

- (c) any particular portion of an hotel or boarding-house which is let by the keeper of such hotel or boarding-house to a guest of such hotel or boarding-house;
- “landlord” (業主) includes any person, other than the Government, who is from time to time entitled to receive rent in respect of any premises and in relation to a particular tenant means the person entitled to receive rent from such tenant; (*Amended 29 of 1998 s.105*)
- “lease” (租契) or “tenancy agreement” (租賃協議) includes every agreement for the letting of any premises, whether oral or in writing;
- “let” (出租、租出) includes sublet and “letting” (出租、租出) includes subletting;
- “order” (命令、令) means an order of the Tribunal; (*Replaced 76 of 1981 s.2*)
- “permitted rent” (准許租金) means the rent lawfully payable under this Part in respect of any premises; (*Added 22 of 1953 s.2*)
- “premises” (處所) means the subject matter of any tenancy;
- “prevailing market rent” (市值租金) means the rent, exclusive of rates, at which premises the subject matter of a tenancy to which this Part applies might reasonably be expected to be let, at the date-
- of service of a notice under section 10(1A)(a); or
 - on which the Commissioner issues his certificate under section 10E,
- as may be appropriate, on the terms of the tenancy (other than those relating to rent and duration of the tenancy) but disregarding the effect of this Part; (*Replaced 53 of 1993 s.2*)
- “principal tenant” (主租客) means a tenant of premises other than a Government lessee, who has or shall sublet any part or parts thereof as a separate holding or holdings but shall not include a tenant, hereinafter referred to as a derivative landlord, who has or shall sublet the whole of such premises as one holding; (*Amended 29 of 1998 s.105*)
- “standard rent” (標準租金) with respect to any premises means-
- if the premises were actually let unfurnished on 25 December 1941, the rate of rent which was recoverable from the sitting tenant; and
 - if the premises were not actually let on 25 December 1941, or were then let furnished, but had been let unfurnished on some previous date, the rate of rent which was recoverable from the sitting tenant on the last occasion before 25 December 1941, on which the premises were actually let unfurnished; and
 - if the premises were not let unfurnished until after 25 December 1941, then such rate of rent as may be assessed by the Commissioner under section 8 having regard to what would

- have constituted a standard rent for the premises if let unfurnished immediately before 1 December 1941; (*Amended 22 of 1953 s.2; 76 of 1981 s.2; 53 of 1993 s.2*)
- “tenancy” (租賃) includes a sub-tenancy;
- “tenant” (租客) does not include a Government lessee but includes a sub-tenant and- (*Amended 29 of 1998 s.105*)
- a person who before 23 May 1947 had retained possession of premises by virtue of any enactment repealed by this Part* and who was on 23 May 1947 in possession of premises, to which this Part applies;
 - a person who retains possession of any premises by virtue of this Part;
 - the widow of a tenant, residing with the tenant at the time of his death, or where the tenant leaves no widow or is a woman, such member of the tenant’s family so residing as aforesaid as may be decided in default of agreement by the Tribunal; (*Replaced 22 of 1953 s.2. Amended 76 of 1981 s.2*)
- “tenement” (物業單位) means any building, structure or part thereof, which is held or occupied as a distinct or separate tenancy or holding or under any licence; (*Added 76 of 1981 s.2*)
- “Tribunal” (審裁處) means the Lands Tribunal established under the Lands Tribunal Ordinance (Cap.17). (*Replaced 76 of 1981 s.2*)
- (*25 of 1947 s.2 incorporated. Amended 53 of 1993 s.2*)

Editorial Note: * See s.38 of the Landlord and Tenant Ordinance 1947 (25 of 1947).

COMMENTARY

Overview

This section defines various terms used in the Ordinance. The definitions under this section are subject to specific definitions under other sections of the Ordinance.

2.01

Definitions

The former Landlord and Tenant Ordinance (Cap.255) enacted on 23 May 1947 inserted this section into the Ordinance. A subsequent amendment was made pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1993 (53 of 1993), s.2, commencing on 2 July 1993.

2.02

“Agricultural land” was added as a defined term under the Landlord and Tenant (Amendment) Ordinance 1953 (22 of 1953), s.2. It was later amended pursuant to the Adaptation of Laws (Crown Land) Ordinance (29 of 1998), s.105, commencing retroactively 1 July 1997.

“Business premises” definition was replaced under the Landlord and Tenant (Amendment) Ordinance 1953 (22 of 1953), s.2.

“Commissioner” was added as a defined term under the Landlord and Tenant (Consolidation) (Amendment) (No 2) Ordinance 1975 (10 of 1975), s.2.

“Domestic premises” and “permitted rent” were included under the Landlord and Tenant (Amendment) Ordinance 1953 (22 of 1953), s.2.

“Landlord” was amended under the Adaptation of Laws (Crown Land) Ordinance (29 of 1998), s.105, commencing retrospectively on 1 July 1997.

“Order” was amended and restated pursuant to the Landlord and Tenant (Consolidation) (Amendment) (No 2) Ordinance 1981 (76 of 1981), s.2, commencing 10 December 1981.

“Prevailing market rent” was replaced pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1993 (53 of 1993), s.2, commencing 2 July 1993.

“Principal tenant” was amended pursuant to the Adaptation of Laws (Crown Land) Ordinance (29 of 1998), s.105, commencing retroactively 1 July 1997.

“Standard rent” was most recently amended under the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1993 (53 of 1993), s.2, commencing 2 July 1993.

“Tenant” was amended pursuant to the Adaptation of Laws (Crown Land) Ordinance (29 of 1998), s.105, commencing retroactively 1 July 1997.

“Tenement” was added pursuant to the Landlord and Tenant (Consolidation) (Amendment) (No 2) Ordinance 1981 (76 of 1981), s.2, commencing 10 December 1981.

“Tribunal” was amended pursuant to the Landlord and Tenant (Consolidation) (Amendment) (No 2) Ordinance 1981 (76 of 1981), s.2, commencing 10 December 1981.

Classification of leases

2.03

Leases can be classified according to the arrangements entered into for specifying the term of the lease:

- (a) Fixed-term tenancies -

The start and end dates of a fixed-term tenancy must be specified in the lease; the latest date for determination of the tenancy must be ascertainable with certainty. Fixed-term leases come to an end automatically, and there is no need to serve a notice to quit.

- (b) Periodic tenancies -

The succession of periodic tenancies is regarded as a single continuous tenancy; it continues until proper notice has been given to bring the periodic tenancy to an end. It is a fundamental requirement of a periodic tenancy that either party should have the right to determine it by giving an appropriate notice, but it is acceptable to include a term that prevents notice being given until a specified period has elapsed.

- (c) Tenancies at will -

The tenancy at will is a purely personal interest. The fact that the parties have described their relationship as a tenancy at will is not determinative if the facts do not square with that self-description. There is no tenancy at will if the terms of the agreement show that there is a tenancy for a fixed term or a periodic tenancy.

- (d) Tenancies at sufferance -

A tenancy at sufferance arises when a tenant holds over at the end of the lease without the landlord having either agreed or disagreed to this. This can give way to a periodic tenancy if rent is paid and accepted after the end of the fixed term, unless rent is accepted under the misapprehension that it relates to a period before the expiry of the term, and it was clear before acceptance that the landlord intended to recover possession.

3. Application of this Part

(Adaptation amendments retroactively made - see 29 of 1998 s.105)

- (1) This Part shall not apply to-

- (a) any premises-

- (i) in a building in respect of which an occupation permit, including a temporary occupation permit, was first issued by the Building Authority under section 21(2) of the Buildings Ordinance (Cap.123) after 16 August 1945; or

- (ii) which were completed or substantially rebuilt after 16 August 1945; (*Replaced 29 of 1983 s.2*)

- (b) agricultural land or any building thereon, other than a building erected before 17 August 1945; (*Added 22 of 1953 s.3*)

- (c) land let unbuilt upon save where such land has been let with, and for the better enjoyment of, any building, or save where a

building to which this Part applies has subsequently been erected thereon; (*Added 22 of 1953 s.3*)

- (d) (*Repealed 29 of 1983 s.2*)
- (e) (*Repealed 40 of 1984 s.2*)
- (f) any particular portion of an hotel or boarding-house which is let furnished by the keeper of such hotel or boarding-house to a guest of such hotel or boarding-house;
- (g) any premises for the time being vested in or in the custody of the Custodian of Property or the Custodian of Enemy Property;
- (h) any lease or tenancy held directly from the Government; (*Amended 13 of 1948 s.3; 40 of 1984 s.2; 29 of 1998 s.105*)
- (i) any premises which are, or since 4 May 1979 have been, business premises. (*Replaced 40 of 1984 s.2*)

(2) In the event of any doubt or dispute as to whether any premises are excepted from the application of this Part by any of the provisions of subsection (1), the same may be determined by the Commissioner on the application of a landlord or tenant. (*Amended 76 of 1981 s.3*)

(3) Where immediately before 23 May 1947, a tenant of premises to which this Part does not apply was entitled to protection against eviction by reason of an enactment repealed by this Part*, he shall be deemed to be holding at the rent payable immediately before 23 May 1947, and shall be entitled to such notice to quit as would have been required under the original contract of tenancy or if such notice had already been given and had expired at or before 23 May 1947 then to 1 month's notice.

(*25 of 1947 s.3 incorporated*)

Editorial Note: * See s.38 of the Landlord and Tenant Ordinance 1947 (25 of 1947).

COMMENTARY

Overview

3.01

Section 3 pertains to those domestic tenancies of buildings in respect of which an occupation permit (including a temporary occupation permit) was first issued by the Building Authority before 16 August 1945, and by which do not come within the exceptions stated herein.

Note that the provisions repealed by s.3 continue to apply to those *tenancies in existence on or before July 8, 2004* but where, by that date, the landlord had served a notice under later s.119 to terminate the tenancy or the tenant had made a statutory request for a new tenancy.

4. Power to exclude application of this Part

(Adaptation amendments retroactively made - see 44 of 2000 s.3)

(1) The Chief Executive may, in his absolute discretion and without the necessity of hearing any interested party, by order exclude from the further application of this Part any class of premises. (*Replaced 40 of 1968 s.3. Amended 72 of 1973 s.2; 44 of 2000 s.3*)

(2) The Tribunal may, in accordance with this section, make an order excluding any particular premises from the further application of this Part. (*Replaced 76 of 1981 s.4*)

(3) Every order made under subsection (1) shall be published in the Gazette whereupon the tenant of any such premises shall be deemed to be holding at the rent payable immediately before the publication of such order and shall be entitled to such notice to quit as would have been required under the original contract of tenancy, or, if such notice has already been given and has expired, then to 1 month's notice expiring at the end of the calendar month next after the month in which such order was published: (*Amended 76 of 1981 s.4*)

Provided that in the event of any notice having been given prior to such order being published nothing herein contained shall entitle a landlord to recover possession prior to the expiration of such notice. (*Added 40 of 1968 s.3*)

(3A) Upon the making of an order under subsection (2) the tenant of any such premises shall be deemed to be holding at the rent payable immediately before the making of the order and shall be entitled to such notice to quit as would have been required under the original contract of tenancy or, if such notice has already been given and has expired, then to 1 month's notice expiring at the end of the calendar month next after the month in which such order was made:

Provided that in the event of any notice having been given prior to such order being made nothing herein contained shall entitle a landlord to recover possession prior to the expiration of such notice. (*Added 29 of 1983 s.3*)

(4) Any landlord or tenant desiring to obtain an order of the Tribunal under subsection (2) shall serve notice thereof on his immediate tenant or landlord as the case may be in the prescribed form and shall also post such notice in a conspicuous place at the entrance to the premises to which the application relates. Such service and posting shall be verified by affidavit in the prescribed form which shall be lodged in the registry of the Tribunal. (*Amended 30 of 1955 s.5; 56 of 1961 s.2; 40 of 1968 s.3; 76 of 1981 s.4*)

(5) Any party other than the person served under subsection (4) who opposes the application shall within 14 days of such notice having been posted as aforesaid give notice in writing to the registrar of the Tribunal in the prescribed form stating his interest in the matter and whether he wishes to make written representations to the Tribunal or whether he wishes to appear by himself or by his advocate on the hearing of the application. (Amended 76 of 1981 s.4)

(6) (Repealed 76 of 1981 s.4)

(7) (a) After hearing the parties and considering such representations as it thinks fit, the Tribunal may make an order in terms of subsection (2), either absolutely or subject to such conditions as it thinks fit (including a condition requiring payment of compensation by the landlord to any tenant). (Replaced 76 of 1981 s.4)

(b) For the purposes of any review under section 11A of the Lands Tribunal Ordinance (Cap.17), the time limit mentioned in that section shall not apply to a decision, other than in relation to the payment of compensation, under paragraph (a). (Added 29 of 1983 s.3)

(8) (a) A landlord who has made an application under this section may enter into an agreement with any tenant who in accordance with the provisions of subsection (5) opposes the landlord's application whereby the tenant agrees to withdraw his opposition to such application subject to such terms as may be agreed between the landlord and the tenant: (Amended 53 of 1993 s.3)

Provided that-

- (i) no such agreement shall contain any term whereby the tenant agrees to quit his premises before an order excluding the said premises from the further application of this Part has been made;
 - (ii) if no order excluding the said premises from the further application of this Part is made, the agreement shall be null and void;
 - (iii) if an order excluding the said premises from the further application of this Part is made, the agreement shall be enforceable only in so far as it is consistent with such order.
- (b) In the event of the Tribunal ordering that the premises to which the application relates shall be excluded from the further application of this Part, the Tribunal shall make such order subject to the terms agreed between the parties together with such other conditions, if any, as it may think fit to impose

in accordance with subsection (7). (Added 30 of 1955 s.5. Amended 40 of 1968 s.3; 76 of 1981 s.4)

(9)-(13) (Repealed 76 of 1981 s.4)

(14) Where any class of premises has been excluded from the further application of this Part by an order made under subsection (1), the Tribunal shall have jurisdiction to determine whether any particular premises fall within such class. (Amended 76 of 1981 s.4; 29 of 1983 s.3)

(25 of 1947 s.32 incorporated. Amended 23 of 1963 s.3; 40 of 1968 s.3)

COMMENTARY

Overview

Section 4 applies to applications and the procedure by which the landlords must follow to regain possession of the premises where the tenant is in default of rent which is due and owing to the landlord.

This provision also empowers the Lands Tribunal to determine applications by landlords for possession of premises commenced under this Ordinance or under the Common Law. In such applications, apart from making orders for possession, the Tribunal also has power to make orders for the payment of rent, mesne profits (those profits of an estate received by a tenant in wrongful possession and recoverable by the landlord), disposal of any property left in the premises by the tenant, and payment of damages in respect of any breach of a condition of the tenancy or sub-tenancy.

A landlord who wishes to make an application under this Ordinance or under the Common Law, has to file with the Registrar of the Tribunal a notice of application substantially in accordance with the necessary prescribed forms in order to set out the nature of the application. A filing fee is charged. The applicant should complete the notice of application, either in person or by an authorised person (with letter of authorisation). The notice of application may be completed either in English or Chinese.

5. (Repealed 76 of 1981 s.5)

6. Re-entry by Government

(Adaptation amendments retroactively made - see 29 of 1998 s.4)

- (1) Where-
- (a) there is a breach of any condition of an order made under section 4 in respect of premises on land which the landlord holds under a Government lease or other tenancy from the Government; or
 - (b) prior to the making of an order under section 4 in respect of any such premises there has been made an assignment or underlease of, or an agreement to assign or underlet, an undivided share of or in the land together with the right to the exclusive possession, use, occupation or enjoyment of any portion of any building to be erected thereon pursuant to such order, *(Amended 76 of 1981 s.6)*

such breach, or assignment or underlease, or agreement to assign or underlet shall be deemed to be a breach of a covenant in the Government lease, or of a condition or stipulation of the tenancy of such land, and a right of re-entry thereon under the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap.126) shall be deemed to have accrued to the Government.

(2) Where a right of re-entry is deemed under subsection (1) to have accrued to the Government and in exercise of such right the Government has re-entered upon the land, any person who has taken an assignment or underlease, or has entered into an agreement to take an assignment or underlease, of an undivided share of or in the land together with the right to exclusive possession, use, occupation or enjoyment of any portion of any building to be erected thereon shall, in addition to any other claim he may have, be entitled to recover from the person to whom it was paid any money or other property which passed, whether by way of consideration or otherwise, under or by virtue of such assignment, underlease or agreement.

(3) Subsection (1)(b) shall not apply to an assignment or underlease of, or an agreement to assign or underlet, an undivided share of or in land where the consideration or part of the consideration therefor is the erection of the building to be erected on the land pursuant to an order made under section 4.

(Replaced 46 of 1975 s.2. Amended 29 of 1998 s.4)

COMMENTARY

Overview

6.01

This section reinforces and provides clarity as to the situation under the Ordinance where there has been a breach of a previous s.4 condition. Section 6 provides the guidance that where such breach has occurred, such breach of

condition will also trigger a breach of condition of other covenants such as of government leases or otherwise (s.6(1)). Subsection (2) also clarifies that the right of re-entry is a deemed statutory right under that sub-s.(1) and also provides a number of flow on rights for the tenant for recovery of expenses connected to such arrangement.

7. Registration in Land Registry of order under section 4

(1) The Commissioner shall cause an order made under section 4 to be registered by memorial in the Land Registry against the premises affected. *(Replaced 76 of 1981 s.7. Amended 8 of 1993 s.2)*

(2) Where premises are excluded from the further application of this Part by order under section 4, and it is a condition of the order that a building or buildings shall be erected upon the site of such premises in accordance with the terms of such order, then upon the order being registered by virtue of subsection (1), such condition shall be binding on any executor, administrator, successor or assign of the landlord of the premises and may be enforced against any such executor, administrator, successor or assign by re-entry or otherwise, in like manner as it could have been enforced against the landlord.

(Added 30 of 1955 s.7. Amended 72 of 1973 s.2)

COMMENTARY

Overview

Section 7 prescribes that an order of possession granted under previous s.4 of the Ordinance must be registered accordingly with the Land Registry. Such order is not only binding on the landlord, but also on his executor, administrator, successor or assign by re-entry, or such otherwise designated person.

7.01

When the Lands Tribunal may make an order for possession

The landlord under a tenancy that is subject to the transitional termination notice requirement (LTO, Part IV) has a right to seek an order for possession of the demised premises (or any part of them) even though a transitional termination notice has not been served or, having been served, has not expired in certain circumstances.

7.02

Accordingly, the Lands Tribunal may make the order if it is satisfied that the demised premises (or the relevant part) are 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. The landlord reasonably requires the

premises if he has a genuine present need for them. The landlord must show something more than a desire for the premises. The *onus* is on the landlord to satisfy the court by positive evidence that he was acting *bona fide* and that he reasonably required possession for one of the persons mentioned in the section.

7A. (Repealed 40 of 1984 s.3)

Standard Rent

8. Assessment of standard rent

(1) The landlord or tenant of any premises to which this Part applies may apply to the Commissioner in the specified form for his assessment of the standard rent of such premises. (Replaced 93 of 1975 s.2)

(2) (Repealed 93 of 1975 s.2)

(3) A certificate given pursuant to the provisions of this section by the Commissioner of his assessment of the standard rent of premises described therein shall be prima facie evidence of such standard rent in any legal proceedings whatsoever, whether civil or criminal. (Amended 93 of 1975 s.2)

(Added 22 of 1953 s.5)

COMMENTARY

Introduction

8.01 Section 8 deals with the assessment of standard rent of any premises.

Definition of "rent"

8.02 Rent is:

- (i) a periodical sum;
- (ii) paid in return for the occupation of land;
- (iii) issuing out of the land; and
- (iv) for non-payment of which distress is leviable.

It is a payment which a tenant is bound by his contract to pay to the landlord for the use of his land; see *Escalus Properties Ltd v Robinson* [1996] QB 231, CA (Nourse LJ); see also *United Scientific Holdings Ltd v Burnley Borough Council* [1978] AC 904, HL (Lord Diplock).

Section 8(1)

This provision provides that a landlord or tenant can apply to the Ratings and Valuation Commissioner in regard to his assessment of the standard rent of premises concerned. 8.03

Definition of "prima facie evidence" under s.8(3)

It implies that the certificate of assessment of the standard rent of any premises given by the Commissioner under this section is rebuttable. 8.04

9. (Repealed 53 of 1993 s.4)

9A. Relevance of prevailing market rent

The rent of any premises to which this Part applies-

- (a) may, by virtue of section 9B; but
- (b) shall not, by virtue of section 10, exceed the prevailing market rent of the premises or, where the rates in respect of the premises are payable by the landlord, the aggregate of the following amounts-
 - (i) the prevailing market rent of the premises; and
 - (ii) the amount of the rates payable in respect of the premises.

(Replaced 53 of 1993 s.5)

COMMENTARY

Overview

This section deals with the relevance of prevailing market rent to the rent of any domestic premises (as before 16 August 1945) and the constraints of the amount of rent provided that the rates in respect of the premises are payable by the landlord. 9A.01

9B. Alterations in rent by agreement

(1) Subject to subsection (2), there shall be payable and recoverable by way of rent of premises to which this Part applies such amount as may be agreed between the landlord and tenant.

(2) Where an alteration in rent is agreed between a landlord and a tenant the landlord shall lodge with the Commissioner a notice of the

alteration in rent in triplicate in the specified form signed by both the landlord and tenant.

- (3) A notice under subsection (2) is not valid unless-
- (a) it is signed by the tenant not earlier than 1 month before the date on which it is lodged with the Commissioner and the alteration of rent to which it relates takes effect neither earlier than 1 month before, nor later than 6 months after, the date on which the notice is so lodged; or
 - (b) the notice is endorsed by the Commissioner, the application for which endorsement shall be accompanied by a fee of \$500, to the effect that he is satisfied that the tenant understands the effect of the alteration in rent and has not been subject to any undue pressure or influence.
- (4) Where a notice is lodged with the Commissioner under subsection (2), he shall record the agreement concerning the alteration in rent and shall endorse on 2 copies of the notice a statement to that effect and shall return 1 copy to the landlord and 1 copy to the tenant.
- (5) Where there is an increase in rent under an agreement mentioned in subsection (2), a landlord shall not be entitled to maintain an action to recover rent at the increased rate unless a valid notice mentioned in that subsection is endorsed by the Commissioner under subsection (4).
- (6) The security of tenure afforded to a tenant under section 48(3) shall apply where the rent payable by the tenant is increased by agreement, notwithstanding the failure of the landlord to lodge notice of it under subsection (2).
- (7) Subject to section 10H, the rent of premises payable and recoverable by virtue of this section may be increased-
- (a) by a further agreement to which this section applies,
 - (b) if the rent is less than the rent permitted under section 10(1), by an increase made under section 10(1A)(a) or by virtue of a certificate under section 10E;
 - (c) under section 10(3) or (3AC) only if, after the alteration in rent is agreed under this section, the landlord incurs expenditure on improvements as set out in that section, in which case section 10(3A) shall apply only in respect of expenditure incurred on improvements after the time of that agreement;
 - (d) under section 10AA, 10B or 10C.

(Added 53 of 1993 s.6)

COMMENTARY

Overview

Section 9B provides that the rent paid by the tenant to the landlord is an agreeable sum as listed in the written lease. Any alteration or adjustment to the rent must also be agreed upon. This usually happens upon a lease renewal agreement.

But in regards to domestic premises occupied or held before 16 August 1945, any such alteration must be properly noticed and filed with the Ratings and Valuation Commissioner.

9B.01

10. Permitted increases and adjustments

(1) Subject to section 9A but without prejudice to section 9B, there shall be payable and recoverable by way of rent of premises to which this Part applies the following amounts-

- (a) in respect of any period before 1 July 1994, an amount equal to 55 times the standard rent of the premises or 60% of the prevailing market rent of the premises, whichever is the greater;
- (b) in respect of any period after 30 June 1994 and before 1 July 1995, an amount equal to 65 times the standard rent of the premises or 70% of the prevailing market rent of the premises, whichever is the greater;
- (c) in respect of any period after 30 June 1995 and before 1 July 1996, an amount equal to 75 times the standard rent of the premises or 80% of the prevailing market rent of the premises, whichever is the greater;
- (d) in respect of any period after 30 June 1996, an amount equal to 85 times the standard rent of the premises or 90% of the prevailing market rent of the premises, whichever is the greater. *(Replaced 53 of 1993 s.7)*

(1A) If at any date within the period specified in paragraph (a), (b), (c) or (d) of subsection (1) the rent of any premises is less than the rent permitted under that paragraph, the landlord may-

- (a) subject to section 10H and subsections (1B) and (1C), by serving on the tenant on that date a notice in the specified form, increase the rent to an amount equal to the multiple of the standard rent of the premises specified in that paragraph; or

Definition of "acts done *mala fide*"

45.02

Acts done *mala fide* are those done in bad faith. This term is opposite to *bona fides* and opposite to good faith. *Mala fide* basically means: want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The determination of a plea of *mala fide* involves two questions, namely: (i) whether there is a personal bias or an oblique motive; and (ii) whether the action is contrary to the objects, requirements and conditions of a valid exercise of the norm.

A *mala fide* act is an intentional dishonest act by not fulfilling legal or contractual obligations, misleading another, entering into an agreement without the intention or means to fulfill it, or violating basic standards of honesty in dealing with others.

46. Collection of rates not to be affected

Nothing in this Part shall be construed so as to prevent a landlord from collecting from his tenant the rates for the time being payable in respect of any premises or such apportioned sum as shall properly be attributable to such premises in respect of rates, provided that the obligation of paying the rates in respect of such premises was assumed by the tenant under the terms of the tenancy.

(25 of 1947 s.37 incorporated)

COMMENTARY**Overview**

46.01

Section 46 provides that a landlord shall not be prevented by any provisions in Part I of this Ordinance to collect the rates, or an apportioned sum of the rates of such premises that a tenant shall pay. The obligation of paying the rates shall be assumed by the tenants under the term of tenancy in order to make this section enforceable.

47. Forms

(Adaptation amendments retroactively made - see 44 of 2000 s.3)

(1) The forms in the Second Schedule are prescribed for use under this Part and shall in each case be in English and Chinese. (Added 22 of 1953 s.33. Amended 44 of 2000 s.3)

- (2) Subject to subsection (1), the Commissioner may-
- (a) specify any form to be used under this Part;
 - (b) publish any such form in the Gazette; and
 - (c) in his discretion accept any notice or application served on him which is not in the specified form. (Added 93 of 1975 s.10)

COMMENTARY**Overview**

Section 47 simply prescribes that the forms in the Second Schedule of this Ordinance shall be used under Part I of this Ordinance and the forms used in each case shall be in both English and Chinese.

47.01

48. Expiry of this Part

(1) Subject to subsections (3), (4) and (5), this Part, except sections 6 and 7, shall expire at midnight on 31 December 1998. (Amended L.N. 518 of 1996)

(2) The Legislative Council may by resolution amend subsection (1) by substituting for the date specified in that subsection such date as may be specified in the resolution.

- (3) If, within 1 year before the expiry of this Part under subsection (1)-
- (a) an increase in the rent of any premises, other than an increase under section 10(2), (3) or (3AC), 10AA, 10B or 10C, becomes effective;
 - (b) a notice of an alteration in rent of any premises is lodged with the Commissioner under section 9B(2);
 - (c) the landlord of any premises serves notice of an increase in rent in accordance with section 10(1A)(a) or 10G(1); or
 - (d) the Tribunal makes an order in respect of an appeal under section 32(aa) from a decision of the Commissioner under section 10F,

this Part, except section 10D, shall continue to apply to those premises for a period of 1 year from the date on which that increase or alteration becomes effective.

(4) If, before this Part ceases to apply to any particular premises, the landlord or tenant of those premises serves and posts notice of his desire to obtain an order of the Tribunal under section 4(2) excluding the premises from the further application of this Part-

Section 67	(Repealed 29 of 1983 s.23)
Section 68	Proceedings in, and jurisdiction of, court or Tribunal
Section 68A	Appeal on point of law
Section 68B	Costs
Section 69	(Repealed 76 of 1981 s.49)
Section 70	Exercise of powers of Commissioner
Section 70A	Refusal to furnish information and obstruction
Section 70B	Harassment
Section 70C	False statement
Section 71	Forms
Section 72	Enlargement of time
Section 73	(Repealed 76 of 1981 s.50)
Section 74	Service of notice
Section 74A	Saving
Section 74B	Expiry of this Part
Section 74C	Provisions transitional to the enactment of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1980

Overview of Part II

II.01

As previously examined, this Part II like Part I, covered and applied to pre-war and certain post-war domestic tenancies.

However, note that this *Part II* expired on 31 December 1998 and was not renewed. But by virtue of s.116(1)(b) of the Ordinance, all tenancies to which Part II has ceased to apply will become subject to Part IV of the Ordinance.

Part II of the Ordinance still has general application to a limited number of domestic tenancies subject to an occupation permit issued between 16 August 1945 and 19 June 1981, which have a ratable value less than \$30,000 a year (and provided the tenancy was not transferred to the new regime under Part IV subject to LTO, s.51A or 51B). The main purpose of Part II was to provide a measure of rent control by protecting tenants against unrestricted increases in rent and to give them security of tenure.

Part II continues the concept of *security of tenure*, which means that a tenant is given a statutory right to continue to rent and to occupy a property after the expiry of the existing tenancy period. Under this Part II, which is considered the “old regime” (tenancies *created before 9 July 2004*), a tenant of a *domestic property* is in most cases guaranteed the right to continue to rent the property as long as the tenant is willing to pay the prevailing market rent. The landlord cannot refuse to let the property to the same tenant *except* under a few circumstances expressly stipulated under s.119E of the (former) Landlord and Tenant Ordinance. Such exceptions include: (i) the landlord’s intention to

rebuild the property; (ii) unnecessary annoyance or disturbance caused by the tenant; or (iii) use of the property by the tenant for immoral or illegal purposes.

To comply with the s.119E requirements, the landlord had to deal with complicated laws and procedures to recover possession of the property (such as issuing a termination notice to the tenant, responding to the tenant’s request for a new tenancy or conducting litigation at the Lands Tribunal). This section was repealed in July 2004 and simplified accordingly.

Under Part II, a Landlord may increase rent in only four circumstances: (i) by agreement between the parties; (ii) where there has been an increase in rates or an imposition of rates for the first time; (iii) where the landlord has carried out recent improvements to the premises; or (iv) on the certificate of the Commissioner of Rating and Valuation following an application by the landlord (s.55–65). A landlord may only bring the tenancy to an end if he can obtain an order for possession of the premises from the Lands Tribunal (*via* Lands Tribunal Ordinance (Cap.17)). Note that s.53(2) of the Ordinance specifically sets out eight grounds on which a landlord may apply for possession.

Furthermore, s.52 of the Ordinance deals with the issue of security of tenure by providing that tenancy is continued under Part II *notwithstanding* that the contractual term has expired or that it has been brought to an end by a common law notice to quit.

(Part II replaced 78 of 1973 s.2)

Interpretation and Application

49. Interpretation

(Adaptation amendments retroactively made - see 23 of 1998 s.2; 29 of 1998 s.105)

In this Part, unless the context otherwise requires-

“Building Authority” (建築事務監督) means the Building Authority under the Buildings Ordinance (Cap.123);

“Commissioner” (署長) means the Commissioner of Rating and Valuation;

“court” (法院) means the District Court;

“current rent” (現行租金) means, except in section 51B, the rent, exclusive of rates, payable by a tenant at the date of an application under section 57; (*Amended 40 of 1984 s.13*)

“forfeiture” (沒收租賃權) means forfeiture-

- for breach of any provision of a tenancy or sub-tenancy; or
- under a provision of a tenancy or sub-tenancy allowing forfeiture or determination following the destruction, or partial

destruction, of or damage to the premises; (*Added 40 of 1984 s.13*)

“landlord” (業主) includes any person, other than the Government, who is from time to time entitled to receive rent in respect of any premises and, in relation to a particular tenant, means a person entitled to receive rent from such tenant; (*Amended 29 of 1998 s.105*)

“prevailing market rent” (市值租金) means, except in section 51B, the rent, exclusive of rates, at which premises the subject matter of a tenancy to which this Part applies might reasonably be expected to be let, at the date upon which the Commissioner issues his certificate under section 58, on the terms of the tenancy (other than those relating to rent and duration of the tenancy) but disregarding the effect of this Part; (*Amended 29 of 1983 ss.10 & 46; 40 of 1984 s.13*)

“principal tenant” (主租客) means a tenant of premises, other than a Government lessee, who has sublet the whole or any part or parts thereof as a separate holding or holdings; (*Amended 29 of 1998 s.105*)

“repealed Part II” (已廢除的部) means Part II of the Ordinance repealed by section 2 of the Landlord and Tenant (Consolidation) (Amendment) (No 2) Ordinance 1973 (78 of 1973);

“tenancy” (租賃) includes an agreement for a tenancy;

“tenant” (租客) or “sub-tenant” (分租客) does not include a Government lessee but includes- (*Amended 29 of 1998 s.105*)

- (a) a person who, on 18 December 1979, is in possession of premises the subject matter of a tenancy or sub-tenancy to which this Part, whether by virtue of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1980 (6 of 1980) or otherwise, applies; (*Amended 6 of 1980 s.2*)
- (b) (*Repealed 6 of 1980 s.2*)
- (c) a person who retains possession of any premises by virtue of this Part; (*Amended 93 of 1975 s.12*)
- (d) any government other than the Government of the Hong Kong Special Administrative Region, or a public body, corporation, partnership or firm, which is the tenant or sub-tenant of premises the subject matter of a tenancy or sub-tenancy to which this Part applies; (*Added 6 of 1980 s.2. Amended 23 of 1998 s.2*)

“tenement” (物業單位) means any building, structure, or part thereof, which is held or occupied as a distinct or separate tenancy or holding or under any licence; (*Added 93 of 1975 s.12*)

“Tribunal” (審裁處) means the Lands Tribunal established under the Lands Tribunal Ordinance (Cap.17). (*Replaced 76 of 1981 s.31*)

COMMENTARY

Overview

This section defines various terms used in Part II of this Ordinance. The definitions under this section are subject to specific definitions under other sections of the Ordinance.

49.01

50. Application

(Adaptation amendments retroactively made - see 29 of 1998 s.105; 44 of 2000 s.3)

(1) Subject to subsection (6), this Part applies to every domestic tenancy and domestic sub-tenancy of post-war premises, whether the same was effected orally or in writing and notwithstanding any provision in such tenancy or sub-tenancy, including any provision purporting generally or specifically to exclude this Part. (*Amended 29 of 1983 s.11*)

(2) For the purposes of this section, “post-war premises” (戰後處所) means premises to which Part I does not apply by virtue of section 3(1)(a). (*Replaced 29 of 1983 s.11*)

(3) The burden of proving that premises in a building are not post-war premises shall lie on the person so asserting; and a copy of a written permit of the Building Authority to occupy a building shall be prima facie evidence that premises in that building are not post-war if the permit purports to have been issued prior to 17 August 1945. (*Amended 29 of 1983 s.11*)

(4) (a) The benefits and protection afforded by this Part shall, in any tenancy or sub-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 or sub-tenant, as the case may be, where she or he was residing with the tenant or sub-tenant at the time of his or her death, and for the purposes of this Part references to tenant or sub-tenant shall, except in this subsection, be deemed to include a reference to such widow, widower, mother, father, daughter or son. (*Amended 29 of 1983 s.11; 40 of 1984 s.14*)

(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. (*Added 29 of 1983 s.11*)

- (c) The benefits and protection afforded by this Part shall not be available to a personal representative of a deceased tenant or sub-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 or that protection. *(Added 40 of 1984 s.14)*
- (5) *(Repealed 6 of 1980 s.3)*
- (6) This Part shall not apply to the following-
- (a) a tenancy or sub-tenancy-
- (i) of premises to which Part I applies; or
- (ii) of premises in respect of which there is in existence an order under section 4; *(Replaced 24 of 1980 s.2. Amended 29 of 1983 s.11)*
- (b) a tenancy or sub-tenancy of land unbuilt on;
- (c) a tenancy or sub-tenancy of agricultural land, which expression shall have the meaning assigned to it by section 36 of the Rating Ordinance (Cap.116), including such a tenancy or sub-tenancy where there is on the land a dwelling house occupied by persons working the land;
- (d) a tenancy or sub-tenancy where the landlord or principal tenant is the employer and the tenant or sub-tenant is the employee in possession of the premises in accordance with the terms and conditions of his employment, being terms and conditions which require him to vacate the accommodation on ceasing to be so employed;
- (e) a tenancy held from the Government, the Hong Kong Housing Authority, the Hong Kong Housing Society or the Hong Kong Settlers Housing Corporation Limited, or a sub-tenancy created out of such a tenancy; *(Amended 52 of 1981 s.2; 53 of 1993 s.19; 29 of 1998 s.105)*
- (f)-(g) *(Repealed 76 of 1981 s.32)*
- (h) *(Repealed 29 of 1983 s.11)*
- (i)-(k) *(Repealed 6 of 1980 s.3)*
- (l) a tenancy or sub-tenancy of any premises in a building in respect of which an appropriate certificate was first issued or which premises were completed or substantially rebuilt on or after 19 June 1981; and, for the purposes of this paragraph, "appropriate certificate" (適當證明書) means-
- (i) an occupation permit, including a temporary occupation permit, issued by the Building Authority under section 21 (2) of the Buildings Ordinance (Cap.123); or

- (ii) where section 21 of the Buildings Ordinance (Cap.123) does not apply to the premises by virtue of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap.322 1964 Ed.) or the Buildings Ordinance (Application to the New Territories) Ordinance (Cap.121), a certificate issued by the Director of Lands, or any person authorized by him, certifying that the premises are complete; or *(Amended L.N. 370 of 1981; L.N. 76 of 1982; L.N. 94 of 1986; 60 of 1987 s.14; L.N. 291 of 1993)*
- (iii) where section 21 of the Buildings Ordinance (Cap.123) does not apply to the premises by virtue of section 18 of the Housing Ordinance (Cap.283), a certificate issued by the Director of Housing, or any person authorized by him, certifying that the premises are complete; *(Added 52 of 1981 s.2. Amended 29 of 1983 s.11)*
- (m) a tenancy or sub-tenancy of premises the rateable value of which is not less than \$30,000 or such other sum as the Legislative Council by resolution determines; *(Replaced 52 of 1981 s.3. Amended 29 of 1983 s.11; 40 of 1984 s.14; 32 of 1985 s.8)*
- (n) a tenancy or sub-tenancy in writing created after 18 December 1981 for a fixed term of 5 years or longer which contains no provision-
- (i) for earlier determination by the landlord otherwise than by forfeiture; and
- (ii) for any premium or fine or for any increase in the rent during the fixed term; *(Added 76 of 1981 s.32)*
- (o) a tenancy or sub-tenancy created on or after 10 June 1983 of premises of which, or of part of which, the tenant or sub-tenant under that tenancy or sub-tenancy is not already in possession under another tenancy or sub-tenancy. *(Added 29 of 1983 s.11)*
- (7)-(8) *(Repealed 29 of 1983 s.11)*
- (9) The Chief Executive may by order exclude from the further application this Part any class of tenancy or sub-tenancy, any class of premises or any particular tenancy or sub-tenancy or premises. *(Amended 44 of 2000 s.3)*
- (10) Subject to subsection (12), for the purposes of this section, the rateable value of any premises shall be-
- (a) in the case of premises being a tenement included in the valuation list declared in March 1977 under section 13 of the

- Rating Ordinance (Cap.116) as amended or altered from time to time up to and including 10 June 1983, the rateable value contained in that list on 10 June 1983; and
- (b) in any other case, the rateable value which would have been contained in the list referred to in paragraph (a) on 10 June 1983 had the premises been included in that list and which is certified by the Commissioner as regards the premises for the purposes of this section and that certificate shall be final and binding. *(Replaced 29 of 1983 s.11. Amended 77 of 1988 s.3)*

(11) The dates mentioned in subsection (10) may be amended by resolution of the Legislative Council. *(Added 29 of 1983 s.11. Amended 77 of 1988 s.3)*

(12) Any tenancy or sub-tenancy of premises excluded from this Part at any time by virtue of the operation of subsection (6)(m) shall continue to be so excluded notwithstanding any amendment of subsection (10). *(Added 29 of 1983 s.11. Amended 77 of 1988 s.3)*

COMMENTARY

Legislative history

50.01 This section was inserted under the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1981 (52 of 1981), which commenced on 9 July 1981. It was further amended in 1981 under the Landlord and Tenant (Consolidation) (Amendment) (No 2) Ordinance (76 of 1981), which commenced on 10 December 1981.

Overview

50.02 Section 50 empowers this Part II's general application to a limited number of domestic tenancies subject to: (i) an occupation permit issued between 16 August 1945 and 19 June 1981; (ii) which have a rateable value less than \$30,000 a year; and (iii) provided the tenancy was not transferred to the new regime under Part IV subject to later, s.51A or 51B.

The main purpose of this provision was to provide a measure of rent control by protecting tenants against unrestricted increases in rent and to give them security of tenure.

50A. Block lettings

(1) For the purposes of this Part, where a tenancy is of premises consisting of 2 or more dwellings, which dwellings have an aggregated rateable value of not less than the sum mentioned in paragraph (m) of section 50(6), that paragraph shall not have the effect of excluding from the application of this Part a dwelling in those premises the rateable value of which is less than that sum; and unless otherwise excluded, this Part shall apply to such a dwelling in accordance with subsection (2).

(2) Where, by virtue of subsection (1), this Part applies to a dwelling, that dwelling-

- (a) shall be deemed to be premises subject to a separate tenancy to which this Part applies and, if it is subject to a sub-tenancy, that sub-tenancy shall be deemed to have been created out of that separate tenancy; and
- (b) shall have, for the purposes of sections 55 to 66, a rent, as determined under section 50B, payable and recoverable in respect of it. *(Amended 40 of 1984 s.15)*

(Added 52 of 1981 s.4)

COMMENTARY

Legislative history

This section was inserted under the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1981 (52 of 1981), which commenced on 9 July 1981. It was further amended in 1981 under the Landlord and Tenant (Consolidation) (Amendment) (No 2) Ordinance (76 of 1981), which commenced on 10 December 1981.

Overview

Section 50A provides the definition of a block of tenancies, which will consist of premises consisting of 2 or more dwellings and by which such dwellings have an aggregated rateable value of not less than \$30,000 a year. Any rateable value higher than this sum will be excluded from this Part II and thereafter transferred to the new regime under Part IV.

50A.01

50A.02

50B. Continuation of tenancies in block lettings

- (1) Where-
- by virtue of section 50A(2), a dwelling is deemed to be subject to a separate tenancy; and
 - that separate tenancy continues in existence by virtue of section 52,

the rent and other terms of the tenancy of that dwelling during that continuation shall be consistent with this Part and-

- shall be as agreed by the parties; or
- failing agreement-
 - the rent shall be as determined by the Commissioner in accordance with subsection (2); and
 - the other terms shall be as determined by the Tribunal in accordance with subsection (3).

- (2) (a) The rent of a tenancy for the purposes of subsection (1)(ii)(A) shall be such part of the whole rent payable for the premises mentioned in section 50A(1) as is apportioned to that tenancy by the Commissioner who shall have regard to the relative size and other features of the dwellings in those premises.

- (b) The Commissioner shall notify the parties in writing of the rent so apportioned and the apportionment shall be final and binding.

- (c) *(Repealed 40 of 1984 s.16)*

- (3) In determining the other terms of the tenancy under subsection (1)(ii)(B), the Tribunal shall have regard to-

- the terms of the tenancy of which the dwelling forms part;
- the terms ordinarily applicable to a tenancy of a dwelling in premises consisting of 2 or more dwellings; and
- such other considerations as appear to be equitable,

and the determination shall be final and binding.

(Added 52 of 1981 s.4. Amended 76 of 1981 s.33)

COMMENTARY**Legislative history****50B.01**

This section was inserted under the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1981 (52 of 1981), which commenced on 9 July 1981. It was further amended in 1981 under the Landlord and Tenant (Consolidation) (Amendment) (No 2) Ordinance (76 of 1981), which commenced on 10 December 1981.

Overview

Block tenancies as defined in previous s.50A continue to be provided a measure of rent control as the tenants of these premises are protected against unrestricted increases in rent and to give them security of tenure.

50B.02**50C. Interpretation**

- (1) For the purposes of sections 50A, 50B and this section-
- section 50(10) shall apply to a dwelling as it applies to premises;
 - “tenancy” (租賃) includes a sub-tenancy;
 - “dwelling” (住宅) means a building, or part of a building, which is designed and constructed for the purpose of separate occupation as a dwelling, whether or not it is subject to a separate tenancy.

- (2) For the purposes of this Part, the date of the tenancy of a dwelling shall be the date on which the parties entered into the tenancy of the premises which included that dwelling.

(Added 52 of 1981 s.4)

COMMENTARY**Legislative history**

This section was inserted under the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1981 (52 of 1981), which commenced on 9 July 1981.

50C.01**Overview**

This provision provides further definitions and application of terms used throughout this Part II of the Ordinance.

50C.02**51. Meaning of “domestic tenancy” (住宅租賃)**

(Adaptation amendments retroactively made - see 29 of 1998 s.105)

- (1) For the purposes of section 50, “domestic tenancy” (住宅租賃) and “domestic sub-tenancy” (住宅分租租賃) mean a tenancy or sub-tenancy of premises let as a dwelling.

(2) Notwithstanding the purpose for which premises were let, in determining the nature of a tenancy for the purposes of this Part, the following provisions shall apply-

- (a) in any agreement in writing between a landlord and tenant, or between a principal tenant and sub-tenant, a term that the premises shall be used for a specified purpose shall be prima facie evidence that the premises are being used for such purpose;
 - (b) notwithstanding any evidence as to whether premises were originally let as a dwelling or not let as a dwelling, premises which are being used primarily for another purpose shall be deemed to have been let for such other purpose:
Provided that where such primary user is user as a dwelling and in breach of any term in the agreement with the landlord or principal tenant, as the case may be, then the tenant or sub-tenant shall be required to establish that such user has been agreed to by the landlord or principal tenant, expressly or by implication, or acquiesced in by him;
 - (c) subject to paragraph (d), where there exists insufficient evidence as to whether premises were let as a dwelling or not let as a dwelling, the nature of the tenancy or sub-tenancy shall be determined by the primary user of the premises;
 - (d) where there is evidence that premises were let otherwise than as a dwelling, or that they were being used otherwise than as a dwelling at the commencement of a sub-tenancy created out of the original tenancy, any premises the subject of such sub-tenancy shall themselves be deemed to be used otherwise than as a dwelling until the sub-tenant satisfies the Tribunal to the contrary; (*Amended 76 of 1981 s.34*)
 - (e) the use of premises as a boarding or lodging house is a use other than as a dwelling.
- (3) In determining whether premises were let, or are being used, as a dwelling, the following may be taken into account-
- (a) the covenants, terms and conditions in any Government lease, tenancy or sub-tenancy; (*Amended 29 of 1998 s.105*)
 - (b) any occupation permit given by the Building Authority under section 21 of the Buildings Ordinance (Cap.123), or under any Ordinance replaced thereby, in relation to the premises;
 - (c) normal additional uses of premises consistent with the domestic nature of a tenancy or sub-tenancy having regard to the following-
 - (i) floor area in occupation part or full-time for such uses;

- (ii) the number of people engaged in such uses but not dwelling on the premises;
- (iii) the furnishings, fittings and contents of the premises; and
- (iv) the gross profits resulting from such uses relative to the rent or proportion thereof paid by the person making such profits.

(4) Where a dispute arises as to whether a tenancy or sub-tenancy is domestic, the landlord, tenant, principal tenant or sub-tenant may, if primary user is relevant to the dispute apply in the specified form to the Commissioner for his certificate as to the primary user of the premises and shall specify in the form the nature of the dispute.

(4A) Whether or not a dispute arises as to whether a tenancy or sub-tenancy is domestic, a landlord, tenant, principal tenant or sub-tenant may apply in the specified form to the Commissioner for his certificate as to the primary user of the premises. (*Added 56 of 1976 s.3*)

(4B) Where a person applies to the Commissioner under subsection (4A) he shall-

- (a) specify in the application form a day, other than a public holiday, on which he would like the inspection to be carried out;
- (b) at the time when he lodges the application, pay such fee as may be determined by the Financial Secretary; and
- (c) lodge the application form with the Commissioner not less than 10 days before the day specified in the form. (*Added 56 of 1976 s.3*)

(4C) (*Repealed 32 of 1985 s.9*)

(4D) The Commissioner shall, where practicable, carry out the inspection under subsection (5) on the day specified in the application or, if the inspection cannot be carried out on that day, as soon thereafter as is reasonably possible. (*Added 56 of 1976 s.3*)

(5) Subject to subsection (5A), where an application under subsection (4) or (4A) is made to the Commissioner, he shall inspect the premises, and may-

- (a) where he is satisfied on the evidence available as to the primary user, issue free of charge in the case of an application under subsection (4) and serve on the landlord and tenant or principal tenant and sub-tenant, as the case may be, a certificate in the specified form as to the primary user of the premises on the day of his inspection;

- (b) where he is not so satisfied, issue free of charge in the case of an application under subsection (4) and serve on the landlord and tenant or principal tenant and sub-tenant, as the case may be, a notice in the specified form declining to express an opinion as to the primary user of the premises. *(Amended 56 of 1976 s.3; 29 of 1983 s.12)*

(5A) Where the Commissioner issues a certificate under subsection (5)(a), no further application may be made under subsection (4) or (4A) before the expiry of 1 year from the date on which that certificate is issued. *(Added 29 of 1983 s.12)*

(6) A certificate issued by the Commissioner under subsection (5)(a) shall, for all purposes, including an application under subsection (8), be prima facie evidence of the facts set out therein and of the primary user of the premises on the day on which they were inspected. *(Amended 76 of 1981 s.34)*

(7) *(Repealed 29 of 1983 s.12)*

(8) A party to any tenancy or sub-tenancy may apply to the Tribunal to determine whether or not a tenancy or sub-tenancy is domestic and the Tribunal may determine that question for the purposes of this Part. *(Replaced 29 of 1983 s.12)*

COMMENTARY

Legislative history

51.01

This section has been subjected to a number of amendments and insertions beginning in 1976 with various additional amendments taking place all the way up until 1997. The amendments can be tracked as follows:

- (i) Subsection (2)(d) was amended pursuant to the Landlord and Tenant (Consolidation) (Amendment) (No 2) Ordinance (76 of 1981) s.34, commencing 10 December 1981;
- (ii) Subsection (3)(a) was amended pursuant to the Adaptation of Laws (Crown Land) Ordinance (29 of 1998) s.105, commencing retroactively 1 July 1997;
- (iii) Subsection (4A) was amended pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1976 (56 of 1976) s.3, commencing 9 July 1976;
- (iv) Subsection (4B) was amended pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1976 (56 of 1976) s.3, commencing 9 July 1976;

- (v) Subsection (4C) was repealed pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1985 (32 of 1985) s.19, commencing 1 July 1985;
- (vi) Subsection (4D) was amended pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1976 (56 of 1976) s.3, commencing 9 July 1976;
- (vii) Subsection (5)(b) was amended pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1976 (56 of 1976) s.3, commencing 9 July 1976. It was subsequently amended pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1983 (29 of 1983) s.12, commencing 10 June 1983;
- (viii) Subsection (5A) was added pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1983 (29 of 1983) s.12, commencing 10 June 1983;
- (ix) Subsection (6) was amended pursuant to the Landlord and Tenant (Consolidation) (Amendment) (No 2) Ordinance 1981 (76 of 1981) s.34, commencing 10 December 1981;
- (x) Subsection (7) was repealed pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1983 (29 of 1983) s.12, commencing 10 June 1983; and
- (xi) Subsection (8) was replaced pursuant to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1983 (29 of 1983) s.12, commencing 10 June 1983.

Overview

Despite the extensive wording of this provision, s.51 can be simply broken down to the fact that a "domestic tenancy" is a tenancy of premises let as a residential dwelling (note later s.115 of the LTO). Whether or not premises are let as a "dwelling" is, therefore, of central importance when considering the application of the later provisions of this Ordinance, in particular s.51A and Part IV below.

51A. Transfer of tenancy to Part IV on joint application

(1) A landlord and tenant, or principal tenant and sub-tenant, of premises to which this Part applies may apply jointly to the Commissioner in the specified form in triplicate for the tenancy, or sub-tenancy, to be excluded from the application of this Part.

(2) An application under subsection (1) may be made during the contractual period of the tenancy, or sub-tenancy, or during its continuation under section 52(1) and shall be lodged with the Commissioner within 28 days of its execution.

51.02

- (3) The Commissioner shall-
- (a) if he is satisfied that the tenant, or sub-tenant, understands the effect of the exclusion of the tenancy, or sub-tenancy, from this Part and has not been subject to any undue pressure or influence, endorse his approval on copies of the application and serve a copy on each of the applicants; or
 - (b) if he is not so satisfied, serve a notice to that effect on each of the applicants.
- (4) Where an application is endorsed under subsection (3)(a), the tenancy, or sub-tenancy, to which the application relates shall be excluded from the application of this Part and Part IV shall apply to it with effect from a future date specified in the application by the applicants or, if no such date is specified, from the date of that endorsement.
- (5) Where an application is endorsed under subsection (3)(a), that application shall constitute-
- (a) a discontinuance by an applicant of any proceedings under section 53 for possession of the premises to which that application relates; and
 - (b) a waiver by an applicant to any right to increase the rent under this Part in relation to the premises to which that application relates.
- (6) The applicants may in the specified form specify the terms of the tenancy, or sub-tenancy, to which Part IV shall apply and the lodging of the application under this section shall be sufficient compliance with section 119L.

(Added 40 of 1984 s.17)

COMMENTARY

Legislative history

- 51A.01** This section was amended under the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1984 (40 of 1984) commencing on 14 July 1984.

Overview

- 51A.02** As mentioned above, whether or not premises are let as a "dwelling" is, therefore, of central importance where a joint application is made by the landlord and tenant to the Ratings and Valuation Commissioner to have the tenancy under the jurisdiction of Part IV of the Ordinance.

Where the premises are let as a domestic dwelling, then Part IV below will apply to them (unless one of the exceptions explained below applies). If they

are not let as a dwelling then Part IV cannot apply. This matters because: (i) a number of important covenants are implied into Part IV tenancies (along with an implied right of forfeiture in the event of breach); (ii) landlords are obliged to notify the Ratings and Valuation Commissioner when a Part IV tenancy is created or renewed; (iii) Part IV landlords are obliged to give rent receipts; and (iv) Part IV tenants enjoy enhanced protection from unlawful eviction.

Further, while tenancies created before 16 August 1945 continue to enjoy security of tenure, there is no security of tenure (beyond that provided by the lease itself) for those Part IV tenancies created after 8 July 2004 (enactment date of this Ordinance).

51B. Transfer of tenancy to Part IV on unilateral application

- (1) A landlord or tenant, or principal tenant or sub-tenant, of premises to which this Part applies may apply to the Commissioner in the specified form in duplicate for the tenancy, or sub-tenancy, to be excluded from the application of this Part.
- (2) An application under subsection (1) may be made-
 - (a) during the contractual period of the tenancy, or sub-tenancy (but not earlier than 12 months before the expiry of that period); or
 - (b) during its continuation under section 52(1).
- (3) An application under subsection (1) in relation to tenancy, or sub-tenancy, continuing under section 52(1) shall not be made-
 - (a) within 12 months after the date on which an increase in rent (other than on account of improvements or an increase in rates) becomes effective; or
 - (b) within 12 months after the date of service of a notice under subsection (5)(b) following an earlier application under this section.
- (4) Upon receipt of an application under subsection (1), the Commissioner shall serve a copy thereof on the other party and within 14 days of that service that party may make representations to the Commissioner.
- (5) The Commissioner shall consider any representations, determine any facts in dispute and shall-
 - (a) if he is satisfied that the current rent for the premises is not less than 77% of the prevailing market rent, issue a certificate approving the application and serve 1 copy on the landlord, or principal tenant, and 1 copy on the tenant, or sub-tenant; or

- (b) if he is not so satisfied, issue and serve a notice to that effect on the landlord, or principal tenant, and on the tenant, or sub-tenant.
- (6) Where the Commissioner approves the application under subsection (5), he shall state in his certificate a date upon which the tenancy, or sub-tenancy, shall be excluded from this Part; and, on that date, the tenancy shall, subject to subsection (8), be excluded from the application of this Part and Part IV shall apply to it.
- (7) The date mentioned in subsection (6) shall be-
- (a) in a case where the application is made during the contractual period of the tenancy, or sub-tenancy, the date on which the Commissioner issues his certificate under subsection (5)(a): Provided that the Commissioner shall not issue that certificate earlier than 7 months before the expiry of the contractual period; or
 - (b) in a case where the application is made during the continuation of the tenancy, or sub-tenancy, under section 52(1) and-
 - (i) the current rent is not less than the prevailing market rent; or
 - (ii) the rent has not been increased (other than on account of improvements or an increase in rates) during that continuation, the date on which the Commissioner issues his certificate under subsection (5)(a); or
 - (c) in a case where-
 - (i) the application is made during the continuation of the tenancy, or sub-tenancy, under section 52(1); and
 - (ii) the current rent is less than the prevailing market rent; and
 - (iii) the rent has been increased (other than on account of improvements or an increase in rates) during that continuation, a date not more than 18 and not less than 17 months after the date on which that increase became effective or, if there is more than 1 such increase, the date on which the last such increase became effective:

Provided that, where a period of 18 months has elapsed since the date on which that increase or that last increase became effective, the date mentioned in subsection (6) shall be the date on which the Commissioner issues his certificate under subsection (5)(a).
- (8) A certificate issued under subsection (5)(a) shall not affect-
- (a) any proceedings under section 53 commenced before the date of the issue of that certificate; or

- (b) any right to increase the rent under this Part following a proper notice served under section 55, 55A, 56, 63 or 63A or a certificate issued by the Commissioner under section 56A or 58 before that date.
- (9) In this section-
- “current rent” (現行租金) means the rent, exclusive of rates, payable by the tenant, or sub-tenant at the date of the application under subsection (1); and
- “prevailing market rent” (市值租金) means the rent, exclusive of rates, at which the premises might reasonably be expected to be let on a term of 2 years at the date upon which the Commissioner issues his certificate or notice under subsection (5), on the terms of the tenancy, or sub-tenancy (other than those relating to rent and duration of the tenancy or sub-tenancy) but disregarding the effect of this Part.

(Added 40 of 1984 s.17)

COMMENTARY

Overview

Section 51B is self-explanatory as it provides the practice and procedure in which a joint application to transfer a tenancy so that it will be under the jurisdiction of Part IV of the Ordinance be made to the Ratings and Valuation Commissioner.

51B.01

51C. Review of decisions under sections 51A and 51B

- (1) Where the Commissioner-
- (a) serves a notice under section 51A(3)(b); or
 - (b) serves a copy of his certificate under section 51B(5)(a); or
 - (c) serves a notice under section 51B(5)(b),

a party to the tenancy, or sub-tenancy, which is the subject of the application under those sections and who is aggrieved may, within 14 days of that service, apply to the Commissioner by notice in duplicate in the specified form for a review of his decision.

(2) On receipt of an application under subsection (1) and of such fee as may be determined by the Financial Secretary, the Commissioner shall review his decision and, after giving the parties the opportunity of making written submissions, he may affirm the decision or cancel it and decide the matter afresh, and shall serve a notice of his decision on the parties. (Amended 32 of 1985 s.10; 77 of 1988 s.4)

Section 119X Forms

Section 119Y Service of notice

Section 120 (Repealed 53 of 1993 s.31)

Editorial Note:

* Sections 116(3), (4) and (4A), 117(1) and (2), 118, 119, 119A, 119AA#, 119B, 119C, 119D, 119E, 119F, 119FA, 119FB#, 119G, 119H, 119I, 119J, 119K, 119M, 119N, 119NA, 119O, 119P and 119Q (all in Part IV) have been repealed by section 3 of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (16 of 2004). The related savings and transitional provisions, set out in sections 5 to 7 of 16 of 2004, are reproduced as follows:

“5. Savings in respect of Part IV

(1) In the case of a tenancy to which Part IV applies and which is in existence on the day before the commencement date*, if-

- (a) the landlord has before the commencement date given notice under and in accordance with section 119 of the principal Ordinance to terminate the tenancy; or
- (b) the tenant has before the commencement date made a request for a new tenancy under and in accordance with section 119A of the principal Ordinance,

then on and after the commencement date-

- (c) the provisions repealed by section 3 of this Ordinance shall continue to apply to the tenancy as if they were not repealed; and
- (d) the enactments amended by sections 10 to 16 of and the Schedule to this Ordinance shall, if applicable, apply to the tenancy as if they were not amended.

(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 (4) and (5), only be terminated by a transitional termination notice as provided for by section 6.

(3) The term “the tenancy” (該租賃) 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.

(4) 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.
- (5) Subsection (2) is without prejudice to-
- (a) section 7(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.
- (6) (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.
- (7) 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 7, 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.
- (8) If, before the commencement date, a landlord has successfully opposed the grant of a new tenancy on a ground specified in paragraph (b) or (c) of section 119E(1) of the principal Ordinance, the provisions of sections 119F and 119H of that Ordinance and of any condition imposed or order made under either of those sections apply in respect of the landlord as if those sections were not repealed on that date.
- (9) If, on the commencement date, a tenant is in possession of premises in the circumstances described in section 119NA(1) of the principal

Ordinance, the provisions of section 119NA of that Ordinance apply in respect of the tenant as if that section was not repealed on that date.

(10) Proceedings relating to Part IV which are pending in the Tribunal on the commencement date, and decisions of the Tribunal relating to that Part which have not been given effect to on that date, may respectively continue and be given effect to on and after the commencement date notwithstanding the repeal of certain provisions of that Part by section 3 of this Ordinance.

(11) Proceedings relating to provisions of Part IV saved by this section may be commenced in the Tribunal on or after the commencement date.

* Commencement date: 9 July 2004.

6. 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 tenancy for a fixed term 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(4), 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(5)(c) as to early termination); or
- (c) any other rule of law regarding the date on which a termination notice takes effect.

* Commencement date: 9 July 2004.

7. Other transitional provisions

(1) During the continuance of a tenancy as described in section 5(7), 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 an order for possession is made by the landlord 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 this section-"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."

Sections 119AA and 119FB have been added by sections 14 and 19 of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2002 (32 of 2002). Both sections have not yet commenced operation before their repeal by section 3 of 16 of 2004.

COMMENTARY

Overview of Part IV

Part IV of the Ordinance was newly revised and updated as a result of the substantial amendments to the law by the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 which came into effect on 9 July 2004.

Part IV applies to any private domestic tenancies and sub-tenancies. It does not control rent increases nor afford security of tenure to tenants but provides certain essential guidelines to regulate such tenancies. Accordingly, this Part IV does not apply to non-domestic tenancies *nor* does it apply to certain domestic tenancies and sub-tenancies created in writing for a fixed term of 5 years or more which contain no provision for early termination by the landlord and for the payment of a premium or increase in rent during the term.

Prior to 9 July 2004, Parts I and II of this Ordinance used to govern pre-war and post-war premises respectively, but both Parts have already expired as the common law position in regard to security of tenure is restored by the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004.

Landlords and tenants may now freely negotiate and enter into agreement for fresh letting or renewal of tenancies. The Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 has removed the former security of tenure regime which provided a domestic tenant with a statutory right to renew his tenancy at prevailing market rent. Following the commencement of the Amendment Ordinance with effect from 9 July 2004, domestic tenancies should be terminated in the following ways:

- (a) Domestic tenancies created on or after 9 July 2004

These tenancies may be terminated in accordance with the terms of the tenancy or as agreed between the parties. In the absence of a contractual notice requirement or mutual agreement, a fixed term tenancy will end upon expiry of the term and a periodic tenancy may be terminated by a notice to quit at the length of a full notice period in accordance with the common law.

- (b) Domestic tenancies in existence before 9 July 2004

- (i) *Where the former Part IV tenancy renewal procedure has been started*

Where the concerned procedure has been started before 9 July 2004 by the service of valid notices such as Specified Form CR101 or 103, the former tenancy renewal mechanism will continue to apply. The tenant may eventually apply to the Lands Tribunal to renew his tenancy for the last time. But note that the tenant must apply to the Lands Tribunal for this new tenancy before the termination date of the tenancy as set out in Specified Form CR101 above.

- (ii) *Where the former Part IV tenancy renewal procedure has not been started*

The former procedure can no longer be used if it has not been started before 9 July 2004. The concerned tenancies may only be terminated by a Transitional Termination Notice (TTN) to be served by the landlord on the tenant not less than 12 months, or by the tenant on the landlord not less than 1 month, before the intended termination date.

The TTN may be served anytime on and after 9 July 2004 provided it is not earlier than the last day of the term for fixed term tenancies, or the last day of the period current at 9 July 2004 for periodic tenancies.

Until terminated by a TTN, a tenancy will continue on its existing rent and terms notwithstanding expiry of the original duration of the tenancy. The TTN requirement also applies to sub-tenancies. A principal tenant who wants to terminate a sub-tenancy which is in existence before 9 July 2004 will also have to serve a TTN.

A landlord who wants to serve a TTN to also terminate any sub-tenancies created under the principal tenancy should serve the TTN on his tenant in both Chinese and English and post it on 3 successive days upon the main door or entrance of the premises affected.

A TTN will not be required if on or after 9 July 2004, the tenancy is assigned to a new tenant, or there is a change of the terms of the tenancy, or there is an agreement by the landlord and tenant concerning the period of notice of termination.

Definition of Transitional Termination Notice (TTN) under s.6 of Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004

A Transitional Termination Notice (TTN) is a kind of written notice of termination of tenancy. Domestic tenancies were *formerly afforded security* of tenure by Part IV. This regime has been removed by the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 which came into effect on 9 July 2004. To enable tenancies already in existence before this date to adapt to the change in the law, this Ordinance provides that such tenancies may only be terminated by mutual agreement or by a transitional termination notice.

IV.02

Circumstances that a transitional termination notice will not be required to terminate a domestic tenancy

In the following cases, a transitional termination notice will not be required to terminate a domestic tenancy that existed before 9 July 2004: (i) the former Part IV tenancy renewal procedure has already been started before 9 July 2004; (ii) there is a change of term on or after 9 July 2004; (iii) the landlord and tenant on or after 9 July 2004 agree on some other period of notice of termination; or (iv) the tenancy is assigned to a new tenant on or after 9 July 2004.

IV.03

Termination of domestic tenancy without requirement of transitional termination notice

Any termination of a domestic tenancy does not require a transitional termination notice if it is created on or after 9 July 2004, or if it is under the exceptional circumstances as mentioned above. In the absence of a contractual notice requirement or mutual agreement, the following common law principles will generally apply: (i) a fixed term tenancy will end upon expiry of its term; and (ii) a period tenancy will be terminated by a notice to quit at the length of a full tenancy period.

IV.04

Section 7 of Landlord and Tenant (Consolidation) (Amendment) Ordinance

IV.05 Subsections (1) and (2) of Landlord and Tenant (Consolidation) (Amendment) Ordinance deals with the circumstances in which the Land Tribunals can make an order for possession of any premises concerned.

Circumstances for the Lands Tribunal to have power to make an order for possession

IV.06 Subsection (1) of Landlord and Tenant (Consolidation) (Amendment) Ordinance provides that the Lands Tribunal can make an order for possession if it is satisfied that the demised premises or the relevant parts of the premises are 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.

However, such reason as suggested by the landlord shall be subjected to the following: (a) the landlord reasonably requires the premises if he has a genuine present need for them (*Ma Hon v Mabtani* [1981] HKLR 570); and (b) the landlord must show something more than a desire for the premises (*Chiu Kan Sui v Hong Kong Polytechnic* [1982] HKLR 75, CA). The onus is on the landlord to satisfy the court by positive evidence that he was acting *bona fide* and that he reasonably required possession for one of the persons mentioned in the section; see *Lusber v Hilliard* [1980] HKDCLR 25.

Circumstances for the Lands Tribunal to have no power to make an order for possession

IV.07 Subsection (2) of Landlord and Tenant (Consolidation) (Amendment) Ordinance provides that the Lands Tribunal may have no power to make an order for possession in the following circumstances: (i) for a tenancy, the tenant satisfies the Lands Tribunal that it would manifestly not be just and equitable to make the order; or (ii) for a sub-tenancy, the Lands Tribunal is satisfied that greater hardship would be caused by making the order than by refusing it even taking into account of other accommodations that are available for the principal tenant or the sub-tenant.

Definition of “when it would be manifestly not just and equitable to make the order” under s.7(2) of Landlord and Tenant (Consolidation) (Amendment) Ordinance

IV.08 The Lands Tribunal *has no power* to make an order for possession where:

- (i) in the case of a tenancy, the tenant satisfies the Lands Tribunal that, in all the circumstances of the case, it would manifestly not be just and equitable to make the order; or

- (ii) in the case of a sub-tenancy, the Lands 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

In *Lusber v Hilliard* [1980] HKDCLR 25, a tenant must satisfy the court that having regard to all the circumstances of the case, there were clear, cogent and compelling reasons why the making of an order for possession would result in injustice; see also *Cox v Scanlon* [2006] 1 HKLRD 326.

Shift of onus of proof to tenant

Once a landlord has established that premises are reasonably required by him, the *onus* will shift to the tenant. He shall establish that in all the circumstances, it would manifestly not be just and equitable to make an order for possession against him. The *onus* is a heavy one, as the tenant has to show that it would be thoroughly unjust to make the order (*Cheung Man Fing v Chung Wai Man* [1989] 2 HKLR 342, CA). To discharge the *onus*, the tenant must, on the balance of probabilities, prove that any primary facts on which he relied for the contention that it would manifestly not be just and equitable to make an order for possession (*Chan Lau v Wong Sui Mai* [1982] HKLR 1037, CA).

IV.09

Interpretation and Application**115. Interpretation**

- (1) In this Part, unless the context otherwise requires-
 - “Commissioner” (署長) means the Commissioner of Rating and Valuation;
 - “domestic tenancy” (住宅租賃) means a tenancy of premises let as a dwelling; (*Replaced 53 of 1993 s.26*)
 - “forfeiture” (沒收租賃權) means forfeiture-
 - (a) for breach of any provision of a tenancy; or
 - (b) under a provision of a tenancy allowing forfeiture or determination following the destruction, or partial destruction, of or damage to the premises; (*Added 40 of 1984 s.31*)
 - “landlord” (業主) includes any person, other than the Government, who is, from time to time, entitled to receive rent in respect of any premises and, in relation to a particular tenant, means the person entitled to receive rent from that tenant; (*Amended 29 of 1998 s.105*)
 - “notice to quit” (遷出通知書) means a notice to terminate a tenancy given in accordance with the express or implied provisions of that tenancy;
 - “premises” (處所) means the subject matter of any tenancy; (*Added 29 of 1983 s.29*)

“tenancy” (租賃) means a tenancy entered into orally or in writing and includes-

- (a) an agreement for a tenancy; and
- (b) a sub-tenancy; (*Amended 16 of 2004 s.10*)
- (c) (*Repealed 16 of 2004 s.10*)

“tenant” (租客) does not include a Government lessee but includes- (*Amended 29 of 1998 s.105*)

- (a) a sub-tenant; and
- (b) any government other than the Government of the Hong Kong Special Administrative Region, or a public body, corporation, partnership or firm which is the tenant of premises which is the subject matter of a tenancy to which this Part applies; (*Amended 23 of 1998 s.2*)

“Tribunal” (審裁處) means the Lands Tribunal established under the Lands Tribunal Ordinance (Cap.17).

(2) (*Repealed 53 of 1993 s.26*)

(3) No notice or application under this Part shall, for the purposes of the Land Registration Ordinance (Cap.128), be regarded as an instrument in writing by which any parcel of ground, tenement or premises may be affected or as creating a *lis pendens*. (*Added 29 of 1983 s.29*)

(*Amended 16 of 2004 s.10*)

[*cf. 1954 c. 56 s.46 U.K.*]

Editorial Note:

* Sections 116(3), (4) and (4A), 117(1) and (2), 118, 119, 119A, 119AA#, 119B, 119C, 119D, 119E, 119F, 119FA, 119FB#, 119G, 119H, 119I, 119J, 119K, 119M, 119N, 119NA, 119O, 119P and 119Q (all in Part IV) have been repealed by section 3 of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (16 of 2004). The related savings and transitional provisions, set out in sections 5 to 7 of 16 of 2004, are reproduced as follows:

“5. Savings in respect of Part IV

(1) In the case of a tenancy to which Part IV applies and which is in existence on the day before the commencement date*, if-

- (a) the landlord has before the commencement date given notice under and in accordance with section 119 of the principal Ordinance to terminate the tenancy; or
- (b) the tenant has before the commencement date made a request for a new tenancy under and in accordance with section 119A of the principal Ordinance,

then on and after the commencement date-

- (c) the provisions repealed by section 3 of this Ordinance shall continue to apply to the tenancy as if they were not repealed; and
- (d) the enactments amended by sections 10 to 16 of and the Schedule to this Ordinance shall, if applicable, apply to the tenancy as if they were not amended.

(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 (4) and (5), only be terminated by a transitional termination notice as provided for by section 6.

(3) The term “the tenancy” (該租賃) 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.

(4) 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.

(5) Subsection (2) is without prejudice to-

- (a) section 7(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.

(6) (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.

(7) 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 7, 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.

(8) If, before the commencement date, a landlord has successfully opposed the grant of a new tenancy on a ground specified in paragraph (b) or (c) of section 119E(1) of the principal Ordinance, the provisions of sections 119F and 119H of that Ordinance and of any condition imposed or order made under either of those sections apply in respect of the landlord as if those sections were not repealed on that date.

(9) If, on the commencement date, a tenant is in possession of premises in the circumstances described in section 119NA(1) of the principal Ordinance, the provisions of section 119NA of that Ordinance apply in respect of the tenant as if that section was not repealed on that date.

(10) Proceedings relating to Part IV which are pending in the Tribunal on the commencement date, and decisions of the Tribunal relating to that Part which have not been given effect to on that date, may respectively continue and be given effect to on and after the commencement date notwithstanding the repeal of certain provisions of that Part by section 3 of this Ordinance.

(11) Proceedings relating to provisions of Part IV saved by this section may be commenced in the Tribunal on or after the commencement date.

* Commencement date: 9 July 2004.

6. 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-
- by a landlord, not less than 12 months; or
 - 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-

- in respect of a tenancy for a fixed term which was in existence on the day before the commencement date, may not be served earlier than the last day of the term;
- 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-
- the notice is in both Chinese and English; and
 - 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(4), a transitional termination notice duly served in respect of a tenancy in accordance with this section takes effect according to its terms, notwithstanding-

- a change of landlord that does not create a new tenancy;
- any express or implied provision in the tenancy regarding the giving of notice of termination (subject to section 5(5)(c) as to early termination); or
- any other rule of law regarding the date on which a termination notice takes effect.

* Commencement date: 9 July 2004.

7. Other transitional provisions

(1) During the continuance of a tenancy as described in section 5(7), 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-