

28 May 2004

The Hon Audrey EU, SC, JP
Chairman
Bills Committee on Landlord and Tenant
(Consolidation)(Amendment) Bill 2003
Room 429, Central Government Offices
West Wing
11 Ice House Street
Central
Hong Kong

Dear

**Landlord and Tenant (Consolidation) (Amendment) Bill 2003
Committee Stage Amendments by Hon James Tien**

As widely reported, Government objects strongly to the Hon James Tien's proposal to retain security of tenure protection for tenancies of premises with Rateable Values (RV) below \$36,000 (or \$3,000 per month) for a period of three years after the commencement of the Bill, with no transitional arrangement upon expiry of the three-year period. I would like to set out in this letter our reasons of our objection.

Mr Tien's proposal is similar to that proposed earlier by the Hon Albert Ho. Both proposals seek to retain the existing security of tenure regime for tenements falling below a certain RV threshold (\$3,000 per month under Mr Tien's scheme and under \$5,000 under Mr Ho's scheme). Mr Tien's proposal therefore will give rise to the same problems set out in our letter addressed to you on 6 May 2004. I should not repeat the arguments but would like to highlight the unreasonableness and adverse consequences of Mr Tien's proposal, which would selectively extend security of tenure protection for three more years (indefinitely in the case of Mr Ho's proposal).

In a nutshell, Mr Tien's proposal is grossly unfair to landlords of low-value properties and will bring uncertainty and hardship to tenants residing in those properties.

Unfair treatment to landlords

Mr Tien's proposal is premised on the assumption that the 'poorest' tenants deserve three more years of protection and that their landlords should, for the benefit of their tenants, bite the bullet and put up with the existing regime for three more years. We cannot accept this argument because it is the responsibility of Government, not landlords of low-RV properties, to take care of the housing needs of the under-privileged. There is no reason why we should impose this responsibility upon these landlords, who themselves are likely to be people of small means.

It is unfair to continue to deprive these landlords of their freedom to change tenants upon the expiry of a tenancy while at the same time restoring such freedom for landlords of tenements above the RV cut-off. Front-line experience of Rating and Valuation Department (RVD), supported by claims of an organisation representing landlords' interest, suggests that landlords in the lower-end market are more vulnerable to the roguish, uncooperative or outright malicious behaviours of their tenants. Mr Tien's proposal neglects the interests and rights of landlords owning low-RV properties, and could mean that some of these landlords might have to continue to endure their ordeals with 'problem tenants' for up to five more years. This is because some tenants may be able to get Lands Tribunal's ruling to get a new two-year tenancy before the end of the three-year grace period.

Uncertainty to tenants

Members of the Bills Committee have already endorsed our proposal to put in place a transitional arrangement to help tenants of existing tenancies to adjust to the legislative change. The requirement for landlords to serve 12 months' termination notice before they can terminate tenancies will give existing tenants with ample time to find alternative accommodation in the event they have to move out. Under Mr Tien's proposal, this protection will not be available to tenants residing in low-value properties. In the absence of such a transitional arrangement, the landlords of these properties will not be required by law to inform tenants of their intention to repossess their premises well in advance. Upon the expiry of the three-year grace period, they will only need to serve one

month's notice (after their tenancies have run out) to evict their tenants. Tenants will not only be deprived of the certainty afforded by the transitional arrangement, but will also have to face the hardship of having to move out and find accommodation elsewhere within short notice.

Impact on rental market

Mr Tien's proposal would also distort the operation of the rental market. As security of tenure restrictions will continue to apply to low-RV tenements for three more years, prospective landlords owning properties in this RV range might wait for the lifting of the restrictions before renting out their properties. This could dwindle the supply of low-value tenements during this three-year period and cause a surge in supply when the grace period ends.

Lack of justification for partial retention

There is no evidence to suggest that tenants in tenements of RVs below \$3,000 per month are in any particular need of security of tenure protection. According to RVD's data, about 89% of the tenancies of premises of RVs below \$3,000 per month lasted less than four years, among which some 70% lasted for one term of two years or less. Tenements of higher RVs follow a similar pattern. This suggests that many tenants do not rely heavily on security of tenure protection. Furthermore, there is already an adequate supply of low-value rental units in the market. As at the end of 2003, the vacancy rate of residential units of the smallest size (i.e. less than 40m²) was 4.5%. Also, full-scale lifting security of tenure will likely further increase the supply of rental units and make the rental market more competitive, which should be in the interest of both property owners and tenants.

If the concern is that tenants of small means need more time to adjust to the legislative changes, our proposed transitional arrangement will have addressed it. If the concern is that these tenants may be rendered homeless because of the removal of security of tenure protection, there is already a comprehensive safety net to take care of their housing needs. We therefore cannot subscribe to the argument that partial retention of the existing regime and an extended grace period are necessary.

For the above reasons, Government is opposed to Mr Tien's proposal, which will not be beneficial to landlords or tenants. We will not consider taking over the CSAs, but we hope Mr Tien can reconsider the need to put forward his CSAs, which, if passed, will go down history as a piece of bad legislation.

(Michael M Y SUEN)
Secretary for Housing, Planning and Lands

c.c. Members, Bills Committee on Landlord and Tenant
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