

Drafter: J F Wilson

File Ref: LDT/264/00/11C'A'

DRAFTING HISTORY TABLE

Draft no.	Release date	DocsOpen version
3rd cleared draft	18.5.2004	#105639 v14

LANDLORD AND TENANT (CONSOLIDATION)(AMENDMENT) BILL 2003

LANDLORD AND TENANT (CONSOLIDATION)(AMENDMENT) BILL 2003

COMMITTEE STAGE

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

Clause

Amendment Proposed

- 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 "之前已存在的屬" and substituting "的前一天屬存在的".

(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)~~ **(2B)** and ~~(2B)~~ **(2C)**, only be terminated by a transitional termination notice as provided for by section 5A.";

(c) By adding -

"(2A) The term "the tenancy"

() as used in subsection (1)(c)

*and (d) does not include any new
tenancy granted pursuant to Part IV on
or after the commencement date.*

~~(2B)~~ **(2B)** 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 assigned
to a new tenant.

~~(2B)~~ **(2C)** 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)~~ **(2D)** (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.

~~(2D)~~ **(2E)** 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)~~, **(2B)**, 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)~~ **(2C)** (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~~(2D)~~**(2E)**, 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 everything after "日期" where it firstly appears and before "，則" and substituting "的前一天屬存在的第v部適用的租賃而言，如在生效日期之前並無根據主體條例第122(1)條就該租賃送達的終止租賃通知書".

(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.".

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)(Amendmen
t) Ordinance 2004 (of
2004) if the tenancy has
been terminated by -

(a) notice of
terminati
on within
the
meaning
of Part
IV or
Part V of
the
Landlord
and
Tenant
(Consolid
a-tion)
Ordinance
(Cap. 7);

(b) notice to
quit
given by
the
landlord
or
tenant;

(c)
surr
ender;

- (d) a transi-
tional
terminati
on notice
served
pursuant
to
section
5A of the
Landlord
and
Tenant
(Consolid
a-tion)
(Amendmen
t)
Ordinance
2004
(of
2004); or
- (e) effluxion
of
time.".

The Schedule is amended by adding the
following new Forms -

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

FORM 22A
68(1A))

(r.

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/Sub-tenant)
& address: _____

Address of premises: _____

Duration of tenancy From _____ to _____ Existing rent: \$/month
before service of
Transitional
Termination Notice: _____

Transitional Date of Service Date of Expiry
Termination Notice: _____ 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
68(1B))

(r.

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/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)".