

Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7)

Effective from 22 January 2022

“Regulated Tenancies” At a Glance

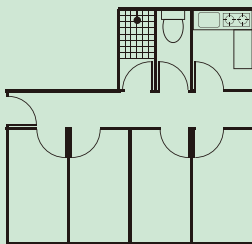
Regulation on
Rent Increase



差餉物業估價署
Rating and Valuation Department

1. Application

- (1) A tenancy which fulfills all of the following conditions is regulated (“regulated tenancy”) under Part IVA of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) (“Ordinance”) —
 - (i) the tenancy commences on or after 22 January 2022;
 - (ii) the tenancy is a domestic tenancy;
 - (iii) the subject premises of the tenancy are a subdivided unit;
 - (iv) the tenant is a natural person;
 - (v) the purpose of the tenancy is for the tenant’s own dwelling; and
 - (vi) the tenancy is not one specified in Schedule 6 to the Ordinance, i.e. the tenancy is not an excluded tenancy (please refer to the booklet on “Regulated Tenancies” for examples of excluded tenancies).
- (2) In general, the scope of regulation covers subdivided units (“SDUs”) of domestic, industrial and commercial buildings, and different types of SDUs (including cubicles, bedspaces, space capsules, lofts, cage homes, rooftop houses and podium houses, etc.). However, it does not cover “squatters” or “New Territories Exempted Houses”.
- (3) For the purposes of item 1(1)(i) above, fixed-term tenancies which commence before 22 January 2022 are not subject to the regulation under Part IVA of the Ordinance even though the tenancies fulfill the conditions mentioned in item 1(1)(ii)-(vi) above. However, periodic tenancies commencing before and existing on 22 January 2022 which fulfil certain conditions will also be subject to the regulation of Part IVA of the Ordinance (for details, please refer to the booklet on “Regulated Tenancies”).
- (4) A person having an interest in any premises, including the landlord and the tenant of a tenancy for the premises, may apply to the Lands Tribunal to determine whether or not a tenancy for the premises is a “regulated tenancy” for the purposes of Part IVA of the Ordinance.
- (5) One of the conditions of a “regulated tenancy” is that the tenancy is a domestic tenancy, and that the primary user of the subject premises of the tenancy may be one of the factors for consideration. A landlord or tenant of any premises may apply to the Commissioner of Rating and Valuation (“Commissioner”) for the issue of a primary user certificate for the premises.



Landlord or Tenant



Primary User Certificate

Rating and Valuation
Department

2. Key Requirements under Part IVA of the Ordinance

(1) Security of Tenure

- (i) A regulated cycle of tenancies for an SDU is to comprise 2 consecutive “regulated tenancies” (i.e. first term tenancy and second term tenancy) for the SDU. Each “regulated tenancy” is for a term of 2 years.
- (ii) A tenant of a first term tenancy for an SDU is entitled to be granted a second term tenancy of the regulated cycle, thus enjoying a total of 4 years of security of tenure.

(2) Rent Regulation

- (i) Rent increase during the term of a “regulated tenancy” is not allowed.
- (ii) The rate of rent increase for the second term tenancy of a regulated cycle must not exceed the percentage change of the territory-wide rental index for all classes of private domestic properties compiled and published by the Rating and Valuation Department (“RVD”) during the relevant period, and is capped at 10%. If the percentage is a negative figure, the rent for the second term tenancy is to be reduced at least by that percentage.

2 First Term years + **2** Second Term years



(3) Entering into Written Tenancy Agreement

If the landlord and tenant of an SDU have entered into a tenancy orally for a first term tenancy and the first term tenancy has commenced, the tenant may in writing demand the landlord to, within 30 days, serve on the tenant a written tenancy agreement reflecting the contents of the oral tenancy. If the landlord fails to do so, the tenant may elect either (i) to withhold the payment of rent until the landlord has done so; or (ii) to terminate the tenancy by, within 7 days after the specified period of 30 days mentioned above, giving the landlord not less than 30 days' prior notice in writing of the termination.



(4) Submission of Notice of Tenancy

The landlord must submit a Notice of Tenancy in Form AR2 to RVD within 60 days after the term of a “regulated tenancy” (including a first term tenancy and a second term tenancy) commences to notify RVD of the particulars of the tenancy.



Within 60 days

(5) Rental Deposit

Despite any provision of the tenancy, the rental deposit payable by a tenant of a “regulated tenancy” may not be more than 2 months' rent under the tenancy. The landlord must return the rental deposit to the tenant no later than the time specified in the Ordinance.

(6) Early Termination by Tenant

A tenant of a “regulated tenancy” may, by giving the landlord not less than 30 days’ prior notice in writing, terminate the tenancy. However, the date of termination must not be a date earlier than the last day of the first year of the term.

(7) Mandatory Terms Implied for Every “Regulated Tenancy”

(i) Landlord’s Obligations

(a) Maintenance and repair

The landlord must maintain and keep in repair the drains, pipes and electrical wiring serving the premises exclusively; and windows of the premises. In addition, the landlord must keep in proper working order the fixtures and fittings provided by the landlord in the premises. On receiving a notice from the tenant for repair of an item mentioned above, the landlord must carry out the repair as soon as practicable.



If the landlord fails to fulfil any of his obligations, the tenant may, by giving the landlord not less than 30 days’ prior notice in writing, terminate the tenancy.

(b) Stamping of the tenancy agreement

The landlord must, after receiving the tenancy agreement (including a Form AR1 signed by the landlord and tenant for a second term tenancy) signed by the tenant, cause the tenancy agreement to be stamped (the relevant stamp duty is to be borne solely by the landlord), and within 30 days, return to the tenant a counterpart of the stamped tenancy agreement signed by the parties.



If the landlord fails to return the counterpart, the tenant may withhold the payment of rent until the landlord has done so.



(ii) Tenant’s Obligations

(a) The tenant must pay the rent to the landlord on or before the due date.

(b) The tenant –

- must not use the premises for any immoral or illegal purpose;
- must not do anything on the premises that would cause any unnecessary annoyance, inconvenience or disturbance to the landlord or any other person;
- must not make any structural alteration to the premises without the prior consent in writing of the landlord;
- must not assign or underlet the whole of the premises to another person; or
- must not underlet part of the premises to another person without the prior consent in writing of the landlord.

(iii) Landlord's Re-entry

If the tenant is in breach of item 2(7)(ii)(a) above and fails to pay the rent within 15 days after the due date, or is in breach of any sub-item of item 2(7)(ii)(b) above, the landlord may enforce a right of re-entry or forfeiture.

(8) Second Term Offer

(i) Landlord Must Make Second Term Offer

A landlord of a first term tenancy for an SDU must, within the offer period (see item 2(8)(ii) below), make a second term offer in Form AR1 (to be available from October 2023) to the tenant for a second term tenancy of the regulated cycle for the SDU, and serve the offer on the tenant.

(ii) Offer Period

Offer period means the period of the second calendar month immediately before the calendar month in which the purported second term tenancy commences. For example, if a second term tenancy is to commence on any date of January 2024, the relevant offer period is the whole month of November 2023.

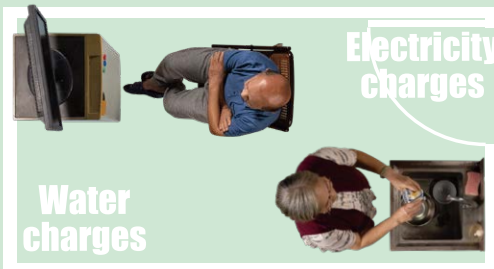
3. Offences Targetting “Regulated Tenancies”

(1) Prohibiting Landlord from Charging Expenses Arbitrarily

A landlord of a “regulated tenancy” commits an offence if the landlord requires the tenant to pay any money or pay for the reimbursement of the charges for utilities and services (including water and electricity) as specified by Part IVA of the Ordinance other than that permitted by that Part of the Ordinance.

(2) Landlord Must Submit Notice of Tenancy

The landlord must, within 60 days after the term of a “regulated tenancy” (including a first term tenancy and a second term tenancy) commences, submit a Notice of Tenancy (Form AR2) to RVD. If the landlord, without reasonable excuse, fails to comply with the relevant requirement, the landlord commits an offence.





[www.rvd.gov.hk/en/our_services/
tenancy_matters.html](http://www.rvd.gov.hk/en/our_services/tenancy_matters.html)



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Disclaimer

The purpose of this pamphlet is to introduce the main provisions of Part IVA "Regulated Tenancies" of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) for general reference by the public only. This pamphlet is not a legal document, nor can it be regarded as an authoritative legal interpretation. Anyone who has questions about the provisions of the Ordinance should seek the advice of a lawyer.