

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 2003

COMMITTEE STAGE

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

<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" (生效日期) 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) by deleting "之前已存" and substituting "的前一天屬存". (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) 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; **or**

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

the tenancy is assigned to a new tenant.

~~(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) (a) *The benefits and
protection afforded by this
Part shall, in any tenancy to
which it applies, be
available to the widow,
widower, mother, father or
any daughter or son over the
age of 18 years of the tenant
where she or he was residing
with the tenant at the time
of the tenant's death; and,
for the purposes of this Part,
references to a tenant shall
except in this subsection*

include a reference to such widow, widower, mother, father, daughter or son.

(b) Only one person mentioned in paragraph (a) shall be entitled to the benefits and protection of this Part at one time and, in default of agreement by those persons, the Tribunal shall nominate that person on such grounds as appears to it to be just and equitable.

(c) The benefits and protection afforded by this Part shall not be available to a personal representative of a deceased tenant or, notwithstanding any will or the law of succession on intestacy, any other person who is not a person mentioned in paragraph (a) as entitled to those benefits and that protection.

~~(2C)~~ *(2D)* 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 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) ***Subject to section 5(2A), a***
transitional termination notice duly served in
respect of a tenancy in accordance with this
section takes effect according to its terms,
notwithstanding -

(a) 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) During the continuance of a tenancy as described in section 5(2ED), 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.

(2) The Tribunal shall not make an order for possession under subsection (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.

(3) If the Tribunal makes an order for possession under subsection (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;
- (b) subject to subsection (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);

(c) subject to subsection (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.

(4) If the Tribunal makes an order for possession under subsection (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 (3)(a).

(5) The Tribunal, when granting an authority under subsection (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.

(6) Without prejudice to subsection (8), a landlord who contravenes subsection (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 (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 (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.

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

(8) If -

(a) an application for a possession order by the landlord is made under subsection (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 (3)(b) or (c),

the Tribunal or, as the case may be, the court referred to in subsection (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.

(9) 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 (3)(b) or (c).

(10) A landlord who has been granted 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.

(11) For the purpose of subsection (1) -
"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 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 an order for possession.".

7

(a) In subclause (1) -

- (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 -

1

"(11) The Tribunal shall have jurisdiction
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.".

3B. Notice of opposition

Rule 69 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) 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 (Consolidation) Ordinance (Cap. 7);

- (b) notice to quit
given by the
landlord or
tenant;
- (c) surrender;
- (d) a transi-
tional
termination
notice served
pursuant to
section 5A of
the Landlord
and Tenant
(Consolida-
tion)
(Amendment)
Ordinance 2004
(of 2004);
or
- (e) effluxion of
time."

3C. Schedule

The Schedule is amended by adding the
following new Forms -

"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

No. **LD** /

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

Respondent's name: _____ *(Tenant/~~Landlord~~/Sub-tenant)
& address: _____

Address of premises: _____

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)No. **LD** / _____

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

Respondent's name: _____ *(Tenant/~~Landlord~~/Sub-tenant)
& address: (1) _____

Address of premises: _____

Duration of tenancy: From _____ to _____ Existing rent: _____
\$/month

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

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 -

**"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 (6 of 2004) is amended by
repealing ", 119E(2) or 119H(1)(a)".