

Landlord and Tenant (Consolidation)(Amendment)Bill 2021

Transport and Housing Bureau
29 July 2021

Background

- The Chief Executive undertook at the LegCo Question and Answer Session in February 2021 that the Government would introduce a bill within the current legislative session to implement tenancy control on subdivided units (SDUs).
- The Task Force for the Study on Tenancy Control of Subdivided Units (Task Force) submitted its report to the Government in March 2021 and recommended that the Government should implement suitable tenancy control on SDUs.
- The Government introduced the Landlord and Tenant (Consolidation)(Amendment) Bill 2021 into LegCo on 14 July 2021 for first reading.

Key Guiding Principles recommended by the Task Force

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- Key guiding principles recommended by the Task Force —
 - (a) should not disproportionately infringe on the private property rights of the owner;
 - (b) the objective of tenancy control on SDUs is not to displace SDUs;
 - (c) to avoid as far as possible any unintended consequences that might be brought by tenancy control measures;
 - (d) to incorporate suitable measures to address the problem caused by subletting as far as possible; and
 - (e) to adopt tenancy control measures which are legally sound, relatively easy to administer and can be implemented speedily.

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Key Features of the Bill

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Scope of Regulation

- To cover as many SDUs as possible.
- Covers SDUs not only in domestic/composite buildings, but also in industrial/commercial buildings.
- Task Force, concern groups and many LegCo Members from major political parties support the above recommendation.
- Would not prejudice the law enforcement action taken by relevant authorities under the existing legislation.

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- A “subdivided unit” is defined as premises that form **part of a unit** of a building.
 - A “unit” is defined as premises of a building that are demarcated or shown as a separate unit in the **building plan** of the building; or premises that are referred to in the **deed of mutual covenant** of the building as a unit.
 - Would not cover unauthorised building works on private lanes or yards, squatter structures or unauthorised structures erected on private land or government land, as well as “New Territories Exempted Houses”.
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- A tenancy will be a “regulated tenancy” and subject to the regulation under the new Part IVA if it fulfils the following criteria —
 - (a) it commences on or after the material date;
 - (b) the tenant is a natural person;
 - (c) it is a tenancy in respect of a subdivided unit;
 - (d) it is a domestic tenancy; and
 - (e) the purpose of the tenancy is for the tenant’s own dwelling.
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Tenancies to be Excluded

- Tenancies proposed to be excluded include —
 - a tenancy of which the landlord is the employer and the tenant is the employee in possession of the premises in accordance with the terms and conditions of the tenant's employment;
 - a tenancy held from the Government, the Hong Kong Housing Authority, the Hong Kong Housing Society, the Hong Kong Settlers Housing Corporation Limited or the Urban Renewal Authority or its wholly owned subsidiaries; and
 - a tenancy held from a social services organisation of a housing unit provided by the organisation (e.g. transitional housing and youth hostels).

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Statutory Requirements for and Mandatory Terms to be Implied into Regulated Tenancies

- Key proposals include —
 - The term is to be fixed at two years; rent cannot be increased during the term.
 - The tenant has the right to terminate the tenancy after the first year of the tenancy by giving the landlord prior notice in writing of not less than 30 days.
 - The landlord cannot require the tenant to pay, or otherwise receive from the tenant, any money in relation to the tenancy other than the rent, rental deposit (must not be more than two months' rent), reimbursement of charges for specified utilities and services, and damages for the tenant's breach of the tenancy.

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- For reimbursement of charges for specified utilities and services, the landlord must provide the tenant with a copy of the bill and an account showing that the aggregate of the apportioned amounts does not exceed the amount charged in the subject bill.
- The landlord must maintain and keep in repair the SDU. If the landlord fails to fulfil his obligation, the tenant may terminate the tenancy by giving the landlord not less than 30 days' prior notice in writing.
- The rental deposit must be returned to the tenant by the landlord within the specified time limits.

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- The tenant must pay the rent to the landlord on or before the due date.
- The tenant must not —
 - i) use the premises for any immoral or illegal purpose;
 - ii) do anything on the premises that would cause any unnecessary annoyance, inconvenience or disturbance to the landlord or any other person;
 - iii) make any structural alteration to the premises without prior consent; or
 - iv) assign or underlet the whole of the SDU, or underlet part of the premises to another person without prior consent.

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- Tenancy in writing: the tenant has the right to demand a written tenancy agreement to be served by the landlord on the tenant within 30 days.
 - If the landlord fails to do so, the tenant can **withhold the payment of rent**.
 - If the tenant fails to pay back the rent withheld to the landlord within 15 days after the tenant's receipt of the written tenancy agreement, the landlord may terminate the tenancy by giving the tenant prior notice in writing of not less than 15 days.
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- The landlord must return to the tenant a counterpart of the stamped tenancy agreement within 30 days. The stamp duty is to be borne by the landlord only.
 - If the landlord fails to do so, the tenant may **withhold the payment of rent**.
 - The landlord must submit information about the regulated tenancy to the Rating and Valuation Department (RVD) within 60 days after the term of the tenancy commences.
 - If the landlord fails to do so without reasonable excuse, he commits an offence.
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Security of Tenure

- Tenant has the right to renew the tenancy once, thus enjoying a total of four years of security of tenure (i.e. a “2+2” regulated cycle).
- The terms and conditions of the second term tenancy are to be the same as those of the first term tenancy, except the rent.
- Rent of the second term tenancy may be adjusted in accordance with the rent regulation mechanism.

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Rent Regulation on Tenancy Renewal

- The rate of rent increase must not be more than —
 - the percentage change of the rental index in respect of all classes of private domestic properties compiled and published by RVD in the relevant period; or
 - 15%,

whichever is the lower.

- If the relevant change is negative, the rent of the second term tenancy must be reduced by at least the same percentage.

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Measure to Address the Problem caused by Subletting

- Subletting of SDUs is believed to be prevalent in the market.
- When a superior tenancy expires or is terminated by notice or forfeiture, the sub-tenancy of the SDU would end simultaneously.
- Propose an “automatic stay of execution” for 60 days.
- Should provide sufficient time for the affected SDU tenants to look for alternative accommodation.

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Offences and Penalties

- Proposed new offences are –
 - the landlord requiring the tenant to make, or otherwise receiving from the tenant, payments other than the rent, rental deposit, reimbursement of charges for specified utilities and services, and damages due to the tenant’s breach of the tenancy.
 - the landlord requiring or otherwise receiving reimbursement of charges for specified utilities and services from the tenant where the aggregate of the apportioned amounts exceeds the amount charged in the bill concerned.
- On a first conviction, fine at level 3 (\$10,000) ; and
- On a subsequent conviction, fine at level 4 (\$25,000).

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- the landlord, without reasonable excuse, failing to submit a notice of tenancy to the Commissioner of Rating and Valuation within 60 days after the term of the tenancy commences –
 - On conviction, fine at level 3; and
 - A further fine of \$200 for each day during which the offence continues.

Effective Date

- Subsequent to the passage of the Bill by LegCo, the Amendment Ordinance shall come into operation on the expiry of three months beginning on the day on which it is published in the Gazette.
- Expect to be implemented by late 2021 or early 2022.

Implementation Arrangements

- RVD will be responsible for administering the new provisions in the Bill.
- To entrust non-governmental organisations to provide support for SDU landlords and tenants at the district level.
- To engage the Estate Agents Authority to issue guidelines setting out the relevant good practices for estate agents.

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End

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