電 話 Tel: 2231 3268 圖文傳真 Fax: 2525 4960

電郵地址 Email: landsd@landsd.gov.hk 本署檔號 Our Ref: (40) in LD1/1900/06 II

來函檔號 Your Ref: CB(3)/PAC/R47



地政總署總部 LANDS DEPARTMENT HEADQUARTERS

我們矢志努力不懈,提供盡善盡美的土地行政服務。 We strive to achieve excellence in land administration.

香港北角渣華道三三三號北角政府合署二十樓 20/F., NORTH POINT GOVERNMENT OFFICES 333 JAVA ROAD, NORTH POINT, HONG KONG

網址 Web Site: www.info.gov.hk/landsd

香港

中區昃臣道8號

立法會大樓

(經辦人:政府帳目委員會秘書 - 韓律科女士)

韓女士:

《審計署署長報告書—衡工量值式審計結果》 (第四十七號報告書)

你曾於二〇〇六年十二月一日來信,要求本署就上述報告書臚列 的各項事宜提供額外資料。

- 2. 關於 (a) 項,正如審計署報告第 2.15 段所述,租戶一旦向政府展開訴訟,地政總署會因訴訟仍在進行中而難以追討欠租及收回有關土地。在二〇〇六年十一月二十八日的公開聆訊中,我們亦重申這點,亦強調在訴訟過程中當局亦曾就合適的個案向法庭提出申請,要求租戶繳付租金。雖然我們不適宜披露具體個案的法律意見,但已就備受關注的事項編製了一份摘要(見附錄甲),以供參考。
- 3. 關於 (b) 項,地政總署過往曾與律政司討論有關事宜,且十分瞭解 箇中情況,政府如同私人業主般可以根據法庭程式,能夠及確實採取 行動以保障本身的利益。若指政府未能保障本身的利益,則是不正確 /不公平的說法。對政府而言,最佳的保障其實在於適當監察及即時 處理違規個案,而報告所建議的改善措施中,大部分已付諸實行。倘 若在實行該等措施後情況仍沒有改善,政府會成立專責小組(成員包括 律政司內的大律師),作進一步檢討和考慮。
- 4. 關於 (c) 項,本署已決定實施如審計署報告所建議的措施,對主要

停車場短期租約的投標者進行財政審查。審查工作將由會計人員所組成 的獨立小組進行。當局現正制訂該審查機制的詳情,並會參考環境運輸 及工務局就標書評審的財政審查所發出的技術通告內訂明的指引。

- 5. 關於 (d) 項,本人已分別於二〇〇六年十二月一日及十二月十一日 主持了兩個高級管理層會議,商討此事。本署現正草擬成立內部審計 小組的初步計劃。同時,本署亦會考慮員工調配及撥款問題,並須進 行內部的員工諮詢工作。預計該小組將於下一個財政年度成立。
- 6. 關於 (e) 項,有關檔的副本載於附錄乙。
- 7. 此外,由兩名在職地政總署人員所撰寫的陳述書亦載於附錄乙。本 署已向兩名前地政總署人員發出有關的書面要求,現正等候他們回覆。

地政總署署長劉勵超

連附件

二〇〇六年十二月十一日

<u>政府作爲業主的立場</u> 一般說明

政府在短期租約下作爲業主的法律地位與任何私人業主的法律地位相類似。一旦提出對短期租約產生影響的訴訟,政府便須受法院的審判權所約束。政府爲強制執行其權利而可能採取的任何法律行動,均須視乎訴訟所涉及的事項而按個案的是非曲直作出考慮。

雖然在政府看來,有些租戶提出訴訟的主要目的,是爲了逃避或拖延繳付租金,但政府的難處在於該等租戶的申索亦看似有理,而這些並不是法院可按簡易程式處理的事項。

一旦租戶停止繳付租金,即屬違反租約的條款及條件,政府可向有關租戶提出訴訟。若租戶已向政府提出訴訟,政府可在同一訴訟中就未付租金提出反申索。根據《高等法院條例》的規則(第 4 章第 14/5 號命令),政府可就租金反申索向法院申請作出簡易判決。不過,在某些個案中,若租戶在法律行動中向政府申索損害賠償,則此舉未必有幫助。

在同一訴訟中,政府可根據香港法例第 4 章第 29 號命令,要求法院頒布臨時命令,下令租戶在訴訟的期間須繳付租金。原則上,法院應該沒有任何理由否決暫付租金的申請,原因很簡單,就是法院應有理由認爲政府有能力履行其對政府作出的任何裁定。

任何租戶如只是爲了逃避繳付租金而決定提出訴訟,亦對他們有不利之處。政府必定會按慣例回應有關訴訟,即首先提出反申索,並可能提出下文所述的無力償債法律程式。藉著提出該項法律程式,租戶必須準備投入大量人力物力應付訴訟,因爲租戶可能需要指示律師甚或大律師就政府的回應作出答辯,當中包括反申索、政府可能就暫付款項提出申請,以及可能就反申索要求法庭作簡易判決的申請等。

政府在停車場個案中已證明可透過清盤或無力償債法律程式保障本身的利益。即使法律程式在進行期間,租戶仍然欠繳租金,但政府無需待法院作出判決,而可按合適的情況向租戶提出清盤或無力償債法律程式;政府在租戶已向政府展開訴訟的情況下向租戶提出清盤或無力償債法律程式,亦不會被視作蔑視法院,原因是法院會處理無力償債法律程式,通過不同的法官對無力償債法律程式中的初期程式作出考慮。

政府或任何其他私人業主的另一選擇是嘗試執行和平的重收物業行動,但此乃不尋常的做法,原因是採取該項行動可能會帶來種種後果,包括帶有受傷或破壞社會安寧的風險、租戶要求向政府發出禁制令或申索損害賠償的風險,以及可能冒犯法院等,這些後果明白顯示政府不宜這樣做。在停車場個案中,地政總署的確曾經有兩次執行和平重收行動,但有關行動只在有利的情況下進行,而且參與行動的人員已獲指示如遇到反抗必須退讓。

- 1. 與二〇〇二年十月二十二日、二〇〇二年十二月四日、二〇〇五年九月二十八日及二〇〇六年八月一日進行視察有關的文件(視察報告及照片)的副本(附件 I)
- 2. 進行視察人員的職級:

視察日期	進行視察的人員的職級
二〇〇二年十月二十二日	產業測量師(南)
二〇〇二年十二月四日	沙田地政專員高級產業測量師(東南)
二〇〇五年九月二十八日	項目測量師 地政主任/產業(1)
二〇〇六年八月一日	地政主任/產業(1)

- 3. 通信(附件 II)
 - (i) 沙田地政專員於二〇〇二年十一月二十四日向香灼璣發出的 警告信
 - (ii) 香灼璣於二〇〇二年十一月二十六日致沙田地政專員的回信
- 4. 聲明(附件 III)
 - (i) 何少佳 項目測量師
 - (ii) 余學志 地政主任/產業(1)

*<u>委員會秘書附註</u>: 與2005 年9 月28 日及2006 年8 月1 日進行的視察有關的視 察報告及照片(在附件I)並無在此隨附。

關於在2002年10月22日及2002年12月4日進行視察期間拍攝的照片,請分別參閱附錄12及13。

頁次 Page

An inspection of the subject tenancy was carried out on 22.10.2002 and it was revealed that:

- (i) the main structure on site had been converted into domestic use;
- (ii) the porch area which was used as a kennel area previously was being used as a carport.

Background

2.1 The subject tenancy has existed as follows:

STT No	Tenant	Area m²	Use	Remarks
108	Steel Structures	1,840	Storage and Helipad (for construction of CLP power lines and towers	- tenancy granted on 1.12.1979, terminated on 1.10.1979 following completion of works
315	Hing Shing Metal Co.	1,480 (1)	Storage and Helipad	- tenancy granted on 1.12.1979 following application from "Steel Structures" to allow his sub-contractor Hing Shing Metal Co. for future contracts. (2)
958	Daniel Heung Cheuk Kei	740	Storage of non-dangerous goods	-tenancy granted on 1.1.1994 to Daniel Heung Cheuk Kei (3)
1150	Daniel Heung Cheuk Kei	1,070	Storage on non-dangerous goods and kennel	-tenancy granted on 6.4.2001 to regularize additional use of kennel and size of tenancyproceding STT 958 had not been executed properly. M89 in LNT 183/ZAT/62 refers.

Notes

- (1) Tenancy area subsequently reduced on 24.2.2002
- (2) Hing Shing Metal Co. granted Daniel Heung Cheuk Kei a Power of Attorney with respect to the tenancy on 28.2.1982 F(60) in LNT 41/ZAT/62 refers to deal with tenancy matters.
- (3) Hing Shing Metal Co had merged with another company and the company was then dissolved. The tenancy was transferred to Daniel Heung Cheuk Kei on the grounds that he had a legal power of attorney of the dissolved company and to avoid a loss of rental and management problems. F(2) in LNT 183/ZAT/62 refers.
- 2.2 It is noted from file records that the subject tenancy has been the subject of recurring breaches of tenancy involving the user and encroachment of government land.

M. 168 (Cont'd)

- 2.3 The tenant had previously submitted an application to regularize the domestic use of the premises. The issue has been considered at length, however it has been made clear that current policy of the department does not allow regularization of short term tenancies for domestic purposes. AD/NT's minute to DLO/ST of 24.1.2000 at M.53 refers.
- 2.4 Please find attached at float a letter for issue requesting reinstatement of the premises to comply with SC(3)-User clause under tenancy.
- 2.5 As the tenancy is due for rent review on 1.3.2003 and three months is required to affect the increase in rent under Clause 4(g) of the tenancy agreement. I have verbally spoken to SS/ST,LACO that rent review can still be conducted without prejudice to government's right to re-enter the site for the breach and in the event the breach is not rectified. I will prepare a memo to seek to confirmation on the matter.

3. Please advise if you have any further comments.

(Yvonne W.F. CHENG)

ES/\$ 24.10.2002

^{*}委員會秘書附註:本文件只備英文本。

M.176

F.N.

A joint site inspection has been carried with SES/SE on 4.12.2002 on the subject STT upon request of Mr. Daniel HEUNG.

2. On the day of inspection, the subject tenancy was found to have been used for storage of non-dangerous goods and kennel use. Photos showing the existing conditions of the STT are put at F(71).

(K.L. LEUNG)

9.12.2002

*委員會秘書附註:本文件只備英文本。

重 話 Tel: 2158 4847 2602 4093

個文傳真 Fax:

電郵地址 Email: 本署檔號 Our Ref: (65) in LNT 183/ZAT/62

來函檔號 Your Ref:

地 政 總 署沙 田 地 政 處
DISTRICT LANDS OFFICE,
SHATIN
LANDS DEPARTMENT

我們矢志努力不懈,提供盡善靈美的土地行政服務。 We strive to achieve excellence in land administration.

沙田上禾岩路 1 號沙田政府合署 11 樓 11/F., SHA TIN GOVERNMENT OFFICES, 1 SHEUNG WO CHE ROAD, SHA TIN, N.T. Urgent By Fax & Post

Fax No: 2570 9115

24 October 2002

D. Heung & Associates, Architects & Engineers Limited Block C, 14th Floor, Seaview Estate 2-8 Watson Road North Point

North Point Hong Kong

Attn.: Mr. D. HEUNG

Dear Sirs.

Short Term Tenancy No. 1150 Mau Tat, Sha Tin

I refer to our recent inspection of the captioned tenancy on 22nd October 2002.

My inspection revealed that the main structure on site has been converted to domestic use and the porch area previously used as a kennel area is now used as a carport. Pursuant to the First Schedule of the Tenancy Agreement, the Premises are to be used for storage of non-dangerous goods and a kennel and in accordance with Special Condition (3), no part of the Premises shall be used for residential purposes. The above uses are in contravention of Special Condition No. 3 and the user specified under the First Schedule of the subject tenancy.

Under the circumstances, you are hereby required to remedy the breach of the tenancy condition by reinstating the Premises to its approved use to my satisfaction within 21 days from the date of this letter. An inspection will be made upon expiry of the said 21-day period to ascertain if in fact the breach has been remedied. Should you continue to ignore my warning of the said breach, the said tenancy will be terminated without further notice.

Should you have any query about this matter, please contact the undersigned at telephone no. 2158 4847 during office hours.

Yours faithfully,

(Miss Yvonne W. F. CHENG) for District Lands Officer, Sha Tin

^{*}委員會秘書附註:本文件只備英文本。



D. HEUNG & ASSOCIATES, ARCHITECTS & ENGINEERS LIMITED

Block C, 14th Floor, Seaview Estate, 2-8 Watson Road, North Point, Hong Kong. Telephone: (852) 2512 8211 Facsimile: (852) 2570 9115 E-mail: dha@netvigator.com

26th November 2002

District Lands Office, Shatin, Lands Department, 11/F., Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin, N.T.

Attn: Ms. Yvonne W. F. Cheng

Dear Madam,

Re: Short Term Tenancy No. 1150 Mau Tat, Sha Tin

Further to your letter dated 24 October 2002, I wish to make the following clarifications:

- 1. During the summer of 2002, I have carried out general repairs of the premises which included painting inside and out of the steel buildings which was corroded, replacing the windows and doors which was severely damaged by burglarors. And general pruning and weeding of the surrounding shrubs so to prevent insect infestment, particularly mosquitoes and flesh eating flies which has killed many of our dogs.
- The carport/kennel has remained the same since the early 1990s. It was painted and cleaned up.
- 3. Other than the above, there was no conversion of any kind.
- 4. Given the history of intrusion and burglaries by illegal immigrants and petty thieves in the last two years. We find it necessary to have over night attendance to our place in order to stop them from breaking-in. The tidy surrounding and orderly arrangement of our personal belonging is our effort to show the thief that the place is not un-attended.
- 5. Please be assured that we have no intention to convert the premises to "residential".

Yours faithfully,

Inward Correspondence Registration No. 交來文件登記號碼

Daniel C K Heung

ISO 9001: 1994 Certification No.: CC1123 HE HE

8 NOV 2002

ISO 9001: 1994 Certification No.; CC1123

香灼璣建築師有限公司

香港北角屈臣道2-8號海景大廈C座14字樓

電子郵件:dha@netvigator.com

*委員會秘書附註:本文件只備英文本。

有關短期租約第 1150 號個案的陳述 (中文譯本)

本人爲下方簽署人,地政處項目測量師何少佳,本人曾於二零 零五年九月二十八日就租金調整事宜到上址進行視察。

我記得,當時屋內的固定裝置和物品被蓋着,地上疊放着頗多 膠箱。那情境跟之前本處於二零零二年十二尺型察時所看見的情况,極爲相似。而該次二零零二年的視察,亦批准上址可被接受爲 一個視作儲存物品的地方。

根據有關短期租約的規定,上址可用作爲儲存非危險物品及作爲一間狗房用途。此外,本人亦知悉上址可容許一名看更留守。約有十條狗隻居於上址。

從表面看來,是次巡視並無發現上址的用途有違規情況。

沙田地政署項目測量師 何少佳

二零零六年十二月六日

本人余學志爲地政總署職員,曾於二零零五年九月二十八日就租金調整事 宜到前短期租約第 1150 號的土地進行實地巡查。

當我抵達該處時,看見一座較大及一座相對較小的構築物。當走進較大的那座構築物時,我發現一些被膠墊蓋着的家具和堆放着的膠箱。

那較小的構築物是一道簷篷。該簷篷下有數隻狗,還有其他的狗在草地上行走。

根據上述短期租約的租賃協議,該土地可作儲存非危險品及狗房用途。依據上述觀察及參考過往的巡查記錄,所得的結論是該土地的使用並無違規。

沙田地政處地政主任/產業(1) 余學志

二零零六年十二月五日

本人余學志爲地政總署職員,曾於二零零六年八月一日按照上級的指示到 前短期租約第 1150 號的土地進行實地巡查,以確定該土地的使用有否違規。

當我抵達該處時,看見一座較大及一座相對較小的構築物。當走進較大的那座構築物時,我發現一些被膠墊蓋着的家具和堆放着的紙箱。

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沙田地政處地政主任/產業(1) 余學志

二零零六年十二月五日