

New Law Provides Equal Rights for Landlords and Tenants

Introduction

There are a number of changes applicable to domestic and non-domestic tenancies following the gazettal and commencement of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (hereinafter referred to as "Amendment Ordinance") on 9 July 2004. Landlords and tenants should take note of these changes and seek professional advice if necessary.

Legislative Amendments

Domestic tenancies : removal of the security of tenure provisions.
Non-domestic tenancies : removal of the statutory minimum length of notice of termination.

Domestic Tenancies

Removal of Security of Tenure

Under the former security of tenure regime, a domestic tenant is entitled to statutory renewal of tenancy provided he is willing to pay the prevailing market rent. This regime has been abolished by the legislative amendments.

After Removal of Security of Tenure, How to Terminate a Domestic Tenancy Created before 9 July 2004?

Following the removal of security of tenure provisions, a tenancy will end upon expiry. There is a transitional arrangement to help landlords and tenants of **tenancies in existence before** the legislative amendments cope with the change: If the landlord or the tenant of a tenancy created before 9 July 2004 wants to terminate the tenancy, they can do so only by serving, after the term of the tenancy has expired, a transitional termination notice (TTN). Such a TTN must be served either 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.

Landlords and tenants should refer to the Amendment Ordinance for details of the TTN requirements, the gist of which is set out below for easy reference:

- (a) on or after 9 July 2004, a TTN can be served at any time but must not be earlier than the following dates:
 - for fixed term tenancies - the last day of the term;
 - for periodic tenancies - the last day of the tenancy period current at 9 July 2004.
- (b) the TTN requirement also applies to sub-tenancies: a principal tenant who wants to terminate a sub-tenancy will also have to serve a TTN;
- (c) 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;

- (d) until the termination date as specified in the TTN, the tenancy will continue on all existing terms, including the rental level;
- (e) a landlord may apply to the Lands Tribunal for possession of the premises for self-occupation at any time after the original term of the tenancy has expired, irrespective of whether a TTN has been served. Once granted, the possession order will override any TTN the landlord may have served;
- (f) the TTN requirement is applicable to the new owner in case of transfer of ownership of a leased residential property. In case the former owner has already served a TTN, the new owner of the property is bound by it;
- (g) a TTN will prevail over any express or implied provision in the tenancy regarding the giving of notice of termination; and
- (h) landlords who have served a TTN are encouraged to remind their tenants again of the termination date nearer the time. Tenants are advised to inform their landlords as early as possible of their removal intention.

A sample TTN is available at the Rating and Valuation Department (RVD) and District Offices. It can also be downloaded from RVD's website: www.info.gov.hk/rvd.

No TTN would be needed in the following situations:

- any of the terms of the tenancy, including but not limited to rental level, has been changed by mutual agreement on or after 9 July 2004;
- the landlord and tenant agree on some other period for notice of termination on or after 9 July 2004;
- the tenancy is assigned to a new tenant on or after 9 July 2004; or
- either the landlord or tenant has commenced the renewal procedure under the former Part IV of the Landlord and Tenant (Consolidation) Ordinance before 9 July 2004. Landlords and tenants of such cases may continue with and complete the procedure.

How to Terminate a New Domestic Tenancy after Removal of Security of Tenure?

Tenancies created or renewed on or after 9 July 2004 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.
- a periodic tenancy will be terminated by a notice to quit in accordance with the common law.

Non-domestic Tenancies

Removal of Statutory Minimum Length of Notice of Termination

Under the former statutory regime, a non-domestic tenancy will not come to an end after the expiry of the term specified in the tenancy unless a notice of termination has been served by a landlord on the tenant not less than six months, or by a tenant on the landlord not less than one month, before the end of the current tenancy. This requirement has been removed by the legislative amendments.

New Termination Arrangements for Non-domestic Tenancies Created before 9 July 2004

For tenancies whose terms have not expired by 9 July 2004, landlords and tenants may terminate the tenancies in accordance with the terms of the tenancy or as agreed between the parties. In the absence of such a relevant tenancy term or mutual agreement on how a tenancy should be terminated, a fixed-term tenancy will come to an end upon expiry, whereas a periodic tenancy will be terminated by a notice to quit in accordance with the common law.

Where the term of tenancy has already expired by 9 July 2004 but is still continuing as a month to month tenancy, the parties may terminate the tenancy by mutual agreement or serve a notice to quit on the other party one month before the intended termination date.

It should be noted that a notice of termination served in accordance with the former statutory regime before 9 July 2004 will continue to apply in relation to that tenancy.

Other Information

Landlords and tenants are invited to refer to the summary guide issued by RVD for various aspects of the Landlord and Tenant (Consolidation) Ordinance which apply to them after the amendments take effect. They may also read the booklet issued jointly by the Consumer Council and the Estate Agents Authority on tenancy agreements. The publications are available at District Offices and the organizations concerned.

Enquiries

For further enquiries, please call RVD's hotline at 2152 0111 or write to the Landlord and Tenant Services Division of the department at 15th floor, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon.