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Legislative Council

LC Paper No. CB(2)1320/04-05(01)

Ref : CB2/PL/AJLS

Paper for the meeting of the Panel on Administration of Justice and Legal Services on 25 April 2005

Background brief prepared by the Legislative Council Secretariat

Court procedure for repossession of premises

Purpose

This paper highlights the past discussions of Members of the Legislative Council on measures to streamline the court procedure for repossession of premises and provides an update on the relevant issues.

Background

2. The issue of streamlining the process of repossession of premises by landlords for non-payment of rent had been discussed by the Bills Committee formed to study the Landlord and Tenant (Consolidation) (Amendment) Bill 2001 (the Bill). Among other things, the Bill sought to expedite the process of repossession by shortening the relief period (from 28 to seven days) for a tenant to settle rent in arrears before an Order for Possession was executed. The Bill was enacted in December 2002.

3. While agreeing that the shortening of the relief period was a step forward in the right direction, the Bills Committee held the view that a fast-track procedure to further streamline the process of possession should be introduced to protect the interests of the landlords. The Bills Committee had put forward the following proposals to reduce the lead time for repossession –

(a) allowing landlords to set down the case for hearing at the time of lodging an application for Order for Possession;

(b) enabling automatic execution of a possession order by the Bailiff without the need to apply to the court for leave to issue a Writ of Possession; and

(c) putting in place a summary judgment procedure similar to that in the High Court.

The Bills Committee had agreed to ask the Panel on Administration of Justice and Legal Services (AJLS Panel) to follow up the relevant issues.

Discussion of the AJLS Panel

4. The AJLS Panel followed up the matter at its meetings on 29 January and 24 May 2004. At the two meetings, the Judiciary Administration briefed the Panel on measures introduced by the Judiciary within its jurisdiction to streamline the procedure for repossession of premises.

Proposal for allowing landlords to set down the case for hearing at the time of lodging an application for repossession

5. The Judiciary Administration did not support the proposal. It explained that for a straightforward case, the lead time between the date of application for repossession and the date of first hearing was about 35 days. The statutory requirements under the Lands Tribunal Rules (LTR) required a minimum of 32 days for completing the necessary procedures before an applicant for repossession could proceed to a hearing. Hence, the lead time of 35 days entailed in effect a waiting time of only three days, which was very short by any standard.

6. The Judiciary further advised that in about 50% of the repossession cases, the landlords were able to obtain a default judgment without a hearing because the tenants did not file a notice of opposition. The time limit for filing a notice of opposition was 14 days after receipt of the notice of application for repossession by the landlord. By the time the landlord knew that the tenant had not filed a notice of opposition and the landlord then applied to vacate the hearing, the hearing date would just be a few days ahead. It was unlikely that the Lands Tribunal could fix another hearing for the vacated slot, hence resulting in waste of court resources.

Applications for default judgment

7. A member of the Panel had suggested that the Lands Tribunal should grant a default order for repossession right away if the defendant tenant had not filed a notice of opposition within the specified time limit.

8. The Judiciary Administration agreed that the proposal could be considered in the context of an overall review of the LTR. The Judiciary Administration also advised the Panel that it was seeking to shorten the time for processing applications for default judgment to seven days, through further procedure reviews and staffing re-deployment within the Lands Tribunal.

Execution of Writs of Possession

9. The Judiciary Administration informed the Panel that the Judiciary had introduced a process of re-engineering initiative in the execution of Writs of Possession. At the time when the Bill was examined, only about 14% of the Writs could be executed by the Bailiffs within 30 days. In 2003, 92% of the Writs were executed within 30 days, the average being 25 days. The situation was sustained in the first quarter of 2004, in spite of a slight increase in the number of Writs issued.

Disposal of straightforward repossession cases by way of callover hearings

10. The Judiciary Administration informed the Panel that since January 2004, the Lands Tribunal had adjusted its listing practice by assigning a court to deal exclusively with repossession cases for at least one day in a week, in the form of callover hearings. The new measures enabled simple and non-contested cases (about 80% of the total cases) to be disposed of expeditiously. For the more complicated cases, the new practice had shortened the waiting time from the date of application for repossession to the date of first hearing in spite of an increased workload.

11. The Panel supported the new listing practice and suggested that the conducting of the callover hearings for simple repossession cases should be extended on a daily basis. While the Judiciary Administration was of the view that there was no need to assign a specific time slot each day for callover hearings, it had subsequently introduced further arrangements so that repossession cases might be listed for callover hearings on days when there were vacant slots on a court's diary.

Current position

Review of the Lands Tribunal Rules

12. As advised by the Judiciary Administration at the meeting on 24 May 2004, the Chief Justice had directed that the LTR as a whole should be reviewed, and the AJLS Panel would be consulted when the review was completed. Members agreed at the meeting that the Panel should further discuss the matter after a year's time.

13. The Judiciary has now completed the review of both the Lands Tribunal Ordinance and the LTR. Most of the recommendations made in the review are related primarily to application for possession of premises with a view to streamlining the procedures. Recommendations are also made in respect of the jurisdiction and other practice and procedure of the Lands Tribunal, with a view to making the processing of claims in the Tribunal more efficient and expeditious.

14. The Judiciary Administration has provided a paper on the review which will be considered by the Panel at its meeting to be held on 25 April 2005.

Relevant papers

15. The following papers are attached –

(a) extract from the Report of the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001 (**Appendix I**);

(b) paper provided by the Judiciary Administration for the Panel meeting on 29 January 2004 (**Apendix II**); and

(c) paper provided by the Judiciary Administration for the Panel meeting on 24 May 2004 (**Appendix III**).

Council Business Division 2
Legislative Council Secretariat
19 April 2005

Appendix I

LC Paper No. CB(2)1100/03-04(04)

Extract from report of the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001 for the House Committee meeting on 6 December 2002

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Statutory repossession procedures

12. At present, a straightforward case of repossession of premises for non-payment of rent where a notice of opposition has been filed will take a total of 103 days. This involves an application stage of 35 days, a minimum mandatory relief period of 28 days, a processing stage of 10 days and an execution stage of 30 days. The purpose of the relief period is to allow the tenant a final opportunity to settle the rent in arrears before the Order for Possession is executed. To minimize the abuse of the relief period by habitually defaulting tenants, the Bill proposes to shorten the relief stage from 28 to seven days.

13. While agreeing that the proposal is a step forward in the right direction, the Bills Committee holds the view that the statutory procedures for repossession can be further streamlined to protect the interest of landlords, particularly in the event of repeated defaults in payment of rent by tenants. Consideration should be given to carrying out some steps in parallel to shorten the lead time. These include -

(a) allowing landlords to set down the case for hearing at the time of lodging an application for Order for Possession;

(b) enabling automatic execution of a possession order by the Bailiff without the need to apply to court for leave to issue a Writ of Possession; and

(c) putting in place under the Bill a similar summary judgement procedure as that in the High Court.

14. On allowing a landlord to set down the case for hearing simultaneously, the Administration's explanation is that legal advice reveals that it will not save time as court waiting time can be lengthened or wasted. Currently, there are about 50% of repossession cases where tenants do not file a notice of opposition and hence the landlords are able to obtain repossession through default judgement without a hearing. The time for a tenant to file a notice of opposition is 14 days after receiving the notice of application for possession by landlord. If parallel steps are taken, by the time it is known that the tenant has not filed the notice of opposition and the landlord applies to vacate the hearing, the hearing date is just a few days ahead. It is most unlikely that the Tribunal will be able to fix another hearing in the freed time slot. Therefore, the proposal will result in a waste of resources and in turn lengthen the court waiting time.

15. On the feasibility of removing the need to apply to the court for leave to issue a Writ of Possession, the Administration's explanation is that the court has a duty to consider each application for repossession carefully, and if a tenant pays up the rent in

arrears before the lapse of the 28-day relief period (seven day as proposed in the Bill), he shall be entitled to relief from repossession by the landlord. Under Order 45 rule 3 of the Rules of the High Court, the Writ of Possession shall not be issued without the leave of the court. Such leave shall not be granted unless it is shown that every person in the actual possession has received such notice of the proceedings. The purpose of such a provision is to alert each and every person or sub-tenant that there is a proceeding between the landlord and tenant. While the principal tenant fails to pay rent, the sub-tenants may have made punctual payments to the tenant. It will be unfair to sub-tenants for any automatic execution of order without their knowledge, thereby depriving them of their rights of relief given under Order 45 rule 3.

16. On the proposed summary judgement procedures, the Administration's view is that under Order 14 rule 1 of the Rule of High Court, the summary judgement procedures arise when though the defendant (tenant) has given notice of intention to defend the action, the plaintiff (landlord) seeks to get a summary judgement on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed. This will involve a court hearing, and application must be made by summons supported by an affidavit. The summons together with a copy of the affidavit must be served on the tenant not less than 10 clear days before the hearing date. The introduction of the Order 14 procedures in the Lands Tribunal may prolong rather than expedite repossession, unless it is very clear that the tenant has no defence to the claim.

17. Members are not convinced of the Administration's explanation. They remain of the view that efforts should be made to expedite the repossession process taking into account the plight of aggrieved landlords. A fast-track procedure may have to be worked out for landlords to claim repossession of premises, particularly in the event of repeated defaults in payment of rent by tenants. In the light of members' concern, the Administration agrees to introduce an implied forfeiture clause in the Bill to assist landlords who fail to put in the tenancy agreement a forfeiture clause in respect of persistent delay in payment. The same will apply to the use of premises for an immoral or illegal purpose. CSAs will be moved to that effect.

18. To facilitate the courts in handling these claims, the Bills Committee considers that additional manpower and financial resources may be required. Consideration should also be given to vesting RVD with the power to deal with tenancy disputes not exceeding a prescribed amount of money as in the case of labour disputes by the Labour Department. At members' request, RVD has studied the adjudication and mediation services for employment disputes, and has sought advice from the Judiciary Administrator, who has strong reservation. Members agree that the proposal be shelved at the moment, and may be brought up in the future where appropriate. Meanwhile, the Panel on Administration of Justice and Legal Services will be requested to continue discussing with the Administration the financial and manpower required to facilitate the courts in handling tenancy claims.

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Panel on Administration of Justice and Legal Services

Court Procedure for Repossession of Premises

Purpose

1. This papers reviews the impact of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2002 on the Lands Tribunal and sets out recent measures introduced within the jurisdiction of the Judiciary to streamline the court procedure for repossession of premises.

Background

2. The Landlord and Tenant (Consolidation) (Amendment) Bill 2001 was passed on 18 December 2002 and came into operation on 27 December 2002. It provided, inter alia, for the shortening of the mandatory relief period from a minimum of 28 to 7 days following the granting of an order of possession to allow the tenant a final opportunity to settle the rent in arrears before a Writ of Possession can be executed. The purpose was to minimise the abuse of the relief period by habitually defaulting tenants. The impact of this amendment on the operation of the Lands Tribunal is reported in paras. 4–9 below.

3. In examining the Amendment Bill, the Bills Committee requested the Panel on Administration of Justice and Legal Services to further examine a number of proposals to streamline the statutory procedure for repossession of premises to protect the interest of the landlords. Among them, a proposal on allowing landlords to set down their cases for hearing at the time of lodging an application for repossession at the Lands Tribunal concerns the Judiciary. Our position is described in paras. 10–15 below.

Impact of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2002

4. The operation of the Amendment Ordinance has not created any adverse impact in terms of caseload, waiting time for hearing at the Lands Tribunal and execution of Writs of Possession by the Bailiff service.

Caseload and Waiting Time

5. In 2003, there were 5616 applications for repossession filed with the Lands Tribunal, an increase of 12% over the 5034 applications in 2002.

6. Despite the increase in the number of cases filed, waiting time from the date of application for repossession to first hearing fell from 54 days in 2002 to 45 days in 2003. The time taken for granting a default order for possession from the date of application was even shorter, falling from 39 days to 35 days.

Relief against forfeiture

7. The Landlord and Tenant (Consolidation) (Amendment) Ordinance 2002 shortened the relief period against forfeiture from 28 to 7 days. Such relief only covers cases where the ground for an order of possession is non-payment of rent. Other grounds to claim possession include unlawful subletting, immoral or illegal use of the premises by the tenant, or repossession for the landlord's own use.

8. In 2003, the Lands Tribunal granted 1354 Writs of Possession, of which 351 (26%) were subject to the mandatory relief period. The corresponding figures in 2002, were 1407 and 340 (24%) respectively, showing no significant difference between the two years. Nonetheless, since the relief period is shortened, the time taken for application and issue of Writs of possession would have been correspondingly reduced.

Execution of Writs of Possession

9. At the time when the Amendment Bill was being examined, the Bills Committee noted that only about 14% of the Writs of Possession could be executed by the Bailiffs within 30 days. The Bills Committee was informed that the Judiciary Administration was introducing new working procedures in this respect. Such business process re-engineering initiative has been very successful. In 2003, 92% of the Writs of Possession cases were executed within 30 days, the average being 25 days.

Allowing landlords to set down the case for hearing at the time of lodging an application for repossession

10. The Bills Committee noted that the lead time between the date of application for repossession and the date of the first hearing was 35 days for a straight-forward case. It took the view that consideration should be given to further streamlining the procedure by allowing landlords to set down their cases for hearing at the time of lodging an application for repossession.

11. At present, Rule 14 of the Lands Tribunal Rules prescribes that an application for hearing can only be made after a notice of opposition has been filed or the time for so doing has elapsed (i.e. within 14 days of service of the notice of application – Rule 69). If service of the notice of application is

effected by post, it shall be deemed to have been effected at the time at which the document would be delivered in the ordinary course of post (Rule 7(2)). Pursuant to Practice Direction 19.2, in the case of ordinary post, service is presumed to have been effected on the second working day after posting. Hence, there is a prescribed window of at least 15 days between the date of application for repossession and the date of application for hearing.

12. Further, Rule 14(1)(b) requires a minimum of 3 days' between the application for hearing and the actual listing of the case by the Tribunal. Then the Tribunal has to give at least 14 days' notice to the parties in respect of the hearing days. In order words, there has to be at least another 17 days between the application for hearing and the actual hearing date.

13. These statutory requirements account for a minimum of 32 days between the date of application and the date of hearing. Hence the existing lead time of 35 days means an effective waiting time of only 3 days, which is very short by any standard.

14. In about 50% of the repossession cases, the tenants do not file a notice of opposition. The landlords are therefore able to obtain a default judgment for repossession without a hearing. The time for a tenant to file a notice of opposition is 14 days after receiving the notice of application for possession by the landlord. If this specific proposal is implemented, by the time the landlord knows that the tenant has not filed a notice of opposition and he applies to vacate the hearing, the hearing date will just be a few days ahead. It is most unlikely that the Tribunal will be able to fix another hearing for the vacated slot. Therefore, the proposal will result in a waste of resources and in turn lengthen the court waiting time.

15. Nevertheless, with a view to giving priority to repossession cases, the Lands Tribunal has adjusted its listing practice from January 2004. At least one day in a week a court will be assigned to deal exclusively with repossession cases, with the hearing in the form of a callover hearing. A large number of cases (15–20) will be listed and straightforward cases can be disposed of immediately. More complicated cases will be adjourned to follow the regular listing schedule. It is estimated that 80 % of the cases can be disposed of in this manner. It should further reduce the waiting times reported in para. 6 above, in particular, those for default orders. We shall monitor the results of this new practice. If necessary, the number of these callover hearings in a week can be increased.

Judiciary Administration
21 January 2004

LC Paper No. CB(2)2427/03-04(03)

For discussion
on 24 May 2004

Panel on Administration of Justice and Legal Services

Court procedure for repossession of premises

Background

At the meeting of the LegCo AJLS Panel on 29 January 2004, the Judiciary Administrator briefed Members on the impact of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2002 and measures to streamline the court procedure for repossession of premises, including the introduction of callover hearings in the Lands Tribunal for repossession cases. This paper reports on the progress in the improvement measures.

Callover hearings

2. The Lands Tribunal has set aside one day every week since 5 January 2004 for a court to deal exclusively with repossession cases in the form of callover hearings. A large number of cases (between 15 to 20) are listed for the assigned day and simple non-contested cases are disposed of immediately. More complicated cases will be adjourned to follow the regular listing schedule.

3. The new listing practice has helped to shorten waiting time from the date of application for repossession to the date of first hearing in spite of an increased caseload. In the first quarter of 2004, there were 1601 applications for repossession, an increase of about 10% over the quarterly average in 2003. The waiting time was, however, reduced from 45 days in 2003 to 40 days.

4. When the callover arrangement was started, it was estimated that about 80% of the cases could be disposed of at the callover hearings. That estimate proved to be realistic as the disposal rate was about 84% for the first four months of operation.

5. The Panel suggested at its meeting in January 2004 that to further expedite the disposal of repossession cases, the Judiciary could consider assigning a specific time slot on a daily basis for callover hearings. Such concept is indeed being practised to some extent as repossession cases are listed for callover hearings on other days whenever there are vacant slots in a court's

diary. In the month of April, for example, callover hearings were listed for an extra 3 days. In view of the present stable caseload of pending repossession cases and the need to balance the interests of parties in "non-repossession" cases before the Lands Tribunal, the Judiciary considers that there is no need to deviate too much from the current arrangements.

6. The Panel also suggested that consideration be given to allowing landlords applying for repossession to elect to have their cases dealt with either by way of a callover hearing or a formal hearing. The Judiciary is of the view that with such a high percentage of cases being disposed of at callover hearings, as set out in paragraphs 4 above, the proposed option would not bring any significant benefit to the applicants.

Execution of Writs of Possession

7. At the meeting on 29 January 2004, Members were informed that the average waiting time for Writs of Possession to be executed by Bailiffs was 25 days in 2003. Such performance has been sustained in the first quarter of 2004, although the number of Writs of Possession has slightly increased during this period over the quarterly average in 2003 (i.e. 1283 and 1226 respectively).

Further measures to shorten the repossession procedure

(a) Processing of applications for default judgment

8. At present, the number of repossession cases disposed of by way of default judgment is about 8 times those dealt with by hearing. The time for processing such applications is about 10 days on average.

9. The procedure starts with the applicant making an application for default judgment under Rule 15 of the Lands Tribunal Rules when the defendant fails to file a Notice of Opposition within 14 days of service of the Notice of Application. Evidence consisting tenancy agreement, information on arrears of rent, demand notes for rates, management fees, electricity, etc. are also submitted. On receipt of the application, the registry of the Lands Tribunal will check whether there is indeed no Notice of Opposition, the evidence received as well as the service of the originating application. The Deputy Registry will do a re-checking before he endorses the application. The applicant will then be notified by letter of the outcome of his application.

10. The Judiciary Administration is seeking to shorten the processing time through further procedure reviews and staffing re-deployment within the

Lands Tribunal in the near future, with a view to reducing it to 7 days if the caseload remains steady.

(b) Review of the Lands Tribunal Rules

11. At the meeting in January 2004, the Panel suggested that the Lands Tribunal should grant a default order for repossession right away if the defendant had not filed a notice of opposition within the time limit.

12. The Chief Justice has directed that the Lands Tribunal Rules as a whole should be reviewed. Further opportunities to shorten the time taken for repossession procedures in the Lands Tribunal, including the suggestion from Members, will be explored. Members will be formally consulted when the review is completed and amendments to the Lands Tribunal Rules are proposed.

Judiciary Administration
May 2004