
2004 (of
2004); or
(e) effluxion
of time."
~~,the period of~~
~~14 days~~
~~mentioned~~
~~in subrule~~
~~(1) is~~
~~reduced to~~
~~7 days.~~

3C. Schedule

The Schedule is amended by adding the following new Forms -

[Note- The 2 Forms are new]

"IN THE LANDS TRIBUNAL OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

FORM 22A

(r. 68(1A))

NOTICE OF APPLICATION
UNDER THE LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) ORDINANCE 2004

Pursuant to section	5A
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No.	LD	/
-----	----	---

Applicant's name:		*(Landlord/Tenant)
& address:		

Respondent's name:		*(Tenant/Landlord)
& address:		

Address of premises:	
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Duration of tenancy before service of Transitional Termination Notice:	From	To	Existing rent: \$/month	
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Transitional Termination Notice:	Date of Service		Date of Expiry of Notice	
-------------------------------------	-----------------	--	-----------------------------	--

	Mode of Service	
--	-----------------	--

Nature and particulars of Application:

The tenancy having been terminated upon the expiry of a transitional termination notice, the Applicant applies for recovery of possession of the suit premises and claims against the Respondent for the following item(s):-

(1) Arrears of rent/mesne profits from _____ to the
date of delivery of vacant possession of the suit premises and costs.

(2) and others _____

Dated this _____ day of _____.

(Signature of Applicant/authorized representative of Applicant*)	
Full name of authorized representative:	

To: 1. The Registrar, Lands Tribunal.
2. The Respondent.

Applicant's address for service:	

+ If the Applicant is a company/incorporation, please affix the company seal and write down the full name of the signatory.

* Delete whichever is inapplicable.

Note: If you intend to oppose this application, you must personally attend at the Lands Tribunal Registry within 7 days of the day of service of this notice or within the time as ordered by the Tribunal and file a Notice of Opposition (Form 7).

"IN THE LANDS TRIBUNAL OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

FORM 22B

(r. 68(1B))

NOTICE OF APPLICATION
UNDER THE LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) ORDINANCE 2004

Pursuant to section	5B(1)
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No.	LD	/
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Applicant's name:		*(Landlord/Tenant)
& address:		

Respondent's name:		*(Tenant/Landlord)
& address:	(1)	

Address of premises:	
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Duration of tenancy:	From	To	Existing rent:	
			\$/month	

Transitional Termination Notice (if any):	Date of Service		Date of Expiry of Notice	
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	Mode of Service	
--	-----------------	--

Nature and particulars of Application:

The Applicant applies for possession of the suit premises on the ground that the suit premises are reasonably required by the Applicant as a residence for -

[Names, ages and relationship to the Applicant of person(s) for whom occupation of the suit premises is required]

And further claims against the Respondent for the following item(s):-

(1) Arrears of rent/mesne profits from _____ to the date of delivery of vacant possession of the suit premises and costs.

(2) and others _____

Dated this _____ day of _____.

(Signature of Applicant/authorized representative of Applicant*)	
Full name of authorized representative:	

To: 1. The Registrar, Lands Tribunal.
2. The Respondent.

Applicant's address for service:	

+ If the Applicant is a company/incorporation, please affix the company seal and write down the full name of the signatory.

* Delete whichever is inapplicable.

Note: If you intend to oppose this application, you must personally attend at the Lands Tribunal Registry within 7 days of the day of service of this notice or within the time as ordered by the Tribunal and file a Notice of Opposition (Form 7).

Schedule,
section 4

By deleting "to the Lands Tribunal Rules (Cap. 17
sub. leg. A)".

Schedule

By adding the following new sections -

***[Note - These 2 sections replace the previous note
in parentheses.]***

**"Standard Chartered Bank (Hong Kong)
Limited (Merger) Ordinance**

29. Interests in land

Section 17(1)(a) of the Standard
Chartered Bank (Hong Kong) Limited (Merger)
Ordinance 2004 (of 2004) is amended by
repealing ", 119E(2) or 119(H)(1)(a)".

***[Note - This Bill is currently in LegCo. and is
expected to pass before the Landlord and Tenant
(Consolidation) (Amendment) Bill.]***

Wing Lung Bank Ordinance

30. Interests in land

Section [] of the Wing Lung Bank
Ordinance 2004 (of 2004) is amended by
repealing [" , 119E(2) or 119H(1)(a)]".

***[Note - This will only be needed if the Bill is
passed before the Landlord and Tenant
(Consolidation) (Amendment) Bill.]***