

Part V

Governs tenancies of non-domestic premises if less than 3 years. If the tenancy is for a fixed term of 3 years or more but contains a break clause allowing either party to terminate the tenancy prior to the expiry of the fixed term, the tenancy would also be governed by Part V. To terminate a tenancy governed by Part V, a Landlord must serve 6 months' notice of termination on the Tenant before the date of termination. In the event there is subletting or the Landlord suspects subletting by the Tenant, the Landlord should post up the notice of termination (in English and Chinese) on a conspicuous part of the Property for 3 consecutive days, which serve to terminate all subtenancies.

The law is as stated at January 2003

The law relating to Landlord and Tenant in Hong Kong is complex. This pamphlet is written simply as a guide and a brief introduction to the issues involved. This pamphlet is not meant to be exhaustive and does not constitute legal advice. If you require legal advice on any of the topics raised in this pamphlet you should consult a solicitor.

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For further information please contact our
Hong Kong office:-

3104-7, 31/F., Central Plaza
18 Harbour Road, Wanchai
Hong Kong

Telephone : (852) 2598 1318
Facsimile : (852) 2588 1318
E-mail address : kanlaw@fredkan.com

FRED KAN & CO.

Solicitors & Notaries
Hong Kong

LAW GUIDE SERIES No. 3

Landlord and Tenant

Hong Kong Office
3104-7, 31/F., Central Plaza
18 Harbour Road
Wanchai, Hong Kong
Telephone : (852) 2598 1318
Facsimile : (852) 2588 1318
E-mail address : kanlaw@fredkan.com

Tianjin Office
A-1-1010 ICTC
59 Machang Road, Hexi District
Tianjin, China
Telephone : (86) (22) 2313 9761 / 2
Facsimile : (86) (22) 2313 9763

INTRODUCTION

It is in the interests of both landlords and tenants to be familiar with the Landlord and Tenant (Consolidation) Ordinance ("the Ordinance") which governs tenancy matters in Hong Kong.

THE ORDINANCE IN OUTLINE

The Ordinance is divided into seven parts.

PART I

Provides security of tenure, that is, protects tenants from eviction and controls rent increases. It applies generally to tenancies of domestic premises constructed before 16th August 1945.

PART II

Prior to its repeal in 2000, Part II governs tenancies of domestic premises created before 19th June 1983. It limits the increase in rent and provides security of tenure to tenants. Part II already expired and is no longer applicable

PART III

Deals with distress for rent, that is, the sale of a tenant's personal property to pay for arrears of rent. The District Court has jurisdiction to issue warrants of distress for arrears of rent in all cases, without any limitation to the value of the property and to the amount of rent to be levied. Landlords should note, however, that no warrant for distress will be issued if the arrears of rent have been due for more than 12 months at the time of the application.

PART IV

Provides security of tenure and regulates the renewal of tenancies of domestic premises created after 19 June 1983 and any domestic tenancy to which Part I has ceased to apply with certain exceptions. Most residential tenancies fall within this Part IV.

PART V

Deals with termination of non-domestic tenancies.

PART VI

Deals with small tenements recovery.

PART VII

Deals with miscellaneous matters.

SECURITY OF TENURE/TERMINATION OF TENANCY

Parts I and IV of the Ordinance protect tenants of domestic premises from eviction by their landlords. Whereas Part V protects tenants of non-domestic premises. Part IV governs more than 90% of tenancies of domestic premises, as premises erected before 16th August 1945 are extremely rare in Hong Kong. Under Part IV, a tenancy shall not come to end unless terminated in accordance with Part IV.

PART IV

A. Landlord's termination

- (1) A landlord may terminate the tenancy by serving a notice in "Form CR101" on the tenant not less than 3 months nor more than 4 months prior to the termination date of the tenancy. The Landlord must specify in the said notice whether he would oppose an application by the Tenant to the Lands Tribunal for a new tenancy and, if so, state the ground of opposition.
- (2) The tenant should then within one month of receipt of Form CR101 notify the landlord in "Form CR102" whether or not he would give up possession of the premises.
- (3) Tenant must then apply to the Lands Tribunal for a new tenancy before date of termination of the tenancy as set out in the Form CR101

B. Tenant's termination

If a landlord has not served Form CR101 on the tenant, the tenant may make a request for a new tenancy in "Form CR103" to the landlord terminating the tenancy, such notice to be served not less than 3 months nor more than 4 months prior to the date of termination. The landlord may within one month give notice in "Form CR104" to the tenant that he will oppose an application to the Lands Tribunal for the grant of a new tenancy and state the ground. The Tenant must then apply to the Lands Tribunal for a new tenancy before the date of termination of the tenancy as specified in the Form CR103 completed by the Tenant and served on the Landlord.

C. Grounds of opposition by Landlord

- (a) the tenant is in arrears of rent or in breach of the covenant or condition of the tenancy;

- (b) the landlord reasonably requires the premises of occupation for himself, his parent or his son or daughter over the age of 18;
- (c) the landlord intends to rebuild the premises;
- (d) the tenant has caused unnecessary annoyance, inconvenience or disturbances to the landlord or to any other person;
- (e) the tenant has used, or has suffered or permitted the use of the premises for an immoral or illegal purpose;
- (f) the tenant has sublet the whole or any part of the premises and does not occupy and part of the premises as his dwelling. The Lands Tribunal shall make an order for the grant of a new tenancy unless the Tribunal is satisfied that the landlord has established any of the above grounds.

- D. Rent The rent for the new tenancy shall be the prevailing market rent for the property.

MATTERS TO OBSERVE

A landlord must give his tenant a rent receipt containing certain particulars of the tenancy, such as, the period covered and the date of payment. A landlord who fails to do so commits an offence.

A landlord who has obtained an order for possession of premises on the ground of self-occupation or rebuilding shall not for a period of 24 months let, assign, transfer or part with possession of the premises for other purposes without consent of commissioner of Rating and Valuation.

Where a tenant agree to surrender a tenancy, the agreement shall have no effect unless it is in the specified form and endorsed by the Commissioner.

PART IV

Where a tenancy agreement is entered into, the landlord must lodge with the Commissioner a notice in "Form CR109". The landlord shall not be entitled to maintain an action to recover rent under the tenancy agreement unless the notice is endorsed by the Commissioner.

Neither the landlord nor the tenant can by agreement with each other waive or otherwise contract out of the provisions under the Ordinance.