LAWS OF HONG KONG

LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE

CHAPTER 7

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CHAPTER 7

LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE

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CHAPTER 7

LANDLORD AND TENANT (CONSOLIDATION)

To consolidate Ordinances relating to landlord and tenant, protection and determination of tenancies, and control and recovery of rent.

[23 May 1947]


Short title

1. This Ordinance may be cited as the Landlord and Tenant (Consolidation) Ordinance.

PART I

PROTECTED TENANCIES AND PERMITTED RENTS

Interpretation and Application

Interpretation

2. In this Part, unless the context otherwise requires—

“agricultural land” means land which is held from the Crown on terms the effect of which is to prohibit the use thereof otherwise than as agricultural land or to prohibit the erection thereon of any building without the consent of the Crown;  (Added 22 of 1953 s. 2)

“Building Authority” means the Building Authority as defined in section 2 of the Buildings Ordinance (Cap. 123);  (Added 22 of 1953 s. 2)

“business premises” means premises which are not domestic premises;  (Replaced 22 of 1953 s. 2)

“Commissioner” means the Commissioner of Rating and Valuation;  (Added 10 of 1975 s. 2)

“dependent premises” means premises which are the subject of a separate letting and which are not self-contained in respect of ablution, privy and cooking facilities;
"domestic premises" means premises the subject of a separate letting (including any bed-space, cubicle, room, floor or portion of a floor or building) which are used wholly or primarily for human habitation:  \( \text{(Amended 22 of 1953 s. 2)} \)

Provided that the following shall not be deemed to be domestic premises within the meaning of this definition—

(a) any building or portion of a building which is used for habitation only by caretakers or watchmen not exceeding 2 in number;

(b) any building or portion of a building which is used for habitation only by office attendants or their families;

(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" includes any person, other than the Crown, 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;

"lease" or "tenancy agreement" includes every agreement for the letting of any premises, whether oral or in writing;

"let" includes sublet and "letting" includes subletting;

"order" means an order of the Tribunal;  \( \text{(Replaced 76 of 1981 s. 2)} \)

"permitted rent" means the rent lawfully payable under this Part in respect of any premises;  \( \text{(Added 22 of 1953 s. 2)} \)

"premises" means the subject matter of any tenancy;

"prevailing market rent" 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), on the terms of the tenancy (other than those relating to rent and duration of the tenancy) but disregarding the effect of this Part;  \( \text{(Added 39 of 1979 s. 2. Amended 29 of 1983 s. 46)} \)

"principal tenant" means a tenant of premises other than a Crown 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;

"standard rent" with respect to any premises other than dependent domestic premises means—

(a) if the premises were actually let unfurnished on 25 December 1941, the rate of rent which was recoverable from the sitting tenant; and

(b) 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
(c) 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 76 of 1981 s. 2)

and in respect of any dependent domestic premises means that proportion of the rent of the whole of the premises let to a principal tenant at the rate prescribed in paragraphs (a), (b) and (c), as the case may be, as is fairly attributable to such dependent domestic premises; (Amended 22 of 1953 s. 2)

“tenancy” includes a sub-tenancy;

“tenant” does not include a Crown lessee but includes a sub-tenant and—

(a) 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;

(b) a person who retains possession of any premises by virtue of this Part;

(c) 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” 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” means the Lands Tribunal established under the Lands Tribunal Ordinance (Cap. 17). (Replaced 76 of 1981 s. 2)

(25 of 1947 s. 2 incorporated)

Application of this Part

3. (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)

* See s. 38 of the Landlord and Tenant Ordinance 1947 (25 of 1947).
(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 Crown;

(Amended 13 of 1948 s. 3; 40 of 1984 s. 2)

(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)

Power to exclude application of this Part

4. (1) The Governor 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)

(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)

* See s. 38 of the Landlord and Tenant Ordinance 1947 (25 of 1947).
(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) Notwithstanding the provisions of section 15, 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:

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)

5. (Repealed 76 of 1981 s. 5)

Re-entry by Crown

6. (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 Crown lease or other tenancy from the Crown; 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 Crown lease, or of a condition or stipulation of the tenancy of such land, and a right of re-entry thereon under the Crown Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126) shall be deemed to have accrued to the Crown.

(2) Where a right of re-entry is deemed under subsection (1) to have accrued to the Crown and in exercise of such right the Crown 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)

Registration in Land Office of order under section 4

7. (1) The Commissioner shall cause an order made under section 4 to be registered by memorial in the Land Office against the premises affected.

(Replaced 76 of 1981 s. 7)

(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)

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

Standard Rent

Assessment of standard rent

8. (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)

No rent in excess of the standard rent

9. Save as in this Part provided no rent shall be recoverable in respect of any premises to which this Part applies in excess of the standard rent thereof notwithstanding any agreement to the contrary whenever made and whether oral or in writing.

(25 of 1947 s. 4 incorporated)

Permitted rent not to exceed prevailing market rent

9A. The permitted rent of any premises to which this Part applies shall not exceed their prevailing market rent or, where the rates in respect of the premises are payable by the landlord, the aggregate of the following amounts—
(a) the prevailing market rent of the premises; and

(b) the amount of the rates payable in respect of the premises.

(Added 39 of 1979 s. 5. Amended 29 of 1983 s. 46)

Permitted increases and adjustments

10. (1) There shall be payable and recoverable by way of rent of premises to which this Part applies an amount equivalent to 39 times the standard rent of the premises.  (Replaced 40 of 1984 s. 4. Amended 32 of 1985 s. 2; 37 of 1986 L.N. 202/87; 77 of 1988 s. 2)

(1A) Where the rent of any premises is less than the permitted rent, the landlord may, subject to subsections (1B) and (1C), increase the rent by serving on the tenant a notice in the specified form, specifying the new rent and the date from which it is to take effect.  (Added 93 of 1975 s. 3)

(1B) Any increase in rent under subsection (1C) shall take effect not earlier than the first day when rent becomes due after the expiration of one month from the service of the notice.  (Added 93 of 1975 s. 3)

(1C) Where a landlord serves a notice on the tenant under subsection (1A) he shall, at the same time, send a copy of the notice to the Commissioner.  (Added 93 of 1975 s. 3. Amended 39 of 1976 s. 6)

(2) Where as part of the tenancy agreement furniture is provided for the use of the tenant the landlord shall be entitled to make such a charge for the use of such furniture (whether expressed by way of rent or otherwise), as, having regard to the value of the same to the tenant, is reasonable:

Provided that no such charge shall be recoverable until the landlord has specified by notice in writing to the tenant the consideration (whether by way of rent or otherwise) which he attributes to such furniture.

(3) Where the landlord of any premises incurs expenditure of $5,000 or more on improvements to such premises, the landlord may increase the rent payable in respect of those premises by 20% per annum of the amount expended on the improvements.  (Replaced 76 of 1981 s. 9)

(3AA) Where rent is increased under subsection (3), the increase shall not take effect except in pursuance of a notice of increase in the specified form served by the landlord on the tenant, specifying the increase and the date from which it is to take effect.  (Added 76 of 1981 s. 9)

(3AB) The date specified in a notice of increase under subsection (3AA) shall be not earlier than the first day when rent becomes due after the expiry of one month from the service of the notice.  (Added 76 of 1981 s. 9)

(3AC) Where the landlord of any premises incurs expenditure of $5,000 or more on improvements to such premises and those premises comprise 2 or more tenements then the amount expended shall be apportioned between the tenements and the rent payable in respect of any tenement may be increased in accordance with this section by reference to the part of the expenditure apportioned to it.  (Added 76 of 1981 s. 9)
(3A) In determining the amount of expenditure incurred on improvements, expenditure incurred in the 6 months immediately prior to the date of service of the notice of increase under subsection (3AA) may be aggregated.  
(Replaced 76 of 1981 s. 9)

(3B) No account shall be taken of—

(a) expenditure incurred prior to the commencement of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1976 (56 of 1976);

(b) expenditure in respect of which an increase in rent has previously been made under this section.  
(Added 56 of 1976 s. 2)

(3BA) Where a landlord serves on a tenant a notice of increase under subsection (3AA), the landlord shall send a copy of that notice to the Commissioner.  
(Added 76 of 1981 s. 9)

(3BB) A tenant on whom a notice of increase in rent is served under subsection (3AA) may, not later than one month after the service of the notice, apply to the Tribunal for an order cancelling or reducing the increase on the ground—

(a) that the improvement was unnecessary:

Provided that where the premises the subject of the improvement comprise 3 or more tenements and more than two-thirds of the tenants of those premises (other than sub-tenants) have consented in writing to the improvement, the improvement shall be deemed to be necessary;

(b) that a greater amount was expended on the improvement than was reasonable; or

(c) where the increase follows an apportionment under subsection (3AC), that the apportionment was unreasonable, and the Tribunal may make an order accordingly.  
(Added 76 of 1981 s. 9)

(4) If the Commissioner is satisfied on the application of a landlord or tenant of premises other than dependent domestic premises that the services and facilities which the landlord is liable to provide under the tenancy agreement differ from those which the landlord was liable to provide under the tenancy agreement by reference to which the standard rent was ascertained, the Commissioner may adjust the standard rent accordingly and upon such adjustment the rent substituted by the Commissioner shall be and become the standard rent for the purposes of this Part but without prejudice to further adjustment under this subsection or under other provisions of this Part.  
(Amended 76 of 1981 s. 9)

(5) Nothing in this Part shall be taken to authorize any increase of rent in respect of a period prior to 23 May 1947.

(6) If any notice served for the purposes of subsection (1) contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable on summary conviction to a fine of $1,000 unless he proves that the statement was made innocently and without intent to deceive.

(7) Where the notice of an increase of rent which at the time was valid has been served on any tenant, the increase may be continued without service of any fresh notice on any subsequent tenant.
(8) The Legislative Council may by resolution amend subsection (1) by substituting, for the figure specified therein, such figure as may be specified in the resolution.  \(\text{(Added 39 of 1979 s. 6. Amended 40 of 1984 s. 4)}\)

(9) In this section—

“improvement” includes structural alteration, extension or addition and the provision of additional fixtures and fittings, but does not include anything done by way of decoration or repair.  \(\text{(Added 76 of 1981 s. 9)}\)

\(\text{(25 of 1947 s. 6 incorporated)}\)

Certificates of prevailing market rent

10A. (1) Where a landlord serves a tenant with a notice of increase of rent under section 10(1A) the tenant may, within 14 days of being so served, apply for a certificate under subsection (5) by sending an application in the specified form in duplicate to the Commissioner.

(2) On receipt of an application under subsection (1) the Commissioner shall serve a copy thereof on the landlord.

(3) Within 14 days of service on him under subsection (2) of a copy of the tenant’s application, the landlord may send his representations thereon to the Commissioner.

(4) Where the Commissioner receives representations from a landlord under subsection (3) which indicate that the landlord disputes any fact set out in the tenant’s application, he shall determine the facts in dispute and then deal with the application in accordance with subsection (5).

(5) Where a tenant makes an application under subsection (1), the Commissioner shall, if satisfied that the increased rent specified in the landlord’s notice under section 10(1A)—

(a) does not exceed the prevailing market rent of the premises aggregated, where the rates in respect of the premises are payable by the landlord, with the amount of the rates, issue free of charge and serve on the landlord and tenant certificates in the specified form to that effect;

(b) exceeds the prevailing market rent of the premises aggregated, where the rates in respect of the premises are payable by the landlord, with the amount of the rates, issue free of charge and serve on the landlord and tenant certificates in the specified form stating—

(i) the prevailing market rent of the premises; and

(ii) where the rates in respect of the premises are payable by the landlord, the amount of the rates,

and may endorse on the certificates such matters as he thinks proper relating to such application, which, in the case of a dispute as to facts shall include the Commissioner’s determination thereof under subsection (4).  \(\text{(Amended 29 of 1983 s. 46)}\)

(6) A certificate issued under subsection (5) shall in any proceedings be prima facie evidence of the facts set out therein.

(7) \(\text{(Repealed 40 of 1984 s. 5)}\)
(8) Nothing in this section shall prejudice any right which a landlord, tenant or sub-tenant may have to make an application under section 32 to the Tribunal.  *(Amended 76 of 1981 s. 10)*

(9) In this section—

“landlord” does not include a principal tenant; and

“tenant” does not include a sub-tenant.  *(Added 39 of 1979 s. 8)*

**Increase in rent on account of rates**

**10AA.** (1) Where—

(a) a landlord bears the rates in respect of any premises and after 31 March 1975 there is an increase in the amount of the rates payable; or

(b) rates are imposed after 31 March 1975 in respect of any premises and the landlord bears those rates,

the landlord may, subject to subsection (2), increase the amount of rent payable by the tenant of those premises by the amount of the increase in rates or by the amount of the rates imposed, as the case may be.

(1A) For the purposes of subsection (1)(b), rates shall be deemed not to be imposed where rates become payable by reason only that the premises cease to be exempt from assessment to or payment of rates under section 36 of the Rating Ordinance (Cap. 116).  *(Added 29 of 1983 s. 4)*

(2) Where the amount of rent is increased under this section the increase shall not take effect except in pursuance of a notice of increase in the specified form served by the landlord on the tenant, specifying the increase and the date from which it is to take effect.

(3) The date specified in a notice of increase under subsection (2) shall not be earlier than—

(a) the date from which the increased rates or the rates imposed, as the case may be, are payable; or

(b) 24 months prior to the date of service of the notice,

whichever is the later.  *(Replaced 29 of 1983 s. 4)*  *(Added 10 of 1975 s. 4.  Amended 39 of 1979 s. 7)*

**Increase in rent following apportionment**

**10B.** (1) Where section 10AA(1) applies in respect of any premises and the premises form part of a tenement or consist of, or form part of, more than one tenement, the landlord may apply to the Commissioner in the specified form for a certificate under subsection (2).

(2) On receipt of an application under subsection (1), the Commissioner shall make such apportionment or aggregation of the rates as he considers necessary to determine the amount of rates attributable to the premises and shall serve on the landlord and on the tenant certificates in the specified form stating the amount by which the rent may be increased.
(3) Where the Commissioner has served a certificate under subsection (2), the rent of the tenancy may be increased, in accordance with section 10AA, by the amount shown in the certificate.

(4) In this section, "tenement" shall have the meaning assigned to it by section 2 of the Rating Ordinance (Cap. 116).

(Added 10 of 1975 s. 4. Amended 39 of 1979 s. 9)

Increase in rent of sub-tenancy on account of rates

10C. (1) Where—

(a) a principal tenant bears the rates in respect of any premises the subject of a sub-tenancy and after 31 March 1975 there is an increase in the amount of rates payable;

(b) rates are imposed after 31 March 1975 in respect of any premises the subject of a sub-tenancy and the principal tenant bears those rates; or

(c) the rent of a tenancy has been increased under section 10AA or 10B and a sub-tenancy has been created out of that tenancy, (Amended 39 of 1979 s. 10)

the principal tenant may, subject to subsection (5), increase the amount of the rent payable by the sub-tenant by the amount of the increase in the rates or by the amount of the rates imposed, as the case may be, attributable to the premises the subject of the sub-tenancy.

(1A) For the purposes of subsection (1)(b), rates shall be deemed not to be imposed where rates become payable by reason only that the premises cease to be exempt from assessment to or payment of rates under section 36 of the Rating Ordinance (Cap. 116). (Added 29 of 1983 s. 5)

(2) Where subsection (1) applies in respect of any premises, a principal tenant may apply to the Commissioner in the specified form for a certificate under subsection (3).

(3) On receipt of an application under subsection (2) the Commissioner shall make such apportionment or aggregation of the rates as he considers necessary to determine the amount of rates attributable to the premises the subject of the sub-tenancy and shall serve on the principal tenant and on the sub-tenant certificates in the specified form stating the amount by which the rent of the sub-tenancy may be increased.

(4) Where the Commissioner has served a certificate under subsection (3), the rent of the sub-tenancy may, subject to subsection (5), be increased by the amount shown in the certificate.

(5) Where the amount of rent of a sub-tenancy is increased under this section, the increase shall not take effect except in pursuance of a notice of increase in the specified form served by the principal tenant on the sub-tenant specifying the amount of the increase and the date from which it is to take effect.

(6) The date specified in a notice of increase under subsection (5) shall be not earlier than—

(a) the date from which the increased rates or the rates imposed, as the case may be, are payable; or (Replaced 29 of 1983 s. 5)
(b) the date on which the increase in rent of the principal tenancy on account of rates became payable; or

(c) 24 months prior to the date of service of the notice of increase on the sub-tenant,

whichever is the later. *(Amended 29 of 1983 s. 5)* *(Added 10 of 1975 s. 4)*

Rent of premises conditionally excluded

11. 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 until the Building Authority has certified that such condition has been fulfilled the provisions of this Part in regard to permitted rent shall continue to apply to such premises notwithstanding such exclusion, and it shall be unlawful to demand or receive in respect of such premises or any part thereof any rent in excess of the permitted rent of the premises or such part, and any person who demands or receives any rent in contravention of this section shall be guilty of an offence and shall be liable on summary conviction to a fine of $10,000.

*(Added 30 of 1955 s. 7)*

Rent lawfully chargeable for dependent domestic premises

12. The rent lawfully chargeable by a principal tenant in respect of any dependent domestic premises shall not exceed a sum of money equal to the aggregate of the following sums—

(a) the standard rent of the premises calculated in accordance with the definition of "standard rent" in section 2; and

(b) a sum equal to 30% of that standard rent; and

(c) any increase of that standard rent authorized by or under this Part or any Ordinance; and

(d) any increase in rent under section 10C. *(Added 10 of 1975 s. 5)* *(Added 22 of 1953 s. 7)*

Statement to be supplied as to standard rent

13. A landlord of any premises to which this Part applies shall, on being so requested in writing by the tenant of such premises or by the superior landlord of such landlord, supply the tenant or the superior landlord, as the case may be, with a statement in writing of the standard rent of such premises, and, if, without reasonable excuse, he fails within 14 days so to do, or supplies a statement which is false in any material particular, he shall be liable on summary conviction to a fine of $1,000.

*(25 of 1947 s. 21 incorporated)*
Postponement of permitted increase where repairs effected by tenant

14. If the tenant of any premises has since 16 August 1945, with the consent of the landlord of such premises, effected repairs thereto which were necessary to render the said premises reasonably habitable and the sum expended by such tenant has amounted to the equivalent of not less than the standard rent of such premises for a period of 6 months, that portion of the rent permitted under section 10(1) which exceeds the standard rent shall not commence to accrue or become payable or recoverable until such time as the amount thereof would, but for this provision, have been equal to one-half of the amount expended by the tenant on such repairs.

(25 of 1947 s. 7 incorporated. Amended 39 of 1979 s. 11)

Offences

15. (1) Any person who—

(a) demands or receives rent in excess of the permitted rent of any premises; (Replaced 22 of 1953 s. 8)

(b) demands or receives any consideration whether in money, in kind or in any other manner whatsoever and whether by way of rent, fine, premium or otherwise, for the grant, surrender, termination, renewal, continuance or transfer of any tenancy; (Amended 22 of 1953 s. 8; 30 of 1955 s. 2)

(c) being or acting as a broker, agent or go-between demands or receives for his services in connection with the procuring of the grant, renewal, continuance or transfer of the tenancy of any premises any consideration the value of which exceeds 5% of the standard rent for 1 year of such premises; or (Amended 22 of 1953 s. 8)

(d) where the purchase or hire of any furniture, fittings, fixtures or other articles is required by him as a condition for the grant, renewal, continuance or transfer of any tenancy, demands or receives any price or consideration for such purchase or hire in excess of a reasonable price or consideration therefor, (Amended 22 of 1953 s. 8)

shall be guilty of an offence and shall be liable on summary conviction to a fine of $4,000. (Amended 22 of 1953 s. 8)

(2) Upon conviction of a person of an offence against subsection (1), it shall be lawful for a magistrate, in addition to imposing a fine—

(a) to order the defendant to pay to the tenant—

(i) any sum received in excess of the permitted rent; or

(ii) the amount or value of the consideration mentioned in subsection (1)(b) or (c); or

(iii) the amount by which the price or consideration for such purchase or hire as is mentioned in subsection (1)(d) exceeds a reasonable price or consideration therefor; and

(b) if the defendant is a principal tenant to order his ejectment. (Replaced 22 of 1953 s. 8)
(3) Nothing in this section shall prejudice the right of any person to recovery by civil action any such sums as a magistrate may order to be paid under the provisions of subsection (2).

(4) Any person who, in any document required under this Part to be lodged with or served on the Commissioner, makes a false statement, knowing it to be false or not believing it to be true, commits an offence and is liable to a fine of $5,000.  *(Added 40 of 1984 s. 6)* *(25 of 1947 s. 8 incorporated)*

Recovery of excessive payments by civil action

16. The person by whom any payment has been made or consideration has been given the demanding or receiving of which is made an offence under the provisions of section 15 may recover the amount or value thereof by action:  *(Amended 76 of 1981 s. 11)* *(25 of 1947 s. 9 incorporated)*

Provided that any action for such recovery shall be commenced within 6 months after the making of such payment or giving of such consideration.

Protected Tenancies

Restriction on recovery of possession and effect of retention of possession

17. (1) No order against a tenant for the recovery of possession of or for ejectment from any premises to which this Part applies shall be made otherwise than under this Part or under any Ordinance empowering any court or magistrate to make an order terminating the tenancy of any premises or for the closure of or ejection of the tenant from, any premises, by reason of the use thereof for immoral or illegal purposes or of the dangerous, insanitary or overcrowded state thereof, or with respect to which any offence has been committed.

(2) Any tenant who before 23 May 1947 has retained possession of any premises by virtue of any enactment repealed by this Part* and who is on 23 May 1947 in possession of premises to which this Part applies and any tenant who shall retain possession by virtue of this Part shall so long as he retains possession observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with this Part, and shall be entitled to give up possession only on giving such notice as would have been required under the original contract of tenancy, or, if no notice would have been so required on giving not less than 1 month's notice:

Provided that notwithstanding anything in the contract of tenancy a landlord who obtains an order for the recovery of possession from or the eviction of any tenant retaining possession as aforesaid shall not be required to give any notice to quit to the tenant.

(3) Subsection (1) shall not apply to—

* See s. 38 of the Landlord and Tenant Ordinance 1947 (25 of 1947).
(a) proceedings by a person claiming under a title adverse and superior to that under which the original tenancy, by virtue of which the tenant became entitled to retain possession, was derived; or

(b) proceedings against a derivative landlord:

Provided that no order or judgment against a derivative landlord for the recovery of possession or ejectment therefrom shall affect the right of any sub-tenant to whom the premises or any part thereof shall have been lawfully sublet before proceedings for recovery of possession or ejectment were commenced to retain possession under this section or be in any way operative against any such sub-tenant.

(4) Notwithstanding the provisions of subsection (1), a closure order may be made under section 27 (Closure Order) of the Buildings Ordinance (Cap. 123). (Added 43 of 1949 s. 3) (25 of 1947 s. 5 incorporated)

Surrender, etc. of tenancy for consideration allowed under certain circumstances

18. (1) Notwithstanding the provisions of section 15(1)(b), a tenant may, pursuant to an agreement in accordance with subsection (2), receive consideration whether in money, in kind or in any other manner whatsoever, for the surrender or termination of his tenancy.

(2) An agreement referred to in subsection (1) shall—

(a) be in such form as the Commissioner shall approve;

(b) have endorsed thereon a certificate referred to in subsection (3)(c); and

(c) be lodged with the Commissioner within 28 days of its execution, with such fee as may be determined by the Financial Secretary. (Amended 40 of 1984 s. 7; 32 of 1985 s. 3)

(3) The Commissioner or any public officer authorized by him in that behalf—

(a) shall satisfy himself that the tenant—

(i) in entering or proposing to enter into an agreement under this section understands the effect of such agreement; and

(ii) in signing or agreeing to sign such an agreement has not been subject to any undue pressure or influence; and

(b) may make such inquiries as he thinks fit for the purposes of paragraph (a); and

(c) shall, if satisfied as to the matters specified in paragraph (a), endorse upon the agreement a certificate to that effect in such form as the Commissioner shall, from time to time, specify. (Amended 93 of 1975 s. 5; 32 of 1985 s. 3)

(4) Nothing in subsection (3) shall be construed as imposing upon the Commissioner or any public officer any duty to inquire into or be satisfied as to the reasonableness or otherwise of the consideration specified in the agreement.
(5) Where, after the commencement of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1973 (64 of 1973), an agreement is made for the surrender or termination of a tenancy under subsection (1), the premises to which the agreement relates shall be excluded from the further application of this Part.  \( (Added\ 64\ of\ 1973\ s.\ 2)\)
\( (Added\ 40\ of\ 1968\ s.\ 2.\ \ Amended\ 18\ of\ 1974\ s.\ 2;\ 10\ of\ 1975\ s.\ 6)\)

**Duties of principal tenant**

19. (1) Every principal tenant shall affix and shall keep affixed on a conspicuous part of the premises comprised in his principal tenancy a notice in Form 1 in the Second Schedule stating the rent payable by him to his landlord and shall give to each sub-tenant notice in writing of the part of such rent which he attributes to the premises let to such sub-tenant.

(2) Every principal tenant shall, whether the same shall be demanded or not, give to each sub-tenant at the time of his paying the same a receipt for the amount of the rent paid and such receipt shall state the period in respect of which such rent was payable.

(3) Every principal tenant shall, within 1 month after becoming a principal tenant, furnish to his landlord a full and true statement showing the name of all the sub-tenants of such principal tenant with sufficient particulars of the parts of the premises occupied by and of the standard rent and gross rent payable by and of the date of first occupation by each of them.  \( (Amended\ 11\ of\ 1954\ s.\ 3)\)

(4) A principal tenant who fails to comply with any of the provisions of subsections (1), (2) and (3) shall be guilty of an offence and shall be liable on summary conviction to a fine of $2,000.  \( (Amended\ 22\ of\ 1953\ s.\ 10)\)

(5) Upon the hearing of any summons issued under this section, it shall be lawful for a magistrate, in addition to imposing a fine if the defendant is convicted, to order the eviction of the defendant.  \( (Amended\ 22\ of\ 1953\ s.\ 10)\)

(6) Where a principal tenant is evicted under the provisions of this section or of section 15, the sub-tenants of such principal tenant shall be deemed to be and shall thereafter be tenants of the immediate landlord of such principal tenant and shall be deemed to hold their respective premises upon the terms and conditions upon which they held them from the principal tenant:

Provided that such immediate landlord shall be entitled to demand or receive from such sub-tenant only such rent as he would have been entitled to demand or receive if the tenancy of the principal tenant had been terminated under the provisions of section 21 and shall undertake towards the sub-tenants all those obligations formerly undertaken by the principal tenant.

(7) It shall be the duty of the immediate landlord of the principal tenant to ensure that the provisions of subsection (1) are complied with, and an immediate landlord who fails without reasonable excuse (the burden of proving which shall be upon him) to ensure that the said provisions are complied with shall be guilty of an offence and shall be liable on summary conviction to a fine of $2,000.  \( (Added\ 22\ of\ 1953\ s.\ 10)\)

\( (25\ of\ 1947\ s.\ 11\ incorporated)\)
Provision of rent receipts

19A. (1) A landlord shall give to his tenant, at the time the tenant pays the rent, a receipt for the amount of rent paid and the receipt shall contain—

(a) the name and address of the landlord;

(b) the period in respect of which such rent was paid; and

(c) the date of payment.

(2) A landlord who fails to comply with subsection (1) commits an offence and is liable to a fine of $2,000.

(Added 29 of 1983 s. 6)

20. (Repealed 40 of 1984 s. 8)

Termination of principal tenancy

21. (1) The immediate landlord of a principal tenant may by service of notice to quit in Form 2 in the Second Schedule and in manner specified in section 44 terminate the tenancy of such tenant in accordance with the provisions of, and to the extent provided in, this section.

(2) The length of notice given by the notice to quit aforesaid shall be either that required by the contract between the landlord and the principal tenant or in default of any term in the contract specifying the length of notice, one calendar month from the date of service thereof.

(3) Upon the expiration of such notice to quit—

(a) each sub-tenant shall be deemed to be the tenant of the immediate landlord and to hold the premises upon the same terms and conditions as he held them from the principal tenant;

(b) each sub-tenant affected thereby shall be liable to pay to the immediate landlord on demand the permitted rent of the premises let to him under contract with the principal tenant;

(c) the immediate landlord shall undertake towards each sub-tenant all those obligations undertaken by the principal tenant previous to service of notice under subsection (1).

(4) At any time within 14 days after the service of the notice to quit, the principal tenant may elect by notice in writing to the landlord to deliver up the whole of the premises subject to the tenancy or to retain any portion thereof retained, immediately before the service of the notice to quit, for his own occupation.

(5) Where the principal tenant retains for his own occupation any part of the premises the subject of his tenancy from the immediate landlord, he shall be deemed to be the tenant of the immediate landlord in respect of the retained part and to hold the same upon a monthly tenancy. The rent of the retained part shall be the aggregate of the following sums—

(a) such proportion of the standard rent of the whole of the premises previously held by him as principal tenant as is fairly attributable to the retained part; and
(b) where the premises are dependent domestic premises, a sum equal to 30% of that proportionate part of the standard rent; and \textit{(Amended 11 of 1954 s. 4)}

(c) any increase of that proportionate part of the standard rent authorized under this Part or any Ordinance:

Provided that in the event of any dispute between the immediate landlord and the principal tenant as to the amount of the rent payable by such principal tenant, such dispute may be referred to and decided by the Commissioner. \textit{(Amended 76 of 1981 s. 12)}

(6) Notwithstanding anything in this Part, and in particular, the definition of "tenant" in section 2, a lessee of the Crown who recovers by virtue of this section any premises to which this section relates shall be deemed to be an immediate landlord of his principal tenant for all the purposes of this section and shall have all the rights and obligations conferred and imposed by this section on an immediate landlord. \textit{(Replaced 22 of 1953 s. 11)}

\textbf{Saving as to new agreements to vacate}

\textbf{22.} Subject to the provisions of section 15, nothing in this Part shall be taken to limit the right of a landlord and tenant (whether or not the tenant is a tenant to whom section 17(2) applies) to agree to such stipulations and conditions as they shall think fit in regard to the duration of the tenancy and in particular to any stipulation in regard to termination of the tenancy in the event of the landlord desiring to sell the premises or to obtain possession for occupation by himself or any member of his family:

Provided that no landlord shall be entitled by reason of any agreement made under the foregoing provision to obtain an order for the ejectment of any tenant unless he satisfies the Tribunal or a court, as the case may be, that the tenant intended by such agreement to deprive himself of the protection against ejectment afforded by this Part. \textit{(Amended 30 of 1955 s. 4; 76 of 1981 s. 13)} \textit{(25 of 1947 s. 13 incorporated)}

\textbf{Saving for unexpired term}

\textbf{23.} Nothing in this Part shall entitle any landlord during the currency of any written lease of any premises for a definite and unexpired term, to any rent higher than the rent reserved in such lease. \textit{(25 of 1947 s. 14 incorporated)}

\textbf{Landlord may enter and effect necessary repairs}

\textbf{24.} (1) A landlord and his servants and agents may—

(a) at all reasonable times, enter and inspect the premises the subject of the tenancy with a view to ascertaining whether they require any necessary repairs; and

(b) after service upon the tenant of 14 days' notice in writing of intention so to do, enter upon the premises the subject of the tenancy and effect all necessary repairs.
(2) For the purposes of this section, "necessary repairs" means any repairs which the tenant would be required to perform were he under covenant with the landlord to keep the premises in a tenantable state of repair.

(3) The Tribunal on the application of a tenant or a landlord may—
   (a) determine any dispute or difference between a tenant and a landlord as to the construction and application of this section;
   (b) decide whether any repairs which the landlord proposes to execute are necessary repairs;
   (c) order a tenant for such period as to the Tribunal may appear reasonable to vacate the premises the subject of the tenancy or part thereof to facilitate the execution of necessary repairs, and in its discretion grant any extension of such period;
   (d) order the ejectment of a tenant who, in the opinion of the Tribunal, has unreasonably refused to allow the landlord to enter the premises the subject of the tenancy or any part thereof for the purpose of effecting any necessary repairs or in order to ascertain whether there are necessary repairs to be effected;
   (e) order the tenant to suffer the landlord and his servants and agents to enter upon the premises the subject of the tenancy or part thereof for the purpose of executing all necessary repairs, or in order to ascertain whether there are any necessary repairs to be effected, and give any direction which may appear to it to be desirable with regard to the manner and times in which and at which the repairs are to be effected;
   (f) order that in respect of any period during which the premises the subject of the tenancy have been reasonably vacated by the tenant to facilitate the execution of necessary repairs, the permitted rent shall abate by such proportion as the period during which the tenant has so vacated the premises bears to the concurrent period or periods in respect of which rent is payable; or
   (g) order restoration of possession to a tenant entitled to such possession by virtue of subsection (4).

(4) A tenant who in order to facilitate the execution of necessary repairs vacates the premises the subject of the tenancy or part thereof whether of his own volition or at the request of the landlord or pursuant to an order of the Tribunal shall not be deemed to have lost possession thereof unless the Tribunal has ordered his ejectment under subsection (3)(d), and shall be entitled to have possession restored to him (as soon as conveniently may be after the repairs have been effected), and the Tribunal is hereby empowered upon application by the tenant to make an order that possession be restored to the tenant.

(Added 22 of 1953 s. 7. Amended 76 of 1981 s. 14)

25–27. (Repealed 76 of 1981 s. 15)

Commissioner may approve contracting out in certain circumstances

28. (1) A landlord and a tenant or prospective tenant of any premises to which this Part applies may make a joint application to the Commissioner for
his approval under subsection (3) of the terms of any tenancy agreement into which they propose to enter.

(2) An application under subsection (1) shall be in the specified form in triplicate and shall be accompanied by a copy of the proposed agreement and such fee as may be determined by the Financial Secretary.  

(Amended 32 of 1985 s. 4)

(3) Notwithstanding anything contained in this Part, the Commissioner shall, if he is satisfied in relation to the proposed agreement—

(Amended 32 of 1985 s. 4)

(a) that the tenant or prospective tenant understands its effect;

(b) that the tenant or prospective tenant in assenting to enter into such an agreement has not been subject to any undue pressure or influence; and

(c) that no sub-tenants are prejudiced thereby,

approve the proposed agreement and endorse the application submitted to him under subsection (1) with a statement to that effect and serve a copy thereof on the landlord and on the tenant or prospective tenant.

(4) The Commissioner may make such inquiries as he thinks fit for the purposes of subsection (3) but nothing in subsection (3) or this subsection shall be construed as imposing on the Commissioner or any public officer any duty to inquire into or be satisfied as to the reasonableness or otherwise of the consideration specified in the agreement.

(5) Where the Commissioner approves the terms of a proposed agreement under subsection (3) the parties may execute a tenancy agreement in the terms so approved, notwithstanding anything in this Part.

(6) Where an agreement is executed under subsection (5)—

(a) the landlord shall lodge a copy thereof with the Commissioner within 28 days of its execution; and  

(Amended 40 of 1984 s. 9)

(b) the building or part thereof to which the agreement relates shall be excluded from the further application of this Part notwithstanding the termination or expiry of the agreement.

(Replaced 39 of 1979 s. 12)

(For savings and transitional provisions see Ord. No. 39 of 1979 s. 25(1))

Commissioner may revise rent in certain cases

29. Subject to section 23, if the standard rent of any premises either—

(a) is a rent which was agreed upon in writing at some date before 1 July 1937; or

(b) is not higher than the rent recoverable from the tenant in actual occupation on 1 July 1937,

the landlord of such premises may apply to the Commissioner to fix, and the Commissioner may fix, such other rent as the Commissioner shall think fit as the standard rent to be paid in respect of such premises during the continuance of this Part:
Provided that nothing in this section shall affect any rent which became due before the date of the determination by the Commissioner fixing the rent.

(25 of 1947 s. 16 incorporated. Amended 76 of 1981 s. 16)

Commissioner may increase standard rent if unreasonably low

30. Notwithstanding anything contained in this Part, the Commissioner may, on the application of a landlord, increase the standard rent of any premises by such amount as the Commissioner considers reasonable, if the Commissioner is satisfied that—  (Amended 76 of 1981 s. 17; 32 of 1985 s. 5)

(a) the standard rent of the premises is unreasonably low, having regard to the general level of rents prevailing on 25 December 1941 for premises of a similar character in the same neighbourhood; or

(b) the standard rent of the premises ought to be increased, having regard to improvements in the amenities of the neighbourhood in which the premises are situate, such improvements having occurred after 25 December 1941.

(Added 22 of 1953 s. 13)

Commissioner may decrease standard rent if unreasonably high

31. Notwithstanding anything contained in this Part, the Commissioner may, on the application of a tenant, decrease the standard rent of any premises by such amount as he considers reasonable, if the Commissioner is satisfied that the standard rent of the premises ought to be decreased, having regard to any deterioration in the amenities of the neighbourhood, or in the condition of the premises, such deterioration having occurred after 25 December 1941.

(Added 22 of 1953 s. 13. Amended 76 of 1981 s. 18; 29 of 1983 s. 7)

Tribunal may hear appeals and, in certain cases, fix or apportion rent, etc.

32. The Tribunal on the application of landlord or tenant may—

(aa) hear any appeal from any decision, determination or assessment of the Commissioner made under this Part; or (Added 76 of 1981 s. 19)

(a) fix any rent which for any reason is not otherwise determinable under the provisions of this Part; or

(b) apportion any rent to which this Part relates other than, in the first instance, for the purpose of assessing the standard rent of dependent premises; or (Amended 29 of 1983 s. 8)

(c) entertain and determine any dispute or difference as to the amount of rent payable in respect of any premises to which this Part applies including any increase of rent, and any charge for the use of furniture by or the provision of services to the tenant, or so far as may be necessary to carry this Part into effect as to the right to the possession of such premises; or
(d) entertain and determine concurrently with any other application, any application for the payment of rent or mesne profits of any premises to which this Part applies accruing due on or after 1 October 1945, and make such order thereon as the Tribunal shall think fit.

(25 of 1947 s. 17 incorporated. Amended 76 of 1981 s. 19)

Order for ejectment of tenant

33. (1) The Tribunal on the application of a landlord may make an order for the recovery of possession from or the ejectment of—

(a) a principal tenant who has been served with a notice under section 21 and who has elected to quit and failed to do so or who has collected or attempted to collect rent from the sub-tenants of such premises in respect of a period subsequent to the expiration of a calendar month following the service of such notice; (Amended 11 of 1954 s. 5)

(b) a tenant who has been convicted of an offence against this Part or of using or suffering or permitting to be used the premises or any part thereof for an immoral or illegal purpose;

(c) a tenant who, except for a cause which the Tribunal shall deem sufficient to entitle the tenant to the continued protection of this Part being a cause not attributable either to his own default or to lack of means, fails to pay within 15 days after demand the permitted rent which has accrued due; (Replaced 22 of 1953 s. 14. Amended 29 of 1983 s. 9)

(d) a tenant who has failed to observe and perform any stipulation or condition of his tenancy agreement other than save as hereinafter provided a stipulation or condition imposing an obligation to vacate the premises;

(e) a tenant who has agreed to vacate the premises and who, in the opinion of the Tribunal, intended by such agreement to deprive himself of the protection against ejectment afforded by this Part;

(f) a person who became a tenant between 16 August 1945 and 23 May 1947 upon the condition that he should vacate the premises on the return of the person who was the tenant before 25 December 1941 and who has neglected or refused so to vacate the premises upon receipt of notice from the landlord that such former tenant had returned to Hong Kong and that the premises were required for his use; (Amended 32 of 1985 s. 6)

(g) a tenant who has given written notice to quit the premises and has failed to quit the same on the expiry of such notice;

(h) a tenant who has been guilty of conduct, or has suffered any person residing or lodging with him to be guilty of conduct, which is a nuisance or annoyance to the landlord or to other tenants or the occupiers of adjacent premises, or has persistently failed to keep his premises in a reasonably sanitary condition by reason of which failure the landlord has been required to comply with a notice served upon him under section 127 of the Public Health and Municipal Services Ordinance (Cap. 132); (Amended 10 of 1986 s. 32(1))
(i) a tenant who obtained a tenancy by reason of being employed by his landlord and who has ceased to be in such employment;

(j) a tenant of land which has not been developed by the erection of buildings of a permanent character, which is required by a landlord for his own use or for the erection of buildings of a permanent character.

(2) No order for the recovery of possession of any premises from a tenant or for the ejectment of a tenant of any premises shall be made under the provisions of subsection (1)(c) unless it is established by the landlord to the satisfaction of the Tribunal that the demand which the tenant has failed to meet was for a sum of money not in excess of the permitted rent of the premises.

(Added 22 of 1953 s. 14)

(25 of 1947 s. 18 incorporated. Amended 76 of 1981 s. 20)

Order for ejectment of principal tenant not to operate against sub-tenants

34. An order for ejectment made against any principal tenant shall not, unless the Tribunal so directs, operate as an order for ejectment of any sub-tenant of such principal tenant, but immediately upon the making of such an order such sub-tenants shall be deemed to be tenants of the immediate landlord of the principal tenant in like manner as is provided by section 21(3) and such immediate landlord shall undertake towards them the obligations theretofore undertaken by the principal tenant.

(25 of 1947 s. 23 incorporated. Amended 76 of 1981 s. 21)

Order for recovery where domestic premises are required for occupation by landlord, etc.

35. (1) The Tribunal on the application of a landlord or of the personal representative of a deceased landlord (not being a landlord who has become such landlord by purchasing premises or any interest therein after 1 September 1946) may make an order for the recovery of possession of any domestic premises or for the ejectment of the tenant therefrom where such premises are reasonably required for occupation as a residence for such landlord or for any son or daughter of his over 18 years of age, or, where the landlord is dead, for the surviving spouse, son or daughter over 18 years of age or father or mother of such deceased landlord:

Provided that no such order shall be made unless the Tribunal is satisfied having regard to all the circumstances of the case, including any alternative accommodation available for the persons for whose occupation the premises are so required or for the tenant, that greater hardship would be caused by refusing to grant the order than by granting it.

(2) No person obtaining an order for the recovery of possession of or ejectment from any premises under subsection (1) shall within 12 months after the date of such order assign, transfer, sublet or part with the possession of the premises or any part thereof without the previous consent of the Tribunal.

(3) Where a person has obtained an order for the recovery of possession of or ejectment from any premises under the provision of subsection (1) and it is
subsequently made to appear to the Tribunal that the order was obtained in bad faith or by the misrepresentation or concealment of material facts or where such person is shown to have acted in breach of the provisions of subsection (2), the Tribunal may order the landlord to pay to the former tenant such sum as may appear to the Tribunal to be sufficient to compensate such tenant for the cost, damage, loss or inconvenience sustained by him as a result of the order for recovery of possession or ejectment.

(25 of 1947 s. 19 incorporated. Amended 76 of 1981 s. 22)

Order where subletting is made without landlord’s consent

36. The Tribunal on the application of a landlord may make an order for the recovery of possession from or ejectment of the occupier of any premises the rent whereof is payable monthly, the tenant of which has, after 1 March 1946 without the consent in writing of the landlord, assigned, transferred, sublet or parted with the possession of such premises or any part thereof:

Provided that no order shall be made under this section against an occupier holding as the sub-tenant of a principal tenant any portion of any domestic premises which premises before 22 October 1945 were divided into and let as separate domestic premises, or since that date have, with the consent of the landlord, been so divided and let.

(25 of 1947 s. 20 incorporated. Amended 76 of 1981 s. 23)

Tenant if a party to an application under section 36 shall be bound by an order made thereunder

37. A tenant who has been made a party to an application under section 36 shall without prejudice to any appeal be bound by an order in favour of the landlord made under that section, and any tenancy in the premises to which the order relates to which such tenant is or might be entitled by virtue of this Part shall cease and determine.

(Added 22 of 1953 s. 15)

Apparent change in occupancy shifts onus of proof to tenant

38. Where a landlord establishes a prima facie case that there has been an apparent change in the occupancy of premises or of part thereof, the tenant shall be deemed to have parted with the possession of such premises or of such part unless he satisfies the Tribunal to the contrary.

(Added 22 of 1953 s. 15. Amended 76 of 1981 s. 24)

A tenant about to absent himself from Hong Kong for certain periods may sublet under conditions

39. (1) A tenant of domestic premises not being a corporation or unincorporate body shall not be deemed to have assigned, transferred, sublet or parted with possession for the purposes of section 36 if the Tribunal is satisfied that— 

(Amended 76 of 1981 s. 25)

(a) he sublet to a person for a period during which the tenant was absent from Hong Kong; and
(b) such subletting occurred with the consent of the landlord or the landlord’s consent was unreasonably withheld; and

(c) the tenant was absent from Hong Kong for a period of not less than 3 and not more than 9 months; and

(d) such person did not pay or promise to pay to the tenant a consideration in excess of the rent payable by the tenant to the landlord.

(Added 32 of 1985 s. 7)

(2) Whether or not the conditions of this section have been complied with a person who has obtained possession of premises to which this Part applies on condition that he will give up possession to the tenant on the tenant’s return to Hong Kong shall not be entitled to the protection of this Part as against the tenant after such tenant’s return or as against the landlord. (Amended 32 of 1985 s. 7)

(3) Nothing herein contained shall entitle a person who has obtained possession of any premises by reason of this section to retain possession as against the landlord after the expiration of 9 months from the date when he first obtained such possession.

(Added 22 of 1953 s. 15)

Power to adjourn, etc.

40. Upon any application for the recovery of possession of any premises or the ejectment of the tenant therefrom the Tribunal may—

(a) in lieu of making an order adjourn the application for a period not exceeding 30 days and subject to such conditions as it thinks proper;

(b) upon making such order direct that it shall not be operative until the expiration of any period not exceeding 30 days specified in such order and may make any such direction subject to such conditions as it thinks proper.

(25 of 1947 s. 22 incorporated. Amended 76 of 1981 s. 26)

41–42. (Repealed 76 of 1981 s. 27)

Appeal to Court of Appeal

43. (1) Any party to proceedings before the Tribunal may appeal to the Court of Appeal against a determination or order of the Tribunal on the ground that such determination or order is erroneous in point of law.

(2) An appeal under this section shall be subject to the provisions of, and any rules made under, the Lands Tribunal Ordinance (Cap. 17).

(Replaced 76 of 1981 s. 28)

Costs

43A. In any proceedings under this Part, the Tribunal shall not make any order as to costs against a party unless that party has conducted his case in a frivolous or vexatious manner.

(Added 76 of 1981 s. 29)
General

Enlargement of time

43B. The Commissioner may extend any time fixed by this Part for the making of any application to him or for the lodging of any document with him. \(\text{Added 40 of 1984 s. 10}\)

Service of notice

44. (1) Any notice given under this Part may be served upon the person affected thereby either personally or by leaving the same with any occupier of the premises to which the same relates, or by leaving the same with some adult inmate at the usual or last known place of business or residence of the person to be served, or, if the person to be served cannot readily be found, by affixing the notice on a conspicuous part of the premises to which the same relates.

(2) The provisions of subsection (1) shall not apply in respect of the service of any notice under section 21, but in such cases service shall be effected by posting the prescribed form of notice in English, together with a copy in Chinese, upon the main door or entrance of the premises affected, and by reposting the same if necessary upon the second and third day thereafter, and upon the expiration of the third day such notice shall be deemed to have been served upon all persons including sub-tenants affected thereby. \(\text{Added 22 of 1953 s. 22. Amended 14 of 1957 s. 3}\)

(3) Without prejudice to subsection (1), service of any notice under section 10(1A) or 10(3AA) or notice, application or certificate under section 10A, 10AA, 10B or 10C may be effected by the recorded delivery service, or registered post, addressed to the last known place of business or residence of the person to be served. \(\text{Added 10 of 1975 s. 8. Amended 93 of 1975 s. 8; 39 of 1979 s. 13; 76 of 1981 s. 30; 40 of 1984 s. 11}\)

Exercise of powers of Commissioner

44A. (1) The Commissioner may, for the purposes of this Part—

(a) serve on any person a requisition in the specified form requiring him to furnish to the Commissioner, within such reasonable period as the Commissioner may specify in the form, the particulars reasonably required by the Commissioner by the requisition;

(b) require the landlord, tenant or sub-tenant or former landlord, tenant or sub-tenant of any premises to exhibit to him all documents relating to the tenancy and user of the premises, including leases, receipts for rent, rent-books and accounts, and the Commissioner may take copies of those documents;

(c) at any reasonable time, with the consent of the occupier, enter and inspect any premises and take such measurements and other particulars as he thinks fit;

(d) require the occupier or other person in control of the premises, following not less than 24 hours notice in writing delivered at the premises, to allow the Commissioner to enter and inspect those
premises at any reasonable time and take such measurements and other particulars as he thinks fit;

(e) after the expiry of not less than 24 hours notice in writing to the occupier of the premises or, if the occupier cannot be found, to the landlord or other person in control of the premises, enter at any reasonable time during day-light (using such force as may be necessary) and inspect any premises and take such measurements and other particulars as he thinks fit.

(2) Any public officer or class of public officer employed in the Rating and Valuation Department and authorized in writing in that behalf by the Commissioner may exercise any of the powers and perform any of the duties conferred or imposed on the Commissioner by this Part.

(Replaced 40 of 1984 s. 12)

Refusal to furnish information and obstruction

44B. (1) Any person who, without reasonable excuse—

(a) refuses or neglects to furnish any of the particulars specified under section 44A(1)(a);

(b) refuses or neglects to exhibit any document he is required to exhibit under section 44A(1)(b);

(c) refuses to allow the Commissioner to take copies of any document exhibited under section 44A(1)(b); or

(d) obstructs or evades the exercise of any power under section 44A(1)(c), (d) or (e),

commits an offence and is liable to a fine of $10,000 and to imprisonment for 3 months.

(2) Where the Commissioner is frustrated or obstructed in the exercise of any power under section 44A(1)(c), (d) or (e), he may apply to the court for an order authorizing him to enter and inspect the premises concerned and exercise his powers and requiring the landlord, tenant, sub-tenant, occupier or person having control of the premises to allow the Commissioner to enter and inspect those premises and exercise his powers; and the court shall have jurisdiction to make such order as it thinks fit.

(3) An application under subsection (2) may be made at the conclusion of any proceedings in respect of an alleged offence under subsection (1) (whether or not any person is convicted) or independently of any such proceedings.

(4) In this section, “court” means the District Court, the Tribunal or a magistrate.

(Added 40 of 1984 s. 12)

Prohibition of acts done mala fide with intent to induce a lessee to quit

45. (1) Any person who shall mala fide do any act whatsoever with intent to induce the lessee of any premises to give up possession thereof shall be liable on summary conviction to a fine of $2,000.
(2) Upon the hearing of any summons issued under this section it shall be lawful for a magistrate, in addition to imposing a fine if the defendant is convicted, to order the defendant to pay to the lessee such sum as may appear to the magistrate to be sufficient to compensate the lessee for any costs, damages, loss or inconvenience sustained by him by reason of such act.

(25 of 1947 s. 33 incorporated. Amended 22 of 1953 s. 23)

Collection of rates not to be affected

46. 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)

Forms

47. (1) The forms in the Second Schedule are prescribed for use under this Part and shall in each case be accompanied by a translation thereof in the Chinese language. (Added 22 of 1953 s. 33)

(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)

48. (Repealed 93 of 1975 s. 11)

PART II

Tenure and Rent of Domestic Premises

Interpretation and Application

Interpretation

49. In this Part, unless the context otherwise requires—

"Building Authority" means the Building Authority under the Buildings Ordinance (Cap. 123);

"Commissioner" means the Commissioner of Rating and Valuation;

"court" means the District Court;

"current rent" 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" means forfeiture—
(a) for breach of any provision of a tenancy or sub-tenancy; or

(b) 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” includes any person, other than the Crown, 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;

“prevailing market rent” 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” means a tenant of premises, other than a Crown lessee, who has sublet the whole or any part or parts thereof as a separate holding or holdings;

“repealed Part II” 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” includes an agreement for a tenancy;

“tenant” or “sub-tenant” does not include a Crown lessee but includes—

(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) a public body, corporation, foreign or Commonwealth Government, 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)

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

Application

50. (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” 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 Crown, the Hong Kong Housing Authority, the Hong Kong Housing Society, the Hong Kong Model Housing Society or the Hong Kong Settlers Housing Corporation Limited, or a sub-tenancy created out of such a tenancy;  
(Revised 52 of 1981 s. 2)

(f)–(g)  
(Revised 76 of 1981 s. 32)

(h)  
(Revised 29 of 1983 s. 11)

(i)–(k)  
(Revised 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” 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 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 Buildings and Lands, or any person authorized by him, certifying that the premises are complete; or  
(Revised L.N. 370/81; L.N. 76/82; L.N. 94/86; 60 of 1987 s. 14)

(iii) where section 21 of the Buildings Ordinance 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;  
(Revised 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;  
(Revised 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;  
(Revised 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.  
(Revised 29 of 1983 s. 11)

(7)–(8)  
(Revised 29 of 1983 s. 11)

(9) The Governor may by order exclude from the further application of this Part any class of tenancy or sub-tenancy, any class of premises or any particular tenancy or sub-tenancy or premises.
(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)

Block lettings

50A. (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)

Continuation of tenancies in block lettings

50B. (1) Where—

(a) by virtue of section 50A(2), a dwelling is deemed to be subject to a separate tenancy; and

(b) 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—
(i) shall be as agreed by the parties; or
(ii) failing agreement—
   (A) the rent shall be as determined by the Commissioner in accordance with subsection (2); and
   (B) 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—
   (a) the terms of the tenancy of which the dwelling forms part;
   (b) the terms ordinarily applicable to a tenancy of a dwelling in premises consisting of 2 or more dwellings; and
   (c) 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)

Interpretation

50C. (1) For the purposes of sections 50A, 50B and this section—
   (a) section 50(10) shall apply to a dwelling as it applies to premises;
   (b) “tenancy” includes a sub-tenancy;
   (c) “dwelling” 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)

Meaning of “domestic tenancy”

51. (1) For the purposes of section 50, “domestic tenancy” and “domestic sub-tenancy” 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;  

(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 Crown lease, tenancy or sub-tenancy;

(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.  

(Amended 76 of 1981 s. 34)
(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)

Transfer of tenancy to Part IV on joint application

51A. (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.

(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)

Transfer of tenancy to Part IV on unilateral application

51B. (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" 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" 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)

Review of decisions under sections 51A and 51B

51C. (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)

(3) (Repealed 32 of 1985 s. 10)  

(Added 40 of 1984 s. 17)

Appeal

51D. A party to the tenancy, or sub-tenancy, which is the subject of the application under section 51A or 51B and who is aggrieved by a decision of the Commissioner under section 51C may, within 1 month of the service of the notice of the decision, appeal to the Tribunal which may make such order thereon as it thinks fit.  

(Added 40 of 1984 s. 17.  Amended 77 of 1988 s. 5)
Continuation and Termination of Tenancies

Continuation of tenancies

52. (1) Where the contractual period of a tenancy or sub-tenancy, whether created before, on or after 19 December 1981, is terminated by effluxion of time or by the landlord or principal tenant, otherwise than by forfeiture, the tenancy or sub-tenancy shall not, subject to subsection (2), sections 52A and 53, come to an end during the continuance in force of this Part. (Replaced 76 of 1981 s. 35. Amended 29 of 1983 s. 13)

(1A) During the continuation of the tenancy or sub-tenancy under subsection (1), the contractual tenancy or sub-tenancy shall continue except to the extent that the terms and conditions thereof are varied under, or are inconsistent with, this Part. (Replaced 29 of 1983 s. 13)

(1B) During the continuation of the tenancy or sub-tenancy under subsection (1), the landlord or principal tenant shall have no right to forfeiture, re-entry or to obtain possession of the premises except as provided by section 53. (Added 76 of 1981 s. 35)

(1C) A tenancy or sub-tenancy which, immediately before 19 December 1981, was continuing under this Part shall be a tenancy or sub-tenancy continuing under subsection (1). (Added 76 of 1981 s. 35)

(1D) A tenancy or sub-tenancy shall not continue under subsection (1) where the tenant or sub-tenant delivers up vacant possession on termination of the contractual period of the tenancy or sub-tenancy. (Added 76 of 1981 s. 35)

(2) Subject to section 50(4), a tenancy or sub-tenancy shall not by virtue of this Part continue in existence after any change in the identity of the tenant, principal tenant or sub-tenant which would terminate such tenancy or sub-tenancy in law.

(3) In every tenancy and sub-tenancy there shall, in the absence of any express covenant or condition, be implied a covenant to pay rent on the due date and a condition for forfeiture for non-payment within 15 days of such date.

(4) Notwithstanding the expiration of this Part under section 74B, this section and section 53 shall continue to apply to any tenancy or sub-tenancy—

(a) for a period of 2 years from the date on which any increase under this Part of the rent payable under the tenancy or sub-tenancy, other than an increase under section 55A or 56, became effective; or (Amended 56 of 1976 s. 4)

(b) until the expiry of a period of 2 years from the creation of the tenancy or sub-tenancy if the same was created not more than 2 years before the expiration of this Part.

Surrender by tenant

52A. (1) Subject to subsection (2), a tenant or sub-tenant may agree to surrender a tenancy or sub-tenancy continuing under section 52(1).

(2) An agreement mentioned in subsection (1) shall have no effect unless it is—
(a) in the specified form;
(b) lodged with the Commissioner within 28 days of execution, with such fee as may be determined by the Financial Secretary; and  
(Amended 40 of 1984 s. 18; 32 of 1985 s. 11)
(c) endorsed by the Commissioner under subsection (3).

(3) The Commissioner—
(a) shall satisfy himself that the tenant or sub-tenant—
(i) in entering into an agreement under subsection (1) understands the effect of that agreement; and
(ii) has not been subject to any undue pressure or influence;
(b) may make such inquiries as he thinks fit for the purposes of paragraph (a); and
(c) shall, if satisfied as to the matters mentioned in paragraph (a), endorse upon the agreement a certificate to the effect that he has approved it under this section.  
(Amended 32 of 1985 s. 11)

(4) The Commissioner shall not be obliged to be satisfied as to the reasonableness of any consideration payable under an agreement mentioned in this section.  
(Added 29 of 1983 s. 14)

Termination of tenancies

53. (1) A tenancy or sub-tenancy continuing under section 52(1) shall come to an end when—

(a) the tenant or sub-tenant delivers up vacant possession of the premises;

(aa) with effect after 18 December 1981, the tenant or sub-tenant of the premises enters into a tenancy or sub-tenancy mentioned in paragraph (n) of section 50(6) of the same premises;  
(Added 29 of 1983 s. 15)

(b) an order of the Tribunal under subsection (2), (4A) or (4B) takes effect; or  
(Amended 29 of 1983 s. 15)

(c) the tenancy out of which the sub-tenancy was created is itself terminated:

Provided that upon such termination this Part shall apply to any tenancy arising under subsection (6A).  
(Replaced 76 of 1981 s. 36)

(1A) Where a tenant or sub-tenant fails to give at least 1 month's notice of his intention to deliver up vacant possession under paragraph (a) of subsection (1), the landlord or principal tenant shall be entitled to 1 month's rent in place of such notice.  
(Added 76 of 1981 s. 36)

(2) The Tribunal shall not make an order for possession of premises in respect of which there is a tenancy or sub-tenancy continuing under section 52(1) unless it is satisfied that—  
(Amended 29 of 1983 s. 15)

(a) any rent lawfully due from the tenant or sub-tenant has not been paid or, where any covenant or condition of the tenancy or sub-tenancy has been broken or not performed, such breach or non-performance would, but for this Part, have been a cause of forfeiture;
(b) the premises or any part thereof are reasonably required by the landlord or principal tenant for occupation as a residence for himself, his father, his mother or any son or daughter of his over the age of 18:  (Amended 29 of 1983 s. 15)

Provided that the Tribunal shall not make an order by reason only that the circumstances of the case fall within this paragraph if—

(i) 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 do so;

(ii) in the case of a sub-tenancy, the Tribunal is satisfied having regard to all the circumstances of the case, including the question whether other accommodation is available for the principal tenant or the sub-tenant, greater hardship would be caused by granting the order than by refusing it;  (Replaced 6 of 1980 s. 5)

(c) the landlord or principal tenant intends to rebuild the premises;

(d) the tenant or the sub-tenant has caused unnecessary annoyance, inconvenience or disturbance to the landlord or the principal tenant or to any other person:  (Amended 39 of 1979 s. 14)

Provided that no order shall be made under this paragraph unless the Tribunal is satisfied that the annoyance, inconvenience or disturbance had continued after a warning in writing had been served by the landlord or principal tenant on the tenant or sub-tenant causing the same;  (Amended 93 of 1975 s. 14)

(e) the tenant—

(i) in the case of a tenancy to which this Part applied immediately prior to 18 December 1979, has at any time after 14 December 1973; and

(ii) in any other case, has at any time after 18 December 1979, in breach of the contractual tenancy sublet the whole or any part of the premises of which he is the tenant;  (Replaced 6 of 1980 s. 5)

(f) the tenant or sub-tenant has used, or has suffered or permitted the use of, the premises of which he is the tenant or sub-tenant or any part thereof, for an immoral or illegal purpose;  (Added 6 of 1980 s. 5)

(g) the tenant or the sub-tenant has entered into an endorsed agreement mentioned in section 52A and has failed to deliver up vacant possession under that agreement; or  (Added 29 of 1983 s. 15)

(h) the tenant has sublet the whole or any part of the premises of which he is tenant and does not occupy any part of the premises as his dwelling.  (Added 29 of 1983 s. 15)

(2A) (a) For the purposes of subsection (2)(b)—

"landlord or principal tenant" includes one or more landlords or principal tenants, holding the premises jointly or in common, with the other landlord or landlords or principal tenant or tenants so holding assenting to an order for possession; and
“his father, his mother or any son or daughter of his” includes the father, mother, son or daughter of one or more landlords or principal tenants, holding the premises jointly or in common, with the other landlord or landlords or principal tenant or tenants so holding assenting to an order for possession. (Added 29 of 1983 s. 15)

(b) For the purpose of subsection (2)(d), a tenant or sub-tenant who persistently fails to pay rent as and when it falls due may be regarded as causing unnecessary inconvenience to the landlord or principal tenant, as the case may be. (Added 39 of 1979 s. 14)

(3) For the purposes of subsection (2)(e) or (2)(h), where a landlord establishes a prima facie case that there has been an apparent change in the occupancy of the premises or of any part thereof, the tenant shall be deemed to have sublet such premises or such part unless he satisfies the Tribunal to the contrary. (Amended 29 of 1983 s. 15)

(4) (a) An order for possession under subsection (2) shall take effect on such date as the Tribunal may order:

Provided that—

(i) in a case where a person acquires a right which, but for section 52 and this section, would entitle him to occupy premises which are subject to a tenancy or sub-tenancy and the Tribunal makes an order for possession on the grounds mentioned in subsection (2)(b) before the expiry of a period of 12 months from the date of the acquisition, the Tribunal shall not make the order to take effect either earlier than 12 months or later than 18 months from the date of the acquisition; and

(ii) in any other case, the Tribunal shall not make an order for possession to take effect later than 6 months from the date of the order.

(b) Subparagraph (i) of paragraph (a) shall not have effect in relation to a case where a person entered into an enforceable contract to acquire the right mentioned in that paragraph before 19 June 1981; and in that case subparagraph (ii) of paragraph (a) shall apply.

(c) When making an order for possession under subsection (2), the Tribunal may also order the payment of rent or mesne profits. (Replaced 52 of 1981 s. 5)

(d) When making an order for possession under subsection (2)(b), the Tribunal shall specify the name of the person for whose occupation it is satisfied the premises are required. (Added 29 of 1983 s. 15)

(4A) Subject to subsection (2)(b), where an application for an order for possession is made on the grounds mentioned in that subsection and the Tribunal is satisfied that only part of the premises is reasonably required, the Tribunal shall—

(a) in a case where any tenant or sub-tenant is willing to remain in possession of the remainder of the premises in terms of an order made under subparagraph (ii)—
(i) make an order for possession of such part of the premises as the Tribunal thinks fit having regard to those reasonable requirements and all the circumstances of the case; and
(ii) make such orders under subsection (4B) in relation to the remainder of the premises as it thinks fit; or

(b) in any other case, make an order for possession of the whole of the premises.  (Added 29 of 1983 s. 15)

(4B) Notwithstanding subsections (5), (6) and (6A), where the Tribunal makes an order for possession under subsection (4A) in relation to only part of the premises, it may, in relation to the remainder of the premises—

(a) apportion that remainder for occupation by the tenant and any sub-tenant, by the tenant alone or by any sub-tenant alone as may be just and equitable;

(b) having regard to the terms and conditions of the existing tenancy or sub-tenancy and subsection (6B)(b), fix the terms and conditions of the tenancy or sub-tenancy under which the remainder apportioned under paragraph (a) shall be occupied.  (Added 29 of 1983 s. 15)

(5) Where a tenant has, in breach of the contractual tenancy, sublet the whole or any part of the premises, an order for possession of the premises under subsection (2) against the tenant shall also operate as an order for possession against the sub-tenant whether or not that sub-tenant is a party to the proceedings in which that order is granted.  (Replaced 76 of 1981 s. 36.  Amended 40 of 1984 s. 19)

(6) Where a tenant has, without breach of the contractual tenancy, sublet the whole or any part of the premises, the Tribunal shall not make any order for possession under subsection (2) against the sub-tenant unless—

(a) the Tribunal makes the order on the ground mentioned in paragraph (b) or (c) of subsection (2); or

(b) the Tribunal is satisfied that, if the application had been by the tenant for an order for possession against the sub-tenant, the tenant would have been entitled to such an order.  (Replaced 76 of 1981 s. 36)

(6A) Where the Tribunal makes an order for possession against the tenant but does not make an order for possession against a sub-tenant to whom the premises or any part has been sublet, the sub-tenant shall become the tenant of the landlord on the same terms, subject to this Part, as the sub-tenant held from the principal tenant:

Provided that, where a part only of the premises would remain in the possession of a sub-tenant or sub-tenants if an order were made under this subsection, the Tribunal, on the application of the landlord, shall, either, order the sub-tenant or the sub-tenants jointly to accept a tenancy of the whole premises on the same terms, subject to this Part, as the principal tenant held from the landlord or make an order for possession of the whole premises.  (Added 76 of 1981 s. 36)

(6B) (a) Any tenancy or sub-tenancy arising under subsections (4A) and (4B) or subsection (6A) shall be a tenancy or sub-tenancy to which this Part applies and which is continuing under section 52(1).
(b) Where a sub-tenant becomes the tenant of a landlord under subsections (4A) and (4B) or subsection (6A), any subletting on or after 10 June 1983 under that tenancy by that tenant, without the written permission of the landlord, shall be in breach of the contractual tenancy.

(c) For the purposes of section 64, the date of a tenancy or sub-tenancy arising under subsections (4A) and (4B) shall be the date of the order of the Tribunal.

(d) Section 64 shall have effect in relation to a tenancy arising under subsection (6A) as it would have had effect in relation to the sub-tenancy from the principal tenant if that sub-tenancy had continued. *(Added 29 of 1983 s. 15)*

(6C) (a) Where a landlord believes that a tenant may have, without breach of the contractual tenancy, sublet the whole or any part of the premises and the landlord is unable, with reasonable diligence, to ascertain the identity of any such sub-tenant, the Tribunal may, on an ex parte application by the landlord, make an order calling upon any sub-tenant to give notice to the landlord of his interest in the premises and may give directions regarding the service of that order.

(b) Where any sub-tenant fails, within the period specified in the order mentioned in paragraph (a), to give notice to the landlord of his interest in the premises, the Tribunal may, when it makes an order for possession of the premises against the tenant, also make an order for possession against any sub-tenant. *(Added 40 of 1984 s. 19)*

(7) Subject to subsection (7A), a person—

(a) who has obtained an order for possession of premises under subsection (2)(b) or (c) shall not for a period of 24 months after the date of that order—

(i) let the premises or any part thereof; or

(ii) assign, transfer or part with possession of the premises or any part thereof except, in a case of an order for possession under subsection (2)(c), where the assignment, transfer or parting with possession is solely to facilitate the rebuilding of the premises; and

(b) who has obtained an order for possession under subsection (2)(b) shall not for a period of 24 months after the date of that order use, or allow the use of, the premises or any part thereof other than as a residence for the person for whose occupation the Tribunal was satisfied the premises were required under that subsection. *(Replaced 29 of 1983 s. 15)*

(7A) (a) Where an applicant has obtained an order for possession under subsection (2)(b) or (c)—

(i) the Tribunal may authorize him to let, assign, transfer or part with possession of the premises or any part thereof or use, or allow the use of, the premises or any part thereof other than as a residence for the person for whose occupation the Tribunal was satisfied the premises were required under subsection (2)(b); and
(ii) the Commissioner may, on an application accompanied by such fee as may be determined by the Financial Secretary, authorize the applicant to let the premises or any part thereof for a particular purpose and for a term not exceeding 1 year or to use, or allow the use of, for a period not exceeding 1 year, the premises or any part thereof for a particular purpose other than as a residence for the person for whose occupation the Tribunal was satisfied the premises were required under subsection (2)(b).  \( \text{Amended 29 of 1983 s. 15; 32 of 1985 s. 12} \)

(b) The Tribunal or Commissioner, when granting an authority under paragraph (a) to let, shall specify the terms, including the rent, on which the premises or the part may be let:

Provided that the rent shall not be more than that payable by the tenant or sub-tenant last in possession. \( \text{Replaced 76 of 1981 s. 36} \)

(7B) Without prejudice to subsection (8), a person who contravenes subsection (7) commits an offence and is liable on conviction on indictment to a fine of $500,000 and in addition, on a second or subsequent conviction, to imprisonment for 12 months, and in any case to forfeit a sum not exceeding the equivalent of—

(a) in the case of a contravention of subsection (7)(a)(i), 2 years’ rent calculated at the rate at which the premises were let without the authority of the Tribunal or the Commissioner; or

(b) in the case of a contravention of subsection (7)(a)(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 or sub-tenant in possession. \( \text{Added 6 of 1980 s. 5. Amended 29 of 1983 s. 15} \)

(7C) Any court which sentences a person for an offence under subsection (7B) may, in addition to imposing a penalty under that subsection, make an order under subsection (8) after hearing the former tenant or sub-tenant and the defendant. \( \text{Added 6 of 1980 s. 5} \)

(7D) \( \text{Repealed 29 of 1983 s. 15} \)

(7E) A letting, assignment, transfer or parting with possession of premises or any part thereof shall not be void, voidable or unenforceable by reason only of a contravention of subsection (7). \( \text{Added 76 of 1981 s. 36} \)

(7F) Where, in an application for possession of premises under subsection (2), the applicant alleges a ground mentioned in paragraph (b) or (c) of subsection (2) and—

(a) an order for possession is granted with the consent of the tenant or sub-tenant; or

(b) the application does not proceed and the tenant or sub-tenant consents to deliver up vacant possession of the premises,

the applicant shall be deemed, for the purposes of subsections (7), (7G) and (8), to have obtained an order for possession under paragraph (b) or (c) of subsection (2); and, in a case mentioned in paragraph (b) of this subsection and
for the purposes of fixing the commencement of the period mentioned in subsection (7), the date of the order shall be deemed to be the date upon which the application for possession is issued from the Tribunal.  (Added 76 of 1981 s. 36)

(7G) Any applicant who has obtained an order for possession under paragraph (b) or (c) of subsection (2) shall be presumed, until the contrary is shown, to have knowledge of that order, of the application for possession, of the grounds alleged upon which the order was obtained, of the outcome of the application and of any consent given by the tenant or sub-tenant in connection with the order or the delivery of vacant possession.  (Added 76 of 1981 s. 36)

(8) Where a landlord or principal tenant has obtained an order for possession of the premises under subsection (2) and it is subsequently made to appear to the Tribunal that the order was obtained by the misrepresentation or concealment of material facts or where such landlord or principal tenant is shown to have acted in contravention of subsection (7), the Tribunal or, as the case may be, the court referred to in subsection (7C) may order the landlord or principal tenant to pay to the former tenant or sub-tenant such sum as it thinks fit by way of compensation for damage or loss sustained by that tenant or sub-tenant as a result of the order.  (Amended 32 of 1985 s. 12) [cf. U.K. 1968 c. 23 s. 19]

(9) Where a tenant or sub-tenant successfully opposes an order for possession of the premises under subsection (2) and it is subsequently made to appear to the Tribunal that the opposition was successful by reason of the misrepresentation or concealment of material facts, the Tribunal may order the tenant or sub-tenant to pay to the landlord or principal tenant such sum as it thinks fit by way of compensation for damage or loss sustained by the landlord or principal tenant as a result of that opposition.  (Added 76 of 1981 s. 36)  
(Amended 76 of 1981 s. 36)

Restriction on order for possession for rebuilding

53A.  (1) The Tribunal shall not make an order for possession of premises on the ground mentioned in paragraph (c) of section 53(2) unless, in addition, it is satisfied that—

(a) the rebuilding will result in an increase in the number of dwellings or in accommodation for domestic use or in accommodation for other than domestic use; and, if for other than domestic use, the site of the premises is suitable for the intended use; or

(b) the rebuilding is in the public interest; or

(c) the expenditure required to restore or repair the premises would not be economically reasonable,

and, where the approval or authority of any person is required in respect of the rebuilding, the Tribunal may—

(i) state that it is satisfied as mentioned in paragraph (c) of section 53(2) and this subsection, if that be the case;

(ii) postpone the hearing of the application to enable the landlord or principal tenant to apply for that approval or authority; and
(iii) if that approval or authority is obtained, but not otherwise, make an order for possession of the premises.

(2) Where the Tribunal grants an order for possession on the grounds mentioned in paragraph (c) of section 53(2), it may impose any reasonable condition on the landlord in relation to his intention to rebuild the premises and shall order that compensation be paid to the tenant and—

(a) that plans of the new building showing the number and size of any dwellings to be erected be lodged with the Tribunal and that the new building be erected to provide that number of dwellings; and

(b) that the rebuilding work (including any demolition that is required) be commenced, and the new building be ready for occupation, on the dates ordered.  \(\text{Amended 29 of 1983 s. 16; 32 of 1985 s. 13}\)

(2A) 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 subsection (2).  \(\text{Added 29 of 1983 s. 16}\)

(3) The Commissioner shall cause an order of the Tribunal under this section to be registered by memorial in the Land Office against the premises affected and the conditions imposed under subsection (2) shall be binding on and enforceable against any successors in title to the landlord.

(4) \(\text{(a)}\) The compensation ordered by the Tribunal under subsection (2) shall be the sum of—

(i) an amount equal to twice the rateable value of the premises;

(ii) an amount equal to the expenditure actually and reasonably incurred or to be reasonably incurred by the tenant and any sub-tenant in respect of the packing, removal and transportation within Hong Kong of the furniture and movable property kept in the premises; and

(iii) an amount equal to the loss actually and reasonably incurred or to be reasonably incurred by the tenant and any sub-tenant in respect of carpets, curtains and fittings.  \(\text{Replaced 40 of 1984 s. 20}\)

\(\text{(b)}\) Where a tenant has sublet premises or any part of premises, the compensation payable under this subsection shall be apportioned by the Tribunal so that a sub-tenant shall be entitled to receive a portion of the compensation payable under paragraph \(\text{(a)}\) which is just and equitable.  \(\text{Amended 40 of 1984 s. 20}\)

\(\text{(c)}\) Where it appears that premises or any part of premises is sublet, the Tribunal may call upon the Commissioner for a certificate as to which part of the premises is occupied by a sub-tenant and such a certificate purporting to be signed by or on behalf of the Commissioner shall be admissible in evidence for the purposes of paragraph \(\text{(b)}\) upon its mere production without further proof, subject to the right of any party, including any sub-tenant, to cross-examine the Commissioner or a public officer in his department nominated by the Commissioner for that purpose.

\(\text{(d)}\) For the purposes of this subsection—
“premises” means the subject matter of a tenancy; and
“rateable value” has the meaning given to that phrase by section 50(10).

(e) The method of calculating the compensation mentioned in paragraph (a) may be amended by resolution of the Legislative Council. 
(Replaced 40 of 1984 s. 20)

(5) (a) Where there is a breach of a condition imposed under paragraph (a) of subsection (2) which results in fewer dwellings or less accommodation being erected than appeared in the plans lodged, the Tribunal may, on the application of the Commissioner, impose a penalty of a sum not exceeding what would have been the market value, at the time of the imposition, of the building if it had been erected in accordance with the plans.

(b) Where there is a breach of a condition imposed under paragraph (b) of subsection (2), the Tribunal may, on the application of the Commissioner,—

(i) where the applicant for an order for possession holds the premises under a Crown lease or other tenancy from the Crown, decree such breach to be a breach of covenant in the Crown lease or of a condition or stipulation in the tenancy and a right of re-entry under the Crown Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126) shall accrue to the Crown; or

(ii) in any case, impose a penalty not exceeding the market value of the premises at the time of the imposition of the penalty.

(c) Where there is a breach of any other condition imposed under subsection (2), the Tribunal may, on the application of the Commissioner, impose a penalty of a sum not exceeding $500,000.

(6) In this section, “dwelling” has the meaning given to that phrase by section 50C(1).

(Added 76 of 1981 s. 37)

Increases in Rent

54. (Repealed 40 of 1984 s. 21)

Alterations in rent by agreement

55. (1) Where an alteration in rent is agreed between a landlord and a tenant the landlord shall lodge with the Commissioner a notice thereof in triplicate in the specified form signed by both the landlord and tenant. 
(Amended 6 of 1980 s. 7; 29 of 1983 s. 18; 32 of 1985 s. 14)

(1A) A notice under subsection (1) shall not be valid unless—

(a) (i) it is signed by the tenant not earlier than 1 month before the date on which it is lodged with the Commissioner; and

(ii) 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. *(Replaced 40 of 1984 s. 22. Amended 32 of 1985 s. 14)*

(2) Where a notice is lodged with the Commissioner under subsection (1), he shall record the agreement concerning the alteration in rent and shall endorse free of charge 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. *(Amended 29 of 1983 s. 18)*

(3) Where there is an increase in rent under an agreement mentioned in subsection (1), 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 (2). *(Replaced 40 of 1984 s. 22)*

(4) The security of tenure afforded to a tenant under section 52(4)(a) shall apply where the rent payable by the tenant is increased by agreement, notwithstanding the failure of the landlord to lodge notice thereof under subsection (1).

(5) Where, on 18 December 1979, a tenant was in possession of premises under a tenancy agreement which provided for the rent payable by the tenant to be varied during the term of the tenancy by reference to fixed and ascertained periods of time, any alteration in rent pursuant to that tenancy agreement shall take effect as if this section had not been enacted, save that where the alteration takes effect on or after 18 December 1979 the security of tenure afforded to a tenant by section 52(4)(a) shall extend to such tenancy as if the rent had been altered under this Part. *(Replaced 6 of 1980 s. 7. Amended 29 of 1983 s. 18)*

Increase in rent on account of improvements

**55A.** (1) Where the landlord of any premises incurs expenditure of $5,000 or more on improvements to such premises, the landlord may, subject to subsection (2), increase the rent payable in respect of those premises by 20% per annum of the amount expended on the improvements.

(2) Where rent is increased under this section the increase shall not take effect except in pursuance of a notice of increase in the specified form served by the landlord on the tenant, specifying the increase and the date from which it is to take effect.

(3) The date specified in a notice of increase under subsection (2) shall be not earlier than the first day when rent becomes due after the expiry of one month from the service of the notice.

(4) Where the landlord of any premises incurs expenditure of $5,000 or more on improvements to such premises and those premises comprise 2 or more tenements then the amount expended shall be apportioned between the tenements and the rent payable in respect of any tenement may be increased in accordance with this section by reference to the part of the expenditure apportioned to it.

(5) Subject to subsection (6), in determining the amount of expenditure incurred on improvements expenditure incurred in the 6 months immediately prior to the date of service of the notice of increase under subsection (2) may be aggregated.
(6) No account shall be taken of—

(a) in the case of a tenancy of premises to which this Part applied prior to 18 December 1979, expenditure incurred prior to 9 July 1976;  
(ii) in any other case, expenditure incurred prior to 18 December 1979;  

(Replaced 6 of 1980 s. 8)

(b) expenditure in respect of which an increase in rent has previously been made under this section.

(7) Where a landlord serves on a tenant a notice of increase under subsection (2), the landlord shall send a copy of that notice to the Commissioner.

(8) A tenant on whom a notice of increase in rent is served under this section may, not later than one month after the service of the notice, apply to the Tribunal for an order cancelling or reducing the increase on the ground—

(a) that the improvement was unnecessary:

Provided that where the premises the subject of the improvement comprise 3 or more tenements and more than two-thirds of the tenants of those premises (other than sub-tenants) have consented in writing to the improvement, the improvement shall be deemed to be necessary;

(b) that a greater amount was expended on the improvement than was reasonable; or

(c) where the increase follows an apportionment under subsection (4), that the apportionment was unreasonable;

and the Tribunal may make an order accordingly.  

(Amended 76 of 1981 s. 40)

(9) In this section—

“improvement” includes structural alteration, extension or addition and the provision of additional fixtures and fittings, but does not include anything done by way of decoration or repair;

“landlord” includes principal tenant;

“tenant” includes sub-tenant.  

(Added 56 of 1976 s. 5)  
[cf. U.K. 1968 c. 23 ss. 25 & 38]

Increase in rent on account of rates

56. (1) Where—

(a) a landlord bears the rates in respect of any premises the subject of a tenancy and there is an increase in the amount of rates payable; or

(b) rates are imposed in respect of any such premises and the landlord bears those rates,

the landlord may, subject to subsection (2), increase the amount of rent payable by the tenant of those premises by the amount of the increase in rates or by the amount of the rates imposed, as the case may be.

(1A) For the purpose of subsection (1)(b), rates shall be deemed not to be imposed where rates become payable by reason only that the premises cease to
be exempt from assessment to or payment of rates under section 36 of the Rating Ordinance (Cap. 116).  *(Added 29 of 1983 s. 19)*

(2) Where the amount of rent is increased under this section the increase shall not take effect except in pursuance of a notice of increase in the specified form served by the landlord on the tenant, specifying the increase and the date from which it is to take effect.

(3) The date specified in a notice of increase under subsection (2) shall not be earlier than—

(a) the date from which the increased rates or the rates imposed, as the case may be, are payable; or

(b) 24 months prior to the date of service of the notice,

whichever is the later. *(Replaced 29 of 1983 s. 19)* *(Replaced 10 of 1975 s. 9)*

**Increase in rent following apportionment**

**56A.** (1) Where section 56(1) applies in respect of any premises and the premises form part of a tenement or consist of, or form part of, more than one tenement, the landlord may, if he cannot agree with the tenant an increase in rent of the tenancy, apply to the Commissioner in the specified form for a certificate under subsection (2).

(2) On receipt of an application under subsection (1) the Commissioner shall make such apportionment or aggregation of rates as he considers necessary to determine the amount of rates attributable to the premises and shall serve on the landlord and on the tenant certificates in the specified form stating the amount by which the rent may be increased.

(3) Where the Commissioner has served a certificate under subsection (2), the rent of the tenancy may be increased, in accordance with section 56, by the amount shown in the certificate.

*(Added 10 of 1975 s. 10. Amended 93 of 1975 s. 15)*

**Application for certificate of increase in rent**

**57.** (1) Where a landlord wishes to increase the rent payable by his tenant, he may apply to the Commissioner for a certificate.

(2) An application under subsection (1) shall be made by sending a notice in duplicate in the specified form to the Commissioner.

(3) Where the Commissioner is of the opinion that, having regard to section 64, no increase in rent is due, or such increase in rent is not due within a period of 6 months from the date of receipt of the application under subsection (1), he may decline to deal with such application or defer dealing with such application until it appears to him that the increase in rent is due within a period of 6 months.

(4) Subject to subsection (3), upon receipt of an application under subsection (1) the Commissioner shall serve a copy thereof on the tenant.
(5) Within 14 days of service on him under subsection (4) of a copy of the landlord’s application the tenant may send his representations thereon in writing to the Commissioner.

(6) Where the Commissioner receives representations from a tenant under subsection (5) which indicate that the tenant disputes any fact set out in the application of the landlord, he shall determine the facts in dispute and shall then deal with the application in accordance with section 58.

(For savings and transitional provisions see Ord. No. 39 of 1979 s. 25(2).)

Certificates of increase in rent

58. (1) Where a landlord applies for a certificate under section 57, the Commissioner shall—

(a) if satisfied that the prevailing market rent exceeds the current rent paid by the tenant, issue free of charge and serve on the landlord and on the tenant certificates in the specified form stating the amount, as ascertained in accordance with subsection (2), by which the current rent may be increased; or

(b) if not satisfied that the prevailing market rent exceeds the current rent paid by the tenant, issue free of charge and serve on the landlord and on the tenant certificates in the specified form to that effect,

and he may endorse on the certificates such matters as he thinks proper relating to such application, which, in the case of a dispute as to facts, shall include the Commissioner’s determination thereof under section 57(6). (Amended 5 of 1975 s. 2; 29 of 1983 ss. 20 & 46)

(2) The amount mentioned in subsection (1)(a) shall be—

(a) the difference between the prevailing market rent and the current rent; or

(b) 30% of the current rent,

whichever is the lesser:

Provided that where the sum of the amount so ascertained and the current rent is less than 30% of the prevailing market rent, the amount shall be the difference between 30% of the prevailing market rent and the current rent. (Replaced 29 of 1983 s. 20. Amended 40 of 1984 s. 23; 32 of 1985 s. 15; 37 of 1986 s. 3)

(2A) Any cents in the amount ascertained or adjusted in accordance with subsection (2) shall be disregarded. (Added 29 of 1983 s. 20)

(3) The percentages mentioned in subsection (2) may be amended by resolution of the Legislative Council. (Replaced 29 of 1983 s. 20. Amended 40 of 1984 s. 23)

(4) Where a certificate has been issued under subsection (1)(b) in relation to any premises, no further application under section 57 in respect of those premises shall be made by the person to whom the certificate has been issued before the expiration of 1 year from the date of service of the certificate.

(5)-(6) (Repealed 6 of 1980 s. 9)
Review

59. (1) Where the Commissioner issues a certificate under section 58, the landlord or the tenant may within 14 days of service on him of the certificate apply to the Commissioner by notice in duplicate in the specified form for a review of the certificate.

(2) On receipt of an application under subsection (1) and such fee as may be determined by the Financial Secretary, the Commissioner shall review his certificate issued under section 58 and, after giving both parties the opportunity of making written submissions, he may affirm the certificate or cancel it and issue a new certificate under that section, and shall serve a notice of his decision on the parties. *(Replaced 76 of 1981 s. 41. Amended 32 of 1985 s. 16; 77 of 1988 s. 6)*

(3) *(Repealed 32 of 1985 s. 16)*

(4) The Commissioner may, at the time of any review under subsection (2), determine the date from which any increase in rent shall take effect, and, if he makes such determination, shall include such determination in the notice of decision served under subsection (2). *(Replaced 76 of 1981 s. 41. Amended 77 of 1988 s. 6)*

Appeal

60. Any person aggrieved by a decision of the Commissioner under section 59 may, within 1 month of the service of the notice of the decision, appeal to the Tribunal which may make such order thereon as it thinks fit. *(Replaced 76 of 1981 s. 42. Amended 77 of 1988 s. 7)*

Notices of increases

61. (1) Unless the Commissioner has made a determination under section 59(4) or the Tribunal has made an order under section 60 regarding the date from which an increase in rent shall take effect, an increase in rent specified in a certificate issued under section 58(1)(a) shall not take effect except in pursuance of a notice of increase in the specified form served by the landlord on the tenant, specifying the date from which the increase is to take effect. *(Amended 5 of 1975 s. 5; 77 of 1988 s. 8)*

(2) Where a landlord serves a notice of increase on the tenant under subsection (1) he shall, at the same time, send a copy of the notice to the Commissioner.

(3) The date specified in a notice under subsection (1) shall not, subject to section 64, be earlier than the first day when rent becomes due after the expiration of 1 month from the service of the notice.

(4) Notwithstanding this section, where proceedings on a review under section 59 or an appeal under section 60 are not concluded on the date specified in a notice under subsection (1), the failure by the tenant or sub-tenant to pay the increase in rent prior to the conclusion of such proceedings shall not be a breach of covenant to pay rent nor give rise to a right to forfeiture.
Application of certain sections to sub-tenancies

62. Sections 55, 57, 58, 59, 60 and 61 shall apply to a sub-tenancy and any references therein to landlord and tenant shall be construed, for this purpose, as references to principal tenant and sub-tenant respectively.

(Replaced 76 of 1981 s. 43. Amended 40 of 1984 s. 24)

Increase in rent of sub-tenancy on account of rates

63. (1) Where—

(a) a principal tenant bears the rates in respect of any premises the subject of a tenancy out of which a sub-tenancy has been created and there is an increase in the amount of rates payable;

(b) rates are imposed in respect of any premises the subject of a tenancy out of which a sub-tenancy has been created and the principal tenant bears those rates; or

(c) the rent of a tenancy has been increased under section 56 or 56A and a sub-tenancy has been created out of that tenancy,

the principal tenant may, if he cannot agree with the sub-tenant an increase in rent of the sub-tenancy, apply to the Commissioner in the specified form for a certificate under subsection (2).

(1A) For the purposes of subsection (1)(b), rates shall be deemed not to be imposed where rates become payable by reason only that the premises cease to be exempt from assessment to or payment of rates under section 36 of the Rating Ordinance (Cap. 116). (Added 29 of 1983 s. 21)

(2) On receipt of an application under subsection (1) the Commissioner shall make such apportionment or aggregation of the rates as he considers necessary to determine the amount of rates attributable to the premises the subject of the sub-tenancy and shall serve on the principal tenant and on the sub-tenant certificates in the specified form stating the amount by which the rent of the sub-tenancy may be increased.

(3) Where the Commissioner has served a certificate under subsection (2), the rent of the sub-tenancy may be increased by the amount shown in the certificate, but the increase in rent shall not take effect except in pursuance of a notice of increase in the specified form served by the principal tenant on the sub-tenant specifying the date from which the increase is to take effect.

(4) The date specified in a notice of increase under subsection (3) shall be not earlier than—

(a) the date from which the increased rates or the rates imposed, as the case may be, are payable;

(b) the date on which the increase in rent of the principal tenancy on account of rates became payable; or

(c) 24 months prior to the date of service of the notice of increase on the sub-tenant,

whichever is the later. (Amended 29 of 1983 s. 21)

(Replaced 10 of 1975 s. 11)
Increase in rent of sub-tenancy on account of improvements

63A. (1) Where the rent of a tenancy has been increased under section 55A and a sub-tenancy has been created out of that tenancy, the principal tenant may, subject to subsection (3), increase the rent payable by the sub-tenant by such appropriate amount as may be agreed between them.

(2) In the absence of any agreement between the principal tenant and his sub-tenant under subsection (1), the Commissioner may, on an application in the specified form, determine the amount by which the rent payable by the sub-tenant is to be increased, and after any such determination, shall serve a notice of his determination on both parties. (Replaced 77 of 1988 s. 9)

(3) Where the rent payable by a sub-tenant is increased following a determination of the Commissioner under this section the increase shall not take effect except in pursuance of a notice of increase in the specified form served by the principal tenant on the sub-tenant, specifying the increase and the date from which it is to take effect.

(4) The date specified in a notice of increase under subsection (3) shall be such date as shall be determined by the Commissioner.

(5) Where a principal tenant serves on a sub-tenant a notice of increase under subsection (3), the principal tenant shall send a copy of that notice to the Commissioner.

(6) Any person aggrieved by the determination of the Commissioner under subsection (2) may, within 1 month of the service of the notice of determination under subsection (2), appeal to the Tribunal which may make such order thereon as it thinks fit. (Added 76 of 1981 s. 44. Amended 77 of 1988 s. 9) (Added 56 of 1976 s. 7. Amended 76 of 1981 s. 44)

Effective date for increases

64. (1) No increase in rent in any tenancy pursuant to a certificate under section 58 or 59 or to an order of the Tribunal under section 60 or in any sub-tenancy under section 62 shall take effect within a period of 2 years from— (Amended 76 of 1981 s. 45)

(a) the date on which the rent of the tenancy or sub-tenancy was last increased, whether or not such increase was by agreement; or

(b) the date of the tenancy or sub-tenancy,

whichever is the later. (Replaced 6 of 1980 s. 11)

(2)–(4) (Repealed 6 of 1980 s. 11)

(5) Where a tenancy or sub-tenancy was created after 18 December 1979 or, in the case of a tenancy or sub-tenancy to which this Part applied immediately before that date, at any time after 14 December 1973 or where the rent of a tenancy or sub-tenancy has been increased under section 55 or pursuant to a certificate under section 58 or 59 or an order of the Tribunal under section 60, or under section 62 and the rent of the tenancy or sub-tenancy has been increased or further increased pursuant to a certificate under section 58 or 59 or an order of the Tribunal under section 60, or under section 62, no order
shall be made for the recovery of any increased rent or for the recovery of possession for non-payment thereof unless the landlord or principal tenant satisfies the court that 2 years has or will have elapsed between the commence-
ment of the tenancy or sub-tenancy or the previous increase in rent and the date on which the increase or further increase takes effect. (*Amended 6 of 1980 s. 11; 76 of 1981 s. 45*)

(6) For the purposes of this section rent shall, until the contrary is proved, be deemed to have been increased if the tenant or sub-tenant has made any payments, other than rates, to the landlord or the principal tenant, and such additional payments have been made as a condition of the right to occupation of the premises.

(7) Any increase in rent under section 55A or 63A shall not be an increase in rent for the purposes of this section. (*Added 29 of 1983 s. 22*)

Provision of rent receipts

65. (1) A landlord shall give to his tenant, and a principal tenant shall give to his sub-tenant, at the time that the tenant or sub-tenant pays his rent, a receipt for the amount of rent paid and the receipt shall contain—

(a) the name and address of the landlord or principal tenant or the agent thereof, as the case may be;

(b) the period in respect of which such rent was paid; and

(c) the date of payment.

(2) A landlord or principal tenant who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of $2,000.

Obligation to notify subletting of premises

66. (1) Where the whole or any part of any premises is sublet, the tenant of the premises shall, within 14 days of being so required by his landlord, supply his landlord with a statement in writing of the subletting showing— (*Amended 6 of 1980 s. 12; 32 of 1985 s. 17*)

(a) the name of the sub-tenant;

(b) the part of the premises occupied by the sub-tenant;

(c) the rent payable by the sub-tenant; and

(d) the date of first occupation by the sub-tenant. (*Replaced 5 of 1975 s. 6*)

(2) A tenant who is required to supply a statement in accordance with subsection (1) and who, without reasonable excuse—

(a) fails to supply a statement; or

(b) supplies a statement which is false in any material particular,

shall be guilty of an offence and shall be liable on conviction to a fine of $2,000.

67. (*Repealed 29 of 1983 s. 23*)
General

Proceedings in, and jurisdiction of, court or Tribunal

68. (1) Subject to subsections (1A) and (2), neither the Commissioner nor any public officer employed in the Rating and Valuation Department shall be called to give evidence in proceedings before the court or the Tribunal and no subpoena shall be issued against the Commissioner or such public officer. (Amended 93 of 1975 s. 17; 76 of 1981 s. 46)

(1A) The Commissioner or any public officer employed in the Rating and Valuation Department may be called to give evidence in any proceedings under sections 51(8), 53, 53A and 60. (Added 93 of 1975 s. 17. Amended 76 of 1981 s. 46)

(2) Notwithstanding subsection (1), a subpoena duces tecum may be issued against the Commissioner requiring him to produce in any proceedings an application under section 51(4), 51(4A), 56A(1), 57(1), 59(1) or 63(1), and a subpoena issued under this subsection shall be deemed to be complied with by the production of any document specified in the subpoena by any public officer employed in the Rating and Valuation Department. (Amended 10 of 1975 s. 13; 39 of 1979 s. 16; 76 of 1981 s. 46)

(3)–(5) (Repealed 76 of 1981 s. 46)

(6) The court shall have the jurisdiction conferred on it by this Part notwithstanding anything in the District Court Ordinance (Cap. 336).

(7) Subject to section 68A, any determination or order, other than a conviction, of the court or the Tribunal under this Part shall be final. (Replaced 93 of 1975 s. 17. Amended 76 of 1981 s. 46)

Appeal on point of law

68A. (1) Any party to proceedings before the court or the Tribunal may appeal to the Court of Appeal against a determination or order other than a conviction of the court or the Tribunal on the ground that such determination or order is erroneous in point of law. (Amended 92 of 1975 s. 39; 76 of 1981 s. 47)

(2) An appeal under this section shall be—

(a) in the case of an appeal from the court, subject to any rules made under the Supreme Court Ordinance (Cap. 4); and

(b) in the case of an appeal from the Tribunal, subject to the provisions of, and any rules made under, the Lands Tribunal Ordinance (Cap. 17). (Replaced 76 of 1981 s. 47)

(Added 93 of 1975 s. 18)

Costs

68B. In any proceedings under this Part, the Tribunal shall not make any order as to costs against a party unless that party has conducted his case in a frivolous or vexatious manner. (Added 76 of 1981 s. 48)
69. *(Repealed 76 of 1981 s. 49)*

**Exercise of powers of Commissioner**

70. (1) The Commissioner may, for the purposes of this Part—

(a) serve on any person a requisition in the specified form requiring him to furnish to the Commissioner, within such reasonable period as the Commissioner may specify in the form, the particulars reasonably required by the Commissioner by the requisition; *(Amended 40 of 1984 s. 25)*

(b) require the landlord, tenant or sub-tenant or former landlord, tenant or sub-tenant of any premises to exhibit to him all documents relating to the tenancy and user of the premises, including leases, receipts for rent, rent-books and accounts, and the Commissioner may take copies of those documents;

(c) at any reasonable time, with the consent of the occupier, enter and inspect any premises and take such measurements and other particulars as he thinks fit;

(ca) require the occupier or other person in control of the premises, following not less than 24 hours notice in writing delivered at the premises, to allow the Commissioner to enter and inspect those premises at any reasonable time and take such measurements and other particulars as he thinks fit; *(Added 40 of 1984 s. 25)*

(d) after the expiry of not less than 24 hours notice in writing to the occupier of the premises or, if the occupier cannot be found, to the landlord or other person in control of the premises, enter at any reasonable time during day-light (using such force as may be necessary) and inspect any premises and take such measurements and other particulars as he thinks fit. *(Replaced 29 of 1983 s. 24)*

(2) Any public officer or class of public officer employed in the Rating and Valuation Department and authorized in writing in that behalf by the Commissioner may exercise any of the powers and perform any of the duties conferred or imposed on the Commissioner by this Part.

**Refusal to furnish information and obstruction**

70A. (1) Any person who, without reasonable excuse,—

(a) refuses or neglects to furnish any of the particulars specified under section 70(1)(a);

(b) refuses or neglects to exhibit any document he is required to exhibit under section 70(1)(b);

(c) refuses to allow the Commissioner to take copies of any document exhibited under section 70(1)(b); or

(d) obstructs or evades the exercise of any power under section 70(1)(c), *(ca) or (d)*, *(Replaced 40 of 1984 s. 26)*

commits an offence and is liable to a fine of $10,000 and to imprisonment for 3 months. *(Added 29 of 1983 s. 25. Amended 40 of 1984 s. 26)*
(2) Where the Commissioner is frustrated or obstructed in the exercise of any power under section 70(1)(c), (ca) or (d), he may apply to the court for an order authorizing him to enter and inspect the premises concerned and exercise his powers and requiring the landlord, tenant, sub-tenant, occupier or person having control of the premises to allow the Commissioner to enter and inspect those premises and exercise his powers; and the court shall have jurisdiction to make such order as it thinks fit.  \(Added\ 40\ of\ 1984\ s.\ 26\)

(3) An application under subsection (2) may be made at the conclusion of any proceedings in respect of an alleged offence under subsection (1) (whether or not any person is convicted) or independently of any such proceedings. \(Added\ 40\ of\ 1984\ s.\ 26\)

(4) In this section, “court” means the District Court, the Tribunal or a magistrate. \(Added\ 40\ of\ 1984\ s.\ 26\)

Harassment

70B. (1) Any person who unlawfully deprives a tenant or sub-tenant of occupation of any premises commits an offence and is liable on conviction on indictment to a fine of $500,000 and, in addition, on a second or subsequent conviction, to imprisonment for 12 months.

(2) Any person who, with intent to cause a tenant or sub-tenant—

(a) to give up occupation of any premises or part of premises; or

(b) to refrain from exercising any right or pursuing any remedy in respect of any premises or part of premises,

does any act calculated to interfere with the peace or comfort of the tenant or sub-tenant or members of his household or persistently withdraws or withholds services reasonably required for occupation of the premises as a dwelling commits an offence and is liable on conviction on indictment to a fine of $500,000 and, in addition, on a second or subsequent conviction, to imprisonment for 12 months.

(3) Where a person is convicted of an offence under subsection (1) or (2), the court, in addition to passing sentence, may order the person convicted to pay to the tenant or sub-tenant such sum as it thinks fit by way of compensation for damage, loss or inconvenience suffered by the tenant or sub-tenant by reason of the acts constituting the offence and to forfeit to the Crown a sum not exceeding the equivalent of 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 or sub-tenant in possession.

\(Added\ 29\ of\ 1983\ s.\ 25\)

False statement

70C. Any person who, in any document required under this Part to be lodged with or served on the Commissioner, makes a false statement, knowing it to be false or not believing it to be true, commits an offence and is liable to a fine of $5,000.

\(Added\ 40\ of\ 1984\ s.\ 27\)
Forms

71. (1) The Commissioner may specify the forms to be used under this Part.

(2) The Commissioner may publish in the Gazette any form specified by
him under subsection (1).

(3) The Commissioner may in his discretion accept any notice or applica-
tion served on him which is not in the specified form.

Enlargement of time

72. The Commissioner may extend any time fixed by this Part for the
making of any application to him or for the lodging of any document with him
except a notice under section 55.

(Repealed 76 of 1981 s. 50)

73. (Amended 40 of 1984 s. 28)

Service of notice

74. (1) Service of any notice, application, certificate or other document
under this Part or of a notice to quit in respect of a periodic tenancy, or
sub-tenancy, to which this Part applies may be effected— (Amended 40 of
1984 s. 29)

(a) by personal service;

(b) by post, addressed to the last known place of business or residence of
the person to be served; (Amended 39 of 1979 s. 17; 29 of 1983 s. 26)

(c) in the case of service on a tenant or sub-tenant, by leaving the notice,
application, certificate or other document with an adult occupier of
the premises in which the tenant or sub-tenant resides and to which
such document relates; or

(d) by affixing a copy of it to a prominent part of the premises to which it
relates. (Added 29 of 1983 s. 26)

(2) A certificate purporting to be signed by a person who states in that
certificate that he effected service under subsection (1) shall be prima facie
evidence of the facts stated therein relating to that service. (Added 29 of 1983
s. 26)

Saving

74A. Nothing in this Part shall—

(a) authorize any increase in rent in respect of a tenancy or sub-tenancy
which is not a tenancy or sub-tenancy continuing under section 52(1); or
(Replaced 40 of 1984 s. 30)

(aa) (Repealed 76 of 1981 s. 51)

(b) subject to section 53(1)(c), (4A), (4B), (5), (6), (6A) and (6B), afford to
any sub-tenant any security of tenure greater than that enjoyed by his
principal tenant. (Amended 76 of 1981 s. 51; 29 of 1983 s. 27)
Expiry of this Part

74B. (1) Subject to section 52(4), this Part shall expire at midnight on 18 December 1988. (Amended 56 of 1976 s. 8; 39 of 1979 s. 18; 6 of 1980 s. 14; 52 of 1981 s. 10; 29 of 1983 s. 28; 32 of 1985 s. 18; L.N. 202/87)

(2) The Legislative Council may by resolution amend subsection (1) by substituting for the date specified therein such date as may be specified in the resolution. (Added 32 of 1985 s. 18)

Provisions transitional to the enactment of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1980

74C. For the avoidance of doubt it is hereby declared that—

(a) where prior to 18 December 1979 a tenant or sub-tenant—

(i) was in possession of premises under a tenancy or sub-tenancy which became subject to this Part on that date by virtue of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1980 (6 of 1980); and

(ii) made an agreement with his landlord or principal tenant for a new tenancy or sub-tenancy of the premises to commence on or after 18 December 1979, or for a continuation of the existing tenancy or sub-tenancy at an increased rent to take effect on or after that date,

he shall be entitled to the benefits and protection afforded by this Part as if the agreement had not been made;

(b) where a tenant or sub-tenant—

(i) was immediately prior to 18 December 1979 in possession of premises under a tenancy or sub-tenancy which was subject to this Part, or which became subject to this Part on that date by virtue of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1980; and

(ii) made an agreement with his landlord or principal tenant on or after 18 December 1979 and before the commencement of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1980 for an increase in rent,

the amount of rent recoverable by the landlord or principal tenant shall be the amount so agreed, whether or not any notice has been lodged under section 55;

(c) where a tenant or sub-tenant has paid by way of rent any amount which, by virtue of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1980, is not recoverable by the landlord or principal tenant, the tenant or sub-tenant shall be entitled to recover the amount from the landlord or principal tenant who received it or from his personal representatives. (Added 6 of 1980 s. 15)

(Part II replaced 78 of 1973 s. 2)
PART III

DISTRESS FOR RENT

Interpretation and Application

Interpretation

75. In this Part, unless the context otherwise requires—

“Collector of Rates” has the meaning assigned to it in section 2 of the Rating Ordinance (Cap. 116); (Added 37 of 1986 s. 4)

“court” means the District Court;

“rateable value” means—

(a) in the case of premises being a tenement included in a valuation list maintained by the Collector of Rates under section 14A of the Rating Ordinance, the rateable value shown in that list; or

(b) in any other case, the rateable value certified under section 75A; (Added 37 of 1986 s. 4)

“Registrar” means the Registrar of the District Court;

“warrant” means a warrant of distress for arrears of rent. (Amended 5 of 1924 Schedule; 13 of 1966 Schedule)

Certificate as to rateable value

75A. For the purposes of ascertaining the rateable value of any premises in connection with any application under section 101 a certificate purporting to be under the hand of an officer of the Rating and Valuation Department not below the rank of Rent Officer showing in respect of any particular day—

(a) in the case of premises being a tenement included in a valuation list maintained by the Collector of Rates under section 14A of the Rating Ordinance (Cap. 116), the rateable value shown in that list; or

(b) in any other case, whether or not the rateable value of those premises exceeds the sum mentioned in section 101(1),

shall be admissible in any proceedings on its production and without further proof and shall be prima facie evidence of the facts stated therein. (Added 37 of 1986 s. 5)

Application of this Part

76. The provisions of this Part shall extend to New Kowloon and to any other land exempted from Part II of the New Territories Ordinance (Cap. 97), notwithstanding anything contained in that Ordinance. (Replaced 9 of 1950 Schedule)
Jurisdiction

Issuing of warrants of distress

77. The court shall have jurisdiction to issue warrants of distress for arrears of rent in all cases, without respect to the value of the property on which the rent is to be levied and without respect to the amount of rent to be levied.

(1 of 1883 s. 1 incorporated)

Penalty for unauthorized distress

78. (1) No distress shall be levied for arrears of rent except under the provisions of this Part.

(2) Any person, not being a bailiff or officer acting under this Part, who levies or attempts to levy any such distress shall be liable on summary conviction to a fine of $500 or to imprisonment for 3 months, in addition to any other liability which he may have incurred by his proceedings.  (1 of 1883 s. 2 incorporated. Amended 51 of 1911 s. 4; 21 of 1912; 22 of 1950 Schedule)

Limitation of time for issue of warrant

79. No warrant shall be issued in any case for arrears of rent due for more than 12 months at the time of the application.

(1 of 1883 s. 5 incorporated)

Fees

80. No fees shall be taken or demanded for distress under this Part except those prescribed in the Fourth Schedule.

(1 of 1883 s. 4 incorporated. Amended 50 of 1911; 62 of 1911 Schedule)

Making of distress

Application for warrant

81. Any person claiming to be entitled to arrears of rent, or his duly constituted attorney or agent, may apply for a warrant.

(1 of 1883 s. 6 incorporated)

Form of affidavit

82. Every application for a warrant shall be supported by an affidavit in Form 1 in the Fifth Schedule, sworn in like manner as other affidavits in the court.

(1 of 1883 s. 8 incorporated. Amended 50 of 1911; 51 of 1911; 20 of 1948 s. 4)
Issue of warrant

83. A warrant in Form 2 in the Fifth Schedule may be issued by a judge or, in the absence of any judge from the court house, by the Registrar, returnable within 6 days and addressed to a bailiff of the court.

(I of 1883 s. 9 incorporated. Amended 50 of 1911; 62 of 1911; 20 of 1948 s. 4)

Refusal of warrant

84. The judge or Registrar to whom application is made may, on examination of the person applying for a warrant, decline to issue the same.

(I of 1883 s. 10 incorporated. Amended 50 of 1911; 51 of 1911; 62 of 1911 Schedule; 63 of 1911 Schedule)

Appeal from refusal

85. (1) If a judge declines to issue a warrant, application may be made to the Court of Appeal under section 14 of the Supreme Court Ordinance (Cap. 4). (Amended 92 of 1975 s. 58)

(2) If the Registrar declines to issue a warrant, application may be made to a judge in the first instance. A deputy registrar may, however, refer any application to the Registrar.

(I of 1883 s. 11 incorporated. Amended 50 of 1911; 51 of 1911; 62 of 1911 Schedule; 63 of 1911 Schedule)

Time for making distress

86. Every distress shall be made after sunrise and before sunset, and not at any other time, except by special leave of the court or a judge.

(I of 1883 s. 12 incorporated. Amended 50 of 1911; 62 of 1911 Schedule)

Property liable to seizure

87. In pursuance of a warrant, a bailiff shall seize the movable property found in or upon the house or premises mentioned in the warrant, and in the appurtenant possession of the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may, in the bailiff’s judgment, be sufficient to cover the amount of the rent, together with the costs of the distress.

(I of 1883 s. 13 incorporated. Amended 8 of 1928 s. 2)

Property not liable to seizure

88. A bailiff shall not seize—

(a) things in actual use, in the hands of a person at the time of seizure; or

(b) tools and implements not in use, where there is other movable property in or upon the house or premises sufficient to cover the amount of the rent and costs; or

(c) goods of a temporary guest at an inn; or
(d) goods of a lodger at a furnished lodging-house; or
(e) the debtor’s necessary wearing apparel; or
(f) goods in the custody of the law; or
(g) goods delivered to a person or firm exercising a public trade, to be carried, wrought, worked up, or managed in the way of the trade or employ of such person or firm.  *(Replaced 8 of 1928 s. 3)*
*(1 of 1883 s. 14 incorporated)*

Making of inventory on seizure

89. On seizing any property under section 87, the bailiff shall make an inventory and appraisement of such property, and shall give a copy of such inventory and appraisement together with a notice in Form 3 in the Fifth Schedule, to the debtor or to any other person on his behalf, in or upon the said house or premises.

*(1 of 1883 s. 15 incorporated. Amended 20 of 1948 s. 4)*

Filing of inventory, etc.

90. The bailiff shall, as soon as may be, file in the court copies of the inventory and appraisement and notice given under section 89.

*(1 of 1883 s. 16 incorporated)*

Entry, and forcible entry

91. (1) A bailiff or officer appointed to execute a warrant may break open inner doors.

(2) If he is denied admittance to any building in respect of which he has a warrant to distrain, after declaring his name and business, or if, after waiting a reasonable time, no person answers or is in the building, he may apply to the court for authority to break open outer doors and windows, so far as may be necessary to enable him to execute the warrant.

(3) The court, on being satisfied, by the affidavit of the bailiff or officer, that there are no reasonable means of executing the warrant without breaking open the outer doors or windows, may grant an order in writing, addressed to a bailiff, authorizing him to break open, or have broken open, the doors and windows.

(4) Before executing such order, however, the bailiff shall inform any person in or about the building that he has such order and that he is about to act on it, unless the doors or windows are opened. *(Amended 50 of 1911)*
*(1 of 1883 ss. 17 & 18 incorporated)*

Impounding of property seized

92. The bailiff may impound or otherwise secure the property seized in or on the house or premises chargeable with the rent or may remove same.

*(1 of 1883 s. 19 incorporated)*
Discharge or suspension of warrant or release of distress

93. (1) The debtor, or any other person alleging himself to be the owner of any property seized under this Part, may, at any time within 5 days from such seizure, apply to the court to discharge or suspend the warrant or to release a restrained article; and the court may discharge or suspend the warrant or release the article, on such terms as it may think just.

(2) An applicant under subsection (1) shall give to the person who obtained the warrant and the bailiff who executed it 24 hours' notice of the application. The notice shall set out the facts on which the claim is founded and the facts shall be verified by affidavit.

(1 of 1883 s. 20 incorporated)

Costs of application

94. The costs attending an application under section 93 and the costs attending the issue and execution of the warrant shall be in the discretion of the court, and shall be paid as the court directs.

(1 of 1883 s. 21 incorporated)

Wrongful distress

95. If any claim is made to or in respect of any property seized under a warrant, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar, on the application of the bailiff who seized the property, may issue a summons calling before the court the claimant and the person who obtained the warrant, and thereupon any action which may have been brought in respect of such claim shall be stayed, and the court, on proof of the service of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such action after the service of such summons.

(1 of 1883 s. 22 incorporated)

Adjudication in case of wrongful distress

96. (1) Every claim under section 95 shall be verified by affidavit setting out the facts on which it is founded. (Amended 51 of 1911)

(2) When so verified the court shall adjudicate thereupon, and make such order between the parties in respect thereof, and of the costs of the proceedings, as it thinks fit.

(3) An order under subsection (2) shall be enforced as if it were an order made in an action brought in the court.

(1 of 1883 s. 23 incorporated)

Compensation for wrongful distress

97. (1) In any case under section 93 or 95, the court may, if a claim for compensation is made at the time of application, and if it appears to the court
that the landlord or bailiff had no reasonable ground for believing that the goods were properly distrainable, award such compensation by way of damages to the applicant or claimant, as the case may be, as the court thinks fit, and may for that purpose make any inquiry it thinks necessary.

(2) The order of the court awarding or refusing compensation under subsection (1) shall bar any action in respect of injury caused by the distress.

(1 of 1883 s. 24 incorporated)

Power to allow time for payment of rent

98. The court may, at any time, on the application of the debtor and on reasonable notice being given of the application to the person who obtained the warrant, give time to the debtor to pay the rent due from him, on such terms as it may think just and reasonable.

(1 of 1883 s. 25 incorporated. Amended 50 of 1911; 62 of 1911 Schedule)

Sale of Distress

Mode of sale of distress

99. (1) In default of any order to the contrary, the distrained property shall be sold on the day mentioned in the notice given under section 89 and the sale shall be conducted at such place and time and by such auctioneer or bailiff as the Registrar may direct.

(2) The auctioneer or bailiff shall, on realizing the proceeds, pay over the amount thereof to the court, and such amount shall be applied first in payment of the costs of the distress, and then in satisfaction of the debt; and the surplus, if any, shall be returned to the debtor.

(1 of 1883 s. 26 incorporated)

Right of debtor as to manner of sale

100. The debtor may require that the sale shall take place in any other manner than that directed by the Registrar, on giving security for any extra costs or loss thereby, or that, in the opinion of the Registrar, may be thereby occasioned.

(1 of 1883 s. 27 incorporated)

Deserted Premises

Case of deserted premises, where no distress left

101. (1) If a tenant of premises with a rateable value not exceeding $30,000 at the time of an application for a warrant under this section is in arrears for 2 months and deserts the demised premises and leaves the same uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent, the court may, on the application of the lessor or landlord or his agent and on information upon oath, issue its warrant authorizing any bailiff to enter on the premises, breaking any doors, windows, or gates, if necessary; and, if the
premises are found to be deserted with no sufficient distress therein, to place the same in charge of a bailiff and to affix a notice thereon, in a conspicuous place, that, unless cause to the contrary is shown before the court within 10 days, the premises will be given over to the applicant.  (Amended 37 of 1986 s. 6)

(2) If no such cause is shown, the court may, on proof of the fact of desertion, of non-payment of at least 2 months’ rent last due, of want of sufficient distress, and that the applicant is the lessor or landlord of the premises or entitled under this Part to a warrant, make an order directing a bailiff to put the applicant in possession of the premises, and the demise shall become void.

(3) The Legislative Council may by resolution amend the sum mentioned in subsection (1).  (Added 37 of 1986 s. 6)  

(1 of 1883 s. 28 incorporated)  
[cf. U.K. 1737 c. 19 s. 16 & 1817 c. 52]

Rules as to Distress

Distress for arrears of rent on determination of lease

102. Arrears of rent may be distressed for after the end or determination of any term or lease at will, in the same manner as if such term or lease had not been ended or determined:

Provided that such distress is made during the continuance of the possession of the tenant from whom such arrears became due.  

(1 of 1883 s. 29 incorporated)

Priority of landlord’s right

103. No personal property shall be removed from any premises under any writ from any court, other than writs in Crown suits, until the claim for rent due to the landlord or lessor or person entitled to receive the rent is satisfied:

Provided that such claim shall not in any case exceed the amount due for 6 months’ rent last due.  

(1 of 1883 s. 30 incorporated)  
[cf. U.K. 1709 c. 18 or c. XIV]

Property seized under writ or warrant of High Court or the District Court

104. (1) If personal property, otherwise liable to distress for rent, is, at the time of the issue of a warrant or thereafter before seizure by the bailiff under the warrant, seized under any writ or warrant of the High Court or the District Court, the bailiff shall not seize the personal property, but shall return the warrant into court and deliver copies thereof to the execution creditor or his agent and to the debtor, either personally or by leaving the same at the place where the goods were seized.  (Amended 1 of 1953 Fourth Schedule; 92 of 1975 s. 59)

(2) The execution creditor or debtor or either of them may apply to the court to discharge or suspend the warrant within the time and in the manner
mentioned in section 93, and if no application is made within the prescribed time, the Registrar shall, out of the first money to be received by him from the officer executing the writ or warrant, pay over to the person obtaining the warrant the amount thereof:

Provided that if the amount mentioned in the warrant exceeds the amount due for 6 months' rent, the Registrar shall pay the amount of rent due for 6 months and the costs and no more.

*(1 of 1883 s. 31 incorporated)*

**Distrain after satisfaction of execution**

**105.** If any execution is paid off after the issue of a warrant, the bailiff shall immediately execute the warrant.

*(1 of 1883 s. 32 incorporated)*

**Persons who may apply for warrant**

**106.** The following persons may, either personally or by their attorneys or agents, apply for warrants to distrain for arrears of rent due to the estates represented by them; that is to say—

(a) executors or administrators of any lessor or landlord or person entitled to receive rents;

(b) guardians for infants;

(c) committees of lunatics for the lunatics;

(d) receivers appointed by courts for the estate over or for which they are appointed;

(e) assignees and trustees in bankruptcy for the estate of the bankrupt;

(f) mortgagees for the property mortgaged, if the mortgagee is in possession;

(g) trustees for the estate over which the trust extends;

(h) lessees against their underlessees; and

(i) the Registrar for premises seized under execution, if rented to tenants by the person against whom the execution is issued, or otherwise rented so that the rent is payable to such person.

*(1 of 1883 s. 33 incorporated. Amended 72 of 1971 s. 3)*

**Right of one of several parties interested to institute proceedings**

**107.** Where a right to distrain accrues to parties jointly interested or together interested in any premises, such as coparceners, joint tenants, tenants in common, executors, administrators, trustees, guardians, partners, or otherwise, proceedings under this Part may be taken by any one of such parties, in his own name and the name or names of those jointly or together interested with him, and the levying of rent so distrained for shall be a complete discharge to the tenant for the rent or for so much thereof as may be so levied; and the party so levying shall be liable to account to the parties having the interest jointly or together with him for all sums so levied:
Provided that if, in any particular case, it appears to the court or to the Registrar to be advisable to do so, the court or the Registrar may require the party so applying to produce a written authority to distrain, signed by one or more of the persons jointly or together interested with him.  

(Amended 50 of 1911; 62 of 1911 Schedule)

(1 of 1883 ss. 34 & 35 incorporated)

Removal of property under distrain

108. No property found at the time of distrain in or on any premises as to which an arrear of rent is due shall be removed from the premises without the consent of the person issuing the warrant, or by direction of the Registrar, until satisfaction is made for the rent due, if the arrear has accrued during the current tenancy, and if at any time the property would have been liable to distrain for rent under this Part; and the landlord or lessor shall be entitled to require the bailiff, on giving the bailiff a sufficient indemnity, to the satisfaction of the Registrar, to follow the property, if removed, and seize the same under the warrant, whether or not the property was afterwards disposed of by the owner by way of sale, exchange, mortgage, pledge, or otherwise.

(1 of 1883 s. 36 incorporated)

Following property liable to seizure and removed

109. If the tenant or lessee or person in possession or occupation of any premises on which there is an arrear of rent due, recoverable by distress, removes or carries away, or causes or permits to be removed or carried away, from the premises any movable property liable to be seized for such rent, so as to prevent or hinder the bailiff from distraining the same, the court may, on application verified by affidavit, authorize the bailiff to whom the warrant to distrain for the rent on such premises is addressed, and the officers acting with him, to follow and to take and seize the property as a distress for the arrears of rent, wherever the same may be found, at any time within 30 days from the day of its removal, exclusive of the day of removal, and to deal with the property so removed in the same way as if it had been found on the premises, and, if advisable to do so, to place the same again in the premises:

Provided that the bailiff may, without such authority, follow and seize any such property found by him in the act of being removed from any such premises, and before the same is placed in any other house or building.

(1 of 1883 ss. 37 & 38 incorporated)

Restoration of property removed but bona fide sold

110. If the property or any part thereof so removed or carried away under section 108 or 109 has been sold bona fide and for a sufficient consideration, before or after removal from the premises distrained, to any person not knowing and not having the means of knowing that the same was liable to distrain for rent, or was removed or carried away, or was to be removed or carried away, so as to prevent or hinder the landlord or lessee from distraining, the same, or so much thereof as has been so sold, shall be restored by the bailiff distraining or by the court on application under section 93.

(1 of 1883 s. 39 incorporated)
Fraudulent removal of property by tenant

111. Any tenant or lessee or person in possession or occupation who fraudulently removes or carries away movable property under section 108 or 109, and any person who wilfully and knowingly aids or assists such tenant or lessee or person in such fraudulent removal or carrying away, shall be deemed to be guilty of a misdemeanor.

(1 of 1883 s. 40 incorporated)

Protection against irregularity in proceedings

112. Where any distress is made for any sum of money to be levied by virtue of this Part, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the proceeding relating thereto, nor shall the party distrainting be deemed a trespasser from the beginning on account of any irregularity which may afterwards be committed by the party so distrainting, but the person aggrieved by such irregularity may recover satisfaction for the special damages in an action under section 97.

(1 of 1883 s. 42 incorporated)

General

Exclusion of Crown rents

113. Nothing in this Part shall be held to apply to rents due to the Crown.

(1 of 1883 s. 43 incorporated)

Power to amend Schedules

114. The Governor may by notice published in the Gazette amend the Fourth Schedule and the Fifth Schedule in any manner whatsoever.

(Added 17 of 1929 s. 2. Amended 72 of 1973 s. 2)

PART IV

NEW TENANCIES OF DOMESTIC PREMISSES

Interpretation and Application

Interpretation

115. (1) In this Part, unless the context otherwise requires—

"Commissioner" means the Commissioner of Rating and Valuation;

"current tenancy" means a tenancy which is subsisting (whether or not continued by section 117) at the time when a notice is served under section 119(1) or a request made under section 119A(1);

"date of termination" means the date stated in a notice served under section 119(1) as the date at which the tenancy is to come to an end;
“domestic tenancy” has the meaning given to that phrase by section 51;
“forfeiture” 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” includes any person, other than the Crown, 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;

“notice to quit” means a notice to terminate a tenancy given in accordance with the express or implied provisions of that tenancy;

“premises” means the subject matter of any tenancy;  

(Added 29 of 1983 s. 29)

“prevailing market rent” 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 on which the current tenancy would, apart from section 119N, have come to an end under section 119(1) or section 119A(5), on the terms of the new tenancy granted under this Part, but disregarding the effect of this Ordinance;  

(Amended 29 of 1983 ss. 29 & 46)

“tenancy” means a tenancy entered into orally or in writing and includes—

(a) an agreement for a tenancy;

(b) a sub-tenancy; and

(c) a tenancy continued or granted under this Part;

“tenant” does not include a Crown lessee but includes—

(a) a sub-tenant; and

(b) a public body, corporation, foreign or Commonwealth Government, partnership or firm which is the tenant of premises which is the subject matter of a tenancy to which this Part applies;

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

(2) For the purposes of ascertaining whether a tenancy is a domestic tenancy, section 51 shall apply to this Part as it applies to Part II.

(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)

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

Application of this Part

116. (1) Subject to subsections (2) and (3), this Part applies to any domestic tenancy whether created before, on or after 19 December 1981 and notwithstanding any provision in such tenancy, including any provision purporting generally or specifically to exclude this Part.  

(Amended 29 of 1983 s. 30)
(1A) Where Part II ceases to apply to a tenancy because that tenancy becomes a tenancy mentioned in paragraph (m) of section 50(6), this Part shall apply to that tenancy.  *(Added 29 of 1983 s. 30)*

(1B) Where Part II ceases to apply to a tenancy under section 51A or 51B, this Part shall apply to that tenancy.  *(Added 40 of 1984 s. 32)*

(2) This Part shall not apply to any tenancy—

(a) to which Part I or Part II applies; or

(b) which is excluded from Part II by paragraph (b), (c), (d), (e) or (n) of section 50(6), whether or not the tenancy is also excluded from Part II by paragraph (l), (m) or (o), or all those paragraphs, of that section; or  *(Replaced 29 of 1983 s. 30)*

(c) of premises which is subsisting at the time an order under section 4 is made in respect of those premises; or  *(Added 29 of 1983 s. 30)*

(d) which is entered into under an authority under section 53(7A)(a)(ii) or an authority by the Commissioner under section 119H(2)(a).  *(Added 29 of 1983 s. 30)*

(3) This Part shall not apply to a tenancy entered into in writing for a term not exceeding 1 year which is endorsed by the Commissioner under subsection (4).

(4) When the Commissioner is satisfied that a tenancy mentioned in subsection (3)—

(a) has been entered into for a period during which, or for most of which, the landlord will be absent from Hong Kong or for any other special reason acceptable to the Commissioner, the landlord is unable to, or does not wish to, occupy the premises; or

(b) is a tenancy (which is not a sub-tenancy) of premises—

(i) which are, in his opinion, fully furnished; and

(ii) in respect of which the landlord is obliged by the terms of the tenancy to maintain and repair the premises, furnishings and fittings; or

(c) is a sub-tenancy of premises which are—

(i) in his opinion, fully furnished and in respect of which the principal tenant is obliged by the terms of the sub-tenancy to maintain and repair the premises, furnishings and fittings; and

(ii) under a principal tenancy which is excluded under paragraph (b),

and that the tenant or sub-tenant understands the effect of excluding the tenancy or sub-tenancy from this Part, he may endorse the agreement to the effect that this Part does not apply to the tenancy or sub-tenancy.  *(Replaced 40 of 1984 s. 32.  Amended 32 of 1985 s. 19)*

(4A) An application to the Commissioner for his endorsement under subsection (4) shall be accompanied by such fee as may be determined by the Financial Secretary.  *(Added 32 of 1985 s. 19)*
(5) (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. (*Added 29 of 1983 s. 30*)

(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. (*Added 40 of 1984 s. 32*)

(6) (*Repealed 40 of 1984 s. 32*)

Continuation and Renewal of Tenancies

Continuation of tenancies and grant of new tenancies

117. (1) A tenancy shall not come to an end unless terminated in accordance with this Part; and a tenant may apply to the Lands Tribunal for a new tenancy—

(a) if the landlord has given notice under section 119 to terminate the tenancy; or

(b) if the tenant has made a request for a new tenancy under section 119A.

(2) Subsection (1) shall not prevent the coming to an end of a tenancy by notice to quit given by the tenant, by surrender or forfeiture or by the forfeiture of a principal tenancy unless—

(a) in case of a notice to quit, the notice was given before the tenant had been in occupation in right of the tenancy for 1 month; or

(b) in the case of an instrument of surrender, it was executed before, or was executed in pursuance of an agreement made before, the tenant had been in occupation in right of the tenancy for 1 month.

[cf. U.K. 1954 c. 56 s. 24]

Notices given before this Part applies

118. (1) Where, at a time when a tenancy is not one to which this Part applies, the landlord gives notice to quit or of termination under Part V or otherwise and the notice expires when the tenancy is one to which this Part applies, the notice shall have no effect.

(2) This section shall not apply to re-entry where the tenant has given cause for forfeiture.
(3) This section shall apply to notices given before 19 December 1981 as well as after that date.

Termination of tenancy by the landlord

119. (1) Subject to section 119N, the landlord may terminate a tenancy by a notice given to the tenant in the specified form stating the date of termination. *(See Form CR 101 in G.N. 3919 in Gazette No. 53/81)*

(2) Subject to subsection (3), a notice under this section shall not have effect unless it is given not more than 7 nor less than 6 months before the date of termination.

(3) (a) In the case of a tenancy which, apart from this Part, could have been brought to an end by notice to quit given by the landlord, the date of termination shall not be earlier than the earliest date on which, apart from this Part, the tenancy could have been brought to an end by notice to quit given by the landlord on the date of the giving of the notice under this section.

(b) In the case of any other tenancy, a notice under this section shall not specify a date of termination earlier than the date on which apart from this Part the tenancy would have come to an end by effluxion of time.

(4) A notice under this section shall not have effect unless it requires the tenant, within 2 months after the giving of the notice, to notify the landlord in the specified form whether or not, at the date of termination, the tenant will be willing to give up possession of the premises comprised in the tenancy. *(See Form CR 102 in G.N. 3919 in Gazette No. 53/81)*

(5) A notice under this section shall not have effect unless it states whether the landlord would oppose an application to the Tribunal under this Part for the grant of a new tenancy and, if so, also states on which of the grounds mentioned in section 119E he would do so.

*[cf. U.K. 1954 c. 56 s. 25]*

Tenant’s request for a new tenancy

119A. (1) A tenant under a current tenancy may make a request to the landlord for a new tenancy. *(See Form CR 103 in G.N. 3919 in Gazette No. 53/81)*

(2) A tenant’s request for a new tenancy shall be for a tenancy beginning with such date, not more than 7 nor less than 6 months after the making of the request, as may be specified therein:

Provided that the date shall not be earlier than the date on which, apart from this Part, the current tenancy would come to an end by effluxion of time or could be brought to an end by notice to quit given by the tenant.

(3) A tenant’s request for a new tenancy shall not have effect unless it is made by notice in the specified form given to the landlord.

(4) A tenant’s request for a new tenancy shall not be made if the landlord has already given notice under section 119 to terminate the current tenancy, or if the tenant has already given notice to quit or notice under section 119B; and no
notice under section 119 shall be given after the making by the tenant of a request for a new tenancy. *(Amended 29 of 1983 s. 31)*

(5) Where the tenant makes a request for a new tenancy in accordance with this section, the current tenancy shall, subject to sections 119M(2) and 119N, terminate immediately before the date specified in the request for the beginning of the new tenancy.

(6) Within 2 months of the making of a tenant's request for a new tenancy, the landlord may give notice in the specified form to the tenant that he will oppose an application to the Tribunal for the grant of a new tenancy; and any such notice shall state on which of the grounds mentioned in section 119E the landlord will oppose the application. *(See Form CR 104 in G.N. 3919 in Gazette No. 53/81)*

*[cf. U.K. 1954 c. 56 s. 26]*

**Termination by tenant of tenancy for fixed term**

119B. (1) Where the tenant under a current tenancy gives to the landlord, not later than 1 month before the date on which, apart from this Part, the tenancy would come to an end by effluxion of time, a notice in writing that the tenant does not desire the tenancy to be continued, section 117 shall not have effect in relation to the tenancy, unless the notice is given before the tenant has been in occupation in right of the tenancy for 1 month.

(2) A tenancy which is continuing by virtue of section 117 may be brought to an end by not less than 1 month's notice in writing given by the tenant to the landlord, whether the notice is given after the date on which, apart from this Part, the tenancy would have come to an end or before that date, but not before the tenant has been in occupation in right of the tenancy for 1 month.

*[cf. U.K. 1954 c. 56 s. 27]*

**Renewal of tenancies by agreement**

119C. (1) Where the landlord and tenant agree for the grant to the tenant of a future tenancy of the premises on terms and from a date specified in the agreement, the current tenancy shall continue until that date but no longer and shall not be a tenancy to which this Part applies:

Provided that an agreement for the grant of a future tenancy before the tenant has been in occupation in right of the current tenancy for 1 month shall not be enforceable by the landlord.

(2) Where the landlord and tenant agree for the grant to the tenant of a future tenancy but are unable to agree the rent payable, the parties may refer the rent for determination under section 119K and that section shall apply accordingly:

Provided that the tenant may, within 1 month of that determination, serve a notice on the landlord declining to accept that future tenancy. *(Added 29 of 1983 s. 32)*

*[cf. U.K. 1954 c. 56 s. 28]*
Application to Tribunal for new tenancy

Order by Tribunal for grant of a new tenancy

119D. (1) Subject to section 119G, on an application under section 117(1) the Tribunal shall make an order for the grant of a new tenancy.

(2) Where an application under section 117(1) is made in consequence of a notice given by the landlord under section 119, the application shall not be entertained unless the tenant has notified the landlord in accordance with that notice that he will not be willing at the date of termination to give up possession of the premises comprised in the tenancy.

(3) (a) No application under section 117(1) shall be entertained if it is made—

(i) less than 2 months after, either, the giving of the landlord’s notice under section 119 or, as the case may be, the making of the tenant’s request for a new tenancy under section 119A; or

(ii) more than 2 months after the giving of a notice in the specified form by the landlord to the tenant requiring the tenant to make such an application; or  (See Form CR 105 in G.N. 3919 in Gazette No. 53/81)

(iii) after the current tenancy has terminated in accordance with this Part.

(b) A landlord shall not be entitled to give the notice mentioned in subparagraph (ii) of paragraph (a) before the expiry of the period of 2 months mentioned in subparagraph (i) of that paragraph.

[cf. U.K. 1954 c. 56 s. 29]

Opposition by landlord to application for new tenancy

119E. (1) The grounds on which a landlord may oppose an application under section 117(1) are such of the following grounds as may be stated in the landlord’s notice under section 119, or, as the case may be, the notice under section 119A(6)—

(a) any rent lawfully due from the tenant has not been paid or, where any covenant or condition of the tenancy has been broken or not performed, such breach or non-performance is, under the current tenancy, a cause of forfeiture;

(b) the premises or any part thereof 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: (Amended 29 of 1983 s. 33)

Provided that the Tribunal shall not refuse to grant a new tenancy by reason only of this ground if—

(i) 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 refuse to grant a new tenancy; or
(ii) in the case of a sub-tenancy, the Tribunal is satisfied, in all the circumstances of the case, including the question whether other accommodation is available for the principal tenant or the sub-tenant, greater hardship would be caused by refusing to grant a new tenancy than by granting one;

(c) the landlord intends to rebuild the premises;

(d) the tenant has caused unnecessary annoyance, inconvenience or disturbance to the landlord or to any other person:

Provided that no ground shall be established under this paragraph unless the Tribunal is satisfied that the annoyance, inconvenience or disturbance had continued after a warning in writing had been served by the landlord on the tenant causing the same;

(e) the tenant has used, or has suffered or permitted the use of, the premises of which he is the tenant or any part thereof, for an immoral or illegal purpose;

(f) the tenant has sublet the whole or any part of the premises of which he is tenant and does not occupy any part of the premises as his dwelling. (Added 29 of 1983 s. 33)

(2) The landlord shall not be entitled to oppose an application on the ground specified in paragraph (b) of subsection (1) if the interest of the landlord, or an interest which has merged in that interest and but for the merger would be the interest of the landlord, was acquired after the beginning of the period of 12 months which ends with the termination of the current tenancy, and at all times since the acquisition thereof the premises have been comprised in a tenancy or successive tenancies of the description specified in section 116(1).

(2A) For the purposes of subsection (1)(b)—

"landlord" includes one or more landlords, holding the premises jointly or in common, with the other landlord or landlords so holding assenting to the opposition to an application under section 117(1); and

"his father, his mother or any son or daughter of his" includes the father, mother, son or daughter of one or more landlords, holding the premises jointly or in common, with other landlord or landlords so holding assenting to the opposition to an application under section 117(1). (Added 29 of 1983 s. 33)

(3) For the purpose of subsection (1)(d), a tenant who persistently fails to pay rent as and when it falls due may be regarded as causing unnecessary inconvenience to the landlord.

[cf. U.K. 1954 c. 56 s. 30]

Additional provisions regarding opposition on ground of intention to rebuild

119F. (1) The Tribunal shall not decline to make an order for the grant of a new tenancy on the ground mentioned in paragraph (c) of section 119E(1) unless, in addition, the landlord establishes that—

(a) the rebuilding will result in an increase in the number of dwellings or in accommodation for domestic use or in accommodation for other
than domestic use; and, if for other than domestic use, the site of the premises is suitable for the intended use; or

(b) the rebuilding is in the public interest; or

(c) the expenditure required to restore or repair the premises would not be economically reasonable,

and, where the approval or authority of any person is required in respect of the rebuilding, the Tribunal may—

(i) state that the landlord has established the ground mentioned in paragraph (c) of section 119E(1) and one of the matters mentioned in paragraphs (a), (b) and (c) of this subsection;

(ii) postpone the hearing of the application to enable the landlord to apply for that approval or authority; and

(iii) if that approval or authority is obtained, but not otherwise, decline to make an order for the grant of a new tenancy.

(2) Where a landlord successfully opposes the grant of a new tenancy on the ground mentioned in paragraph (c) of section 119E(1), the Tribunal may impose any reasonable condition on the landlord in relation to his intention to rebuild the premises and shall order that compensation be paid to the tenant and—

(a) that plans of the new building showing the number and size of any dwellings to be erected be lodged with the Tribunal and that the new building be erected to provide that number of dwellings; and

(b) that the rebuilding work (including any demolition that is required) be commenced, and the new building be ready for occupation, on the dates ordered.  (Amended 29 of 1983 s. 34; 32 of 1985 s. 20)

(2A) 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 subsection (2).  (Added 29 of 1983 s. 34)

(3) The Commissioner shall cause an order of the Tribunal made under this section to be registered by memorial in the Land Office against the premises affected and the conditions imposed under subsection (2) shall be binding on and enforceable against any successors in title to the landlord.

(4) (a) The compensation ordered by the Tribunal under subsection (2) shall be the sum of—

(i) an amount equal to twice the rateable value of the premises;

(ii) an amount equal to the expenditure actually and reasonably incurred or to be reasonably incurred by the tenant and any sub-tenant in respect of the packing, removal and transportation within Hong Kong of the furniture and movable property kept in the premises; and

(iii) an amount equal to the loss actually and reasonably incurred or to be reasonably incurred by the tenant and any sub-tenant in respect of carpets, curtains and fittings.  (Replaced 40 of 1984 s. 33)

(b) Where a tenant has sublet premises or any part of premises, the compensation payable under this subsection shall be apportioned by
the Tribunal so that a sub-tenant shall be entitled to receive a portion of the compensation payable under paragraph (a) which is just and equitable.  *(Amended 40 of 1984 s. 33)*

(c) Where it appears that premises or any part of premises is sublet, the Tribunal may call upon the Commissioner for a certificate as to which part of the premises is occupied by a sub-tenant and such a certificate purporting to be signed by or on behalf of the Commissioner shall be admissible in evidence for the purposes of paragraph (b) upon its mere production without further proof, subject to the right of any party, including any sub-tenant, to cross-examine the Commissioner or a public officer in his department nominated by the Commissioner for that purpose.

(d) For the purposes of this subsection—

"rateable value" has the meaning given to that phrase by section 50(10).  *(Amended 29 of 1983 s. 34)*

(e) The method of calculating the compensation mentioned in paragraph (a) may be amended by resolution of the Legislative Council.  *(Replaced 40 of 1984 s. 33)*

(5) (a) Where there is a breach of a condition imposed under paragraph (a) of subsection (2) which results in fewer dwellings or less accommodation being erected than appeared in the plans lodged, the Tribunal may, on the application of the Commissioner, impose a penalty of a sum not exceeding what would have been the market value, at the time of the imposition, of the building if it had been erected in accordance with the plans.

(b) Where there is a breach of a condition imposed under paragraph (b) of subsection (2), the Tribunal may, on the application of the Commissioner,—

(i) where the landlord holds the premises under a Crown lease or other tenancy from the Crown, decrec such breach to be a breach of covenant in the Crown lease or of a condition or stipulation in the tenancy and a right of re-entry under the Crown Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126) shall accrue to the Crown; or

(ii) in any case, impose a penalty not exceeding the market value of the premises at the time of the imposition of the penalty.

(c) Where there is a breach of any other condition imposed under subsection (2), the Tribunal may, on the application of the Commissioner, impose a penalty payable to the general revenue of a sum not exceeding $500,000.

(6) In this section, "dwelling" has the meaning given to that phrase by section 50C(1).

**New tenancy of part of premises**

119FA. Subject to section 119E(1)(b), where an application under section 117(1) is opposed on the ground mentioned in section 119E(1)(b) and the Tribunal is satisfied that only part of the premises is reasonably required, the Tribunal shall—
(a) in a case where any tenant or sub-tenant is willing to accept such an order, make an order for the grant of a new tenancy or new tenancies in respect of such part or parts of the premises as the Tribunal thinks just and equitable having regard to those reasonable requirements and all the circumstances of the case; or

(b) in any other case, decline to make an order for the grant of a new tenancy.

(Added 29 of 1983 s. 35)

Dismissal of application for new tenancy where landlord successfully opposes

119G. (1) If the landlord opposes an application under section 117(1) on grounds on which he is entitled to oppose it in accordance with section 119E and, subject to section 119F, establishes any of those grounds to the satisfaction of the Tribunal, the Tribunal shall not make an order for the grant of a new tenancy.

(2) Where the Tribunal does not make an order for the grant of a new tenancy on a ground specified in paragraph (b) of section 119E(1), it shall specify the name of the person for whose occupation it is satisfied the premises are required. (Added 29 of 1983 s. 36)

[cf. U.K. 1954 c. 56 s. 31]

Penalties

119H. (1) Subject to subsection (2), where the landlord successfully opposes the grant of a new tenancy—

(a) on a ground specified in paragraph (b) or (c) of section 119E(1), he shall not, for a period of 24 months after the decision of the Tribunal declining to make an order for the grant of a new tenancy—

(i) let the premises or any part thereof; or

(ii) assign, transfer or part with possession of the premises or any part thereof except, in a case specified in paragraph (c) of section 119E(1), where the assignment, transfer or parting with possession is solely to facilitate the rebuilding of the premises; and

(b) on a ground specified in paragraph (b) of section 119E(1), he shall not, for a period of 24 months after the decision of the Tribunal declining to make an order for the grant of a new tenancy, use, or allow the use of, the premises or any part thereof other than as a residence for the person for whose occupation the Tribunal was satisfied the premises were required under that subsection. (Replaced 29 of 1983 s. 37)

(2) (a) Where a landlord successfully opposes the grant of a new tenancy on the ground specified in paragraph (b) or (c) of section 119E(1), the Tribunal may authorize the landlord to—

(i) let the premises or any part thereof; or

(ii) assign, transfer or part with possession of the premises or any part thereof; or
(iii) use, or allow the use of, the premises or any part thereof other than as a residence for the person for whose occupation the Tribunal was satisfied the premises were required under paragraph (b) of section 119E(1),

and the Commissioner may, on an application accompanied by such fee as the Financial Secretary may determine, authorize the landlord to let, use or allow the use of the premises as mentioned in subparagraph (i) or (iii) for a term not exceeding 1 year.  (Replaced 29 of 1983 s. 37.  Amended 32 of 1985 s. 21)

(b) The Tribunal or the Commissioner, when granting an authority under paragraph (a) to let, shall specify the terms, including the rent, on which the premises or the part are to be let:

Provided that the rent shall not be more than that payable by the tenant last in possession.

(3) Without prejudice to subsection (9), a landlord who contravenes subsection (1) commits an offence and is liable on conviction on indictment to a fine of $500,000 and in addition, on a second or subsequent conviction, to imprisonment for 12 months, and in any case to forfeit a sum not exceeding the equivalent of—

(a) in the case of a contravention of subsection (1)(a)(i), 2 years’ rent calculated at the rate at which the premises were let without the authority of the Tribunal or the Commissioner; or

(b) in the case of a contravention of subsection (1)(a)(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.  (Amended 29 of 1983 s. 37)

(4) Any court which sentences a landlord for an offence under subsection (3) may, in addition to imposing a penalty under that subsection, make an order under subsection (9) after hearing the former tenant and the defendant.

(5)  (Repealed 29 of 1983 s. 37.)

(6) A letting, assignment, transfer or parting with possession of premises or part thereof shall not be void, voidable or unenforceable by reason only of a contravention of subsection (1).

(7) Where, in his opposition to an application for a new tenancy under section 117, the landlord alleges a ground mentioned in paragraph (b) or (c) of section 119E(1) but the application does not proceed and the tenant consents to deliver up vacant possession of the premises, the landlord shall be deemed, for the purposes of subsections (1), (8) and (9), to have successfully opposed the grant of a new tenancy on a ground specified in paragraph (b) or (c) of section 119E(1); and, for the purposes of fixing the commencement of the period mentioned in subsection (1), the date of the decision of the Tribunal declining to make an order for the grant of a new tenancy shall be deemed to be the date on which the landlord filed with the Tribunal his opposition to the grant of a new tenancy.  (Amended 32 of 1985 s. 21)

(8) A landlord who has successfully opposed the grant of a new tenancy on a ground specified in paragraph (b) or (c) of section 119E(1) shall be
presumed, until the contrary is shown, to have knowledge of that opposition, of the application for a new tenancy, of the grounds alleged upon which the application was opposed, of the outcome of the application and of any consent given by the tenant or sub-tenant in connection with the delivery of vacant possession.

(9) Where a landlord successfully opposes the grant of a new tenancy under section 119E(1) and it is subsequently made to appear to the Tribunal that the opposition was successful by reason of the misrepresentation or concealment of material facts or where the landlord is shown to have acted in contravention of subsection (1), the Tribunal or, as the case may be, the court referred to in subsection (4) 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 that opposition. *(Amended 32 of 1985 s. 21)*

(10) Where a tenant obtains the grant of a new tenancy under section 119D and it is subsequently made to appear to the Tribunal that the grant was obtained by reason of the misrepresentation or concealment of material facts, the Tribunal may order the tenant to pay to the landlord such sum as it thinks fit by way of compensation for damage or loss sustained by the landlord as a result of that grant.

**Duration of new tenancy**

119I. Where on an application under this Part the Tribunal makes an order for the grant of a new tenancy, the new tenancy shall be such tenancy as may be agreed between the landlord and the tenant, or, in default of such an agreement, shall be such a tenancy as may be determined by the Tribunal to be reasonable in all the circumstances, being a tenancy for a term not exceeding 3 years, and shall begin on the coming to an end of the current tenancy or such other date as may be agreed between the landlord and the tenant or, in default of such agreement, as may be fixed by the Tribunal. *(Amended 29 of 1983 s. 38)*

Provided that, if there is a principal tenancy which comes to an end within a term of 3 years, the Tribunal shall not determine the duration of the tenancy to be longer than the term until the principal tenancy comes to an end, less 3 days.

*[cf. U.K. 1954 c. 56 s. 33]*

**Other terms of new tenancy**

119J. The terms of a tenancy granted by order of the Tribunal under this Part (other than terms as to the duration thereof and as to the rent payable thereunder) shall be such as may be agreed between the landlord and the tenant or as, in default of such agreement, may be determined by the Tribunal; and in determining those terms the Tribunal shall have regard to the terms of the current tenancy and to all relevant circumstances.

*[cf. U.K. 1954 c. 56 s. 35]*

**Rent under new tenancy**

119K. (1) The rent payable under a new tenancy granted by order of the Tribunal shall be such as may be agreed between the landlord and tenant or as,
in default of such agreement, may be determined by the Tribunal or by a valuation surveyor appointed by the Tribunal, to be a prevailing market rent. (Amended 29 of 1983 s. 46)

(2) The determination of the rent by the valuation surveyor shall, upon a copy of such determination being lodged with the Tribunal and the Commissioner, be binding on the parties.

(3) The valuation surveyor appointed under subsection (1) shall be paid such reasonable fee by the Registrar of the Tribunal as may be determined by the Tribunal from moneys provided by the Legislative Council.

[cf. U.K. 1954 c. 56 s. 34]

Endorsement of tenancy agreement

119L. (1) Where the parties—

(a) on or after 10 June 1983, enter into a tenancy to which this Part applies;

(b) agree a renewal of a tenancy under section 119C;

(c) execute a lease or agreement for a new tenancy as determined by the Tribunal or agreed by them,

the landlord shall lodge with the Commissioner a notice in triplicate in the specified form signed by the landlord; and the Commissioner shall endorse the fact of receipt on 2 copies of the notice and return 1 copy to the landlord and 1 copy to the tenant. (Replaced 29 of 1983 s. 39) (See Form CR 109 in G.N. 2215 in Gazette No. 30/84)

(1A) The notice mentioned in subsection (1) may be lodged—

(a) without charge, within 1 month after the event notified; or

(b) upon payment to the Commissioner of a fee of $500, at any time. (Added 40 of 1984 s. 34)

(2) Subject to section 51A(6), a landlord shall not be entitled to maintain an action to recover rent under an agreement mentioned in subsection (1) unless a notice relating to that agreement is endorsed by the Commissioner under that subsection. (Amended 29 of 1983 s. 39) (Amended 40 of 1984 s. 34)

Carrying out of order for new tenancy

119M. (1) Where under this Part, the Tribunal makes an order for the grant of a new tenancy, then, unless the tenant serves the notice mentioned in subsection (2), the landlord shall be bound to execute or make in favour of the tenant, and the tenant shall be bound to accept, a lease or agreement for a tenancy of the premises embodying the terms agreed between the landlord and the tenant or determined by the Tribunal or the valuation surveyor in accordance with this Part; and where the landlord executes or makes such a lease or agreement the tenant shall be bound, if so required by the landlord, to execute a counterpart or duplicate thereof.
(2) Where the tenant, within 1 month after the determination of the terms of the new tenancy, serves a notice in the specified form on the landlord and the Tribunal stating that he does not wish to accept the new tenancy, the order of the Tribunal shall have no effect and the current tenancy shall continue for such period, not exceeding 2 months from the date of delivery of the notice to the landlord, as the tenant shall state in the notice. (See Form CR 106 in G.N. 3919 in Gazette No. 53/81)

(3) While the current tenancy continues under subsection (2), it shall not be a tenancy to which this Part applies.

(4) During the period from the date on which the current tenancy would, apart from section 119N, have come to an end by virtue of a notice given under section 119(1) or under section 119A(5) until—

(a) the date on which the new tenancy begins; or, as the case may be,

(b) the date on which the current tenancy comes to an end under subsection (2),

the tenant shall be liable to pay the rent fixed in respect of the new tenancy under section 119K:

Provided that, if the terms of the new tenancy, apart from rent, are materially different from the terms of the current tenancy, the Tribunal may, on the application of either party, order that the tenant shall be liable to pay a reasonable rent which may be lesser or greater than the rent fixed in respect of the new tenancy under section 119K.

[cf. U.K. 1954 c. 56 s. 36]

Interim continuation of tenancies pending determination by Tribunal

119N. (1) Subject to sections 119B(2), 119I and 119M(2), in any case where— (Amended 29 of 1983 s. 40)

(a) a notice to terminate a tenancy has been given under section 119 or a request for a new tenancy has been made under section 119A; and

(b) an application to the Tribunal has been made under section 117(1); and

(c) apart from this section, the effect of the notice or request would be to terminate the tenancy before the expiration of the period of 3 months beginning with the date on which the application is finally disposed of,

the effect of the notice or request shall be to terminate the tenancy at the expiration of the said period of 3 months and not at any other time.

(2) The reference in paragraph (c) of subsection (1) to the date on which an application is finally disposed of shall be construed as a reference to the earliest date by which the proceedings on the application (including any proceedings on or in consequence of an appeal) have been determined and any time for appealing has expired, except that if the application is withdrawn or any appeal is abandoned the reference shall be construed as a reference to the date of the withdrawal or abandonment.

[cf. U.K. 1954 c. 56 s. 64]
Rent where new tenancy refused etc.

119NA. (1) Where a tenant remains in possession of any premises after the date on which the current tenancy would, apart from section 119N, have come to an end by virtue of a notice given under section 119(1) or under section 119A(5) and the Tribunal does not, for any reason, make an order for the grant of a new tenancy, the tenant shall be liable to pay rent, as determined by the Tribunal under subsection (2), for the period from that date until the tenant delivers up vacant possession to the landlord.

(2) The Tribunal may, on the application of the landlord or the tenant, determine the rent payable by the tenant under subsection (1) and the Tribunal shall determine that rent as the rent it would have determined if it had ordered the grant of a new tenancy of the premises for a term of 2 years and otherwise on the same terms as the terms of the current tenancy.

(3) This section shall have effect in any proceedings pending in the Tribunal on 10 June 1983.

(Added 29 of 1983 s. 41)

Short tenancies

119O. Where the duration of a current tenancy is such that the time limits fixed in this Part for the giving of notices are not appropriate, the Tribunal may, on application, fix different time limits.

Sub-tenancies

119P. (1) Where a tenant has, in breach of the current tenancy, sublet the whole or any part of the premises and the current tenancy is terminated under this Part, the sub-tenancy shall also terminate.

(2) Where a tenant has, without breach of the current tenancy, sublet the whole or any part of the premises and the sub-tenant has given notice in the specified form to the landlord of his interest in the premises, a copy of any notice or request given or made under sections 119, 119A, 119B and 119D and a copy of the application under section 117(1) shall be served on the sub-tenant; and—

(a) if the tenant fails to make a request for a new tenancy under section 119A, the sub-tenant may make a request for a new tenancy immediately from the landlord;

(b) if the tenant fails to apply for a new tenancy under section 117, the sub-tenant may apply for a new tenancy immediately from the landlord. (See Form CR 107 in G.N. 3919 in Gazette No. 53/81)

(3) Where a sub-tenant makes a request for a new tenancy under section 119A and subsection (2), he may, in accordance with this Part, apply to the Tribunal for a new tenancy immediately from the landlord.

(4) In any application under section 117 by the tenant for a new tenancy, a sub-tenant to whom the premises or any part thereof has been let without breach of the current tenancy shall be entitled to be heard.

(5) Where, in an application under section 117 by the tenant for a new tenancy, the Tribunal does not make an order for the grant of a new tenancy to the tenant then—
(a) if the Tribunal does not make such an order because the landlord has, under this Part, established either of the grounds mentioned in paragraph (b) or (c) of section 119E(1), any sub-tenancy shall terminate; and

(b) if the Tribunal does not make such an order other than because the landlord has established either of the grounds mentioned in paragraph (b) or (c) of section 119E(1), the Tribunal shall, on the application of a sub-tenant, make an order for the grant of a new tenancy immediately from the landlord to the sub-tenant unless, if the application had been by the sub-tenant for a new tenancy from the tenant, the Tribunal would not, under section 119G, have made an order for the grant of a new tenancy:

Provided that, where a part only of the premises would remain in the possession of a sub-tenant or sub-tenants if an order were made under this paragraph, the Tribunal, on the application of the landlord, shall make an order for the grant of such a new tenancy to the sub-tenant, or the sub-tenants jointly, only of the whole premises. (Amended 32 of 1985 s. 22)

(6) Where a sub-tenant applies, under section 117 and subsection (2) or (3), for an order for the grant of a new tenancy immediately from the landlord, the Tribunal shall make an order granting such a tenancy unless, if the application had been by the sub-tenant for a new tenancy from the tenant, the Tribunal would not, under section 119G, have made an order for the grant of a new tenancy.

(7) Where the Tribunal makes an order granting to a sub-tenant a new tenancy immediately from the landlord, the provisions of this Part shall apply as if the order was made under section 119D.

(8) Notwithstanding any termination of a tenancy, a sub-tenancy granted without breach of the current tenancy shall continue as between the landlord and sub-tenant on the same terms as the sub-tenant held from the tenant in the same way as a tenancy would continue under this Part. (Amended 29 of 1983 s. 42)

(8A) Where a sub-tenant becomes the tenant immediately from the landlord, either under a new tenancy or under subsection (8), any subletting on or after 10 June 1983 under that tenancy by that tenant, without the written permission of the landlord, shall be a breach of a condition of the tenancy which is a cause of forfeiture. (Added 29 of 1983 s. 42)

(9) Subject to this section, a sub-tenancy shall not subsist for longer than the tenancy under which it was granted.

Appeals

119Q. (1) Any party may appeal to the Court of Appeal against a determination of the Tribunal on an application under section 117(1) or against an order under section 119F(5) or section 119H(9) or (10) on the ground that such determination is erroneous in point of law.

(2) An appeal under this section shall be subject to the provisions of, and any rules made under, the Lands Tribunal Ordinance (Cap. 17).
Costs

119R. In any proceedings under this Part, the Tribunal shall not make any order as to costs against a party unless that party has conducted his case in a frivolous or vexatious manner.

Provision of rent receipts

119RA. (1) A landlord shall give to his tenant, at the time that the tenant pays his rent, a receipt for the amount of the rent paid and the receipt shall contain—

(a) the name and address of the landlord;
(b) the period in respect of which such rent was paid; and
(c) the date of payment.

(2) A landlord who fails to comply with subsection (1) commits an offence and is liable to a fine of $2,000.

(Added 29 of 1983 s. 43)

Proceedings

119S. (1) Subject to subsection (2), neither the Commissioner nor any public officer employed in the Rating and Valuation Department shall be called to give evidence in proceedings before the Tribunal and no subpoena shall be issued against the Commissioner or such public officer.

(2) The Commissioner or any public officer employed in the Rating and Valuation Department may be called to give evidence in any proceedings under section 51(8), 117(1) or 119F(5).

(3) The District Court shall have the jurisdiction mentioned in section 119H(3) and (4) notwithstanding anything in the District Court Ordinance (Cap. 336).

(4) Subject to section 119Q, any determination or order of the Tribunal under this Part shall be final.

General provisions

120. Sections 70, 70A, 70B, 70C, 71 and 74 shall apply to this Part as they apply to Part II. (Amended 29 of 1983 s. 44; 40 of 1984 s. 35)

(Part IV replaced 76 of 1981 s. 52)

PART V

Tenancy (Notice of Termination)

Interpretation

120A. In this Part, unless the context otherwise requires—

“business premises” means premises which are not domestic premises;
"Commissioner" means the Commissioner of Rating and Valuation; (Added 39 of 1979 s. 20)

"current rent" means the rent, exclusive of rates, payable by a tenant at the date of an application under section 124B(1); (Added 39 of 1979 s. 20)

"domestic premises" means premises the subject of a separate letting (including any bed-space, cubicle, room, floor or portion of a floor or building) which are used wholly or primarily for human habitation:

Provided that the following shall not be deemed to be domestic premises within the meaning of this definition—

(a) any building or portion of a building which is used for habitation only by caretakers or watchmen not exceeding 2 in number;

(b) any building or portion of a building which is used for habitation only by office attendants or their families;

(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" includes any person, other than the Crown, 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 a tenant; (Added 39 of 1979 s. 20)

"notice of termination" means a notice served under section 122(1); (Added 39 of 1979 s. 20)

"premises" means the subject matter of any tenancy; (Added 39 of 1979 s. 20)

"prevailing market rent" in relation to any premises means the rent, exclusive of rates, at which they might reasonably be expected to be let, at the date of an application under section 124B(1), on the terms of the tenancy other than those relating to rent and duration of the tenancy but disregarding the effect of sections 124A to 124C; (Added 39 of 1979 s. 20. Amended 29 of 1983 s. 46)

"principal tenant" means a tenant of premises other than a Crown lessee, who has or shall sublet any part or parts thereof as a separate holding or holdings; (Added 39 of 1979 s. 20)

"Tribunal" means the Lands Tribunal established under the Lands Tribunal Ordinance (Cap. 17). (Added 76 of 1981 s. 53) (Added 39 of 1979 s. 19)

Application

121. (1) Save as otherwise provided in this section, this Part shall apply to every tenancy (which expression shall wherever it occurs in this Part include sub-tenancies unless the context otherwise requires) whether the same be effected orally or in writing and notwithstanding any provision in such tenancy, including any provision purporting specifically to exclude the provisions of this Part.

(2) This Part shall not apply to the following—
(a) a tenancy for a fixed term of 3 years or more the agreement for which contains no provision for earlier determination of the same other than for breach of any of the provisions of the agreement or under a provision of the tenancy allowing forfeiture or determination following the destruction, or partial destruction, of or damage to the premises; (Amended 40 of 1984 s. 36)

(b) a 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. 4. Amended 29 of 1983 s. 45)

(ba) a tenancy to which Part II applies; (Added 6 of 1980 s. 16)

(c) a tenancy to which Part IV applies;

(d) a tenancy in respect of which a valid notice to quit was given prior to 14 April 1962, including a tenancy arising by reason of a tenant holding over in such circumstances;

(e) a tenancy of land unbuilt on, but such a tenancy shall cease to be excluded so soon as there is built on the land in accordance with the provisions of the agreement for the tenancy any building of a permanent nature;

(f) a tenancy of agricultural land, which expression shall have the meaning assigned to it by the Rating Ordinance (Cap. 116), including such a tenancy where there exists on the land any dwelling house occupied by persons working the land;

(g) a tenancy where the landlord is the employer and the tenant is the employee in possession of the premises in accordance with the terms and conditions of his employment where such terms and conditions require him to vacate the accommodation upon ceasing to be so employed;

(h) a tenancy held from the Crown;

(i) (Repealed 29 of 1983 s. 45)

(j) a tenancy authorized by the Commissioner under section 53(7A)(a)(ii); (Added 29 of 1983 s. 45)

(k) a tenancy in respect of which the agreement has been endorsed by the Commissioner under section 116(4); and (Added 29 of 1983 s. 45)

(l) a tenancy authorized by the Commissioner under section 119H(2)(a). (Added 29 of 1983 s. 45)

(3) This Part shall not apply to a tenancy in writing—

(a) for a fixed term not exceeding 1 year; and

(b) which—

(i) has been entered into for a period during which, or for most of which, the landlord will be absent from Hong Kong; or

(ii) is in respect of premises which the landlord intends to rebuild and is for a period pending that rebuilding; or
(iii) is in respect of premises normally occupied or intended to be occupied by the landlord but is temporarily surplus to his requirements; or

(iv) is entered into in circumstances which are special having regard to the particular purposes of the landlord and the particular needs of the tenant. *(Replaced 40 of 1984 s. 36)*

(4) A dispute as to whether a tenancy is excluded under subsection (3) shall not be justiciable in the courts but shall be determined by the Commissioner in a summary manner on application in writing to him and his decision shall be final and binding. *(Replaced 40 of 1984 s. 36)*

(5) Any public officer or class of public officer employed in the Rating and Valuation Department and authorized in writing in that behalf by the Commissioner may exercise the powers of the Commissioner under subsection (4). *(Added 40 of 1984 s. 36)*

*(14 of 1962 s. 2 incorporated)*

**Minimum length of notice to determine tenancy**

122. *(1) (a)* Save where vacant possession is given up or where a tenant surrenders his tenancy in exchange for a new tenancy no tenancy, whether existing on 14 April 1962 or created thereafter, shall cease or be determined without a written notice of termination being served by the landlord or tenant on the other party. *(Amended 39 of 1979 s. 21; 52 of 1981 s. 12)*

(b) The notice shall be served by the landlord, not less than 6 months, or by the tenant, not less than 1 month, before the day on which it is to take effect. *(Added 52 of 1981 s. 12)*

(c) A tenancy for a fixed term shall not cease at the end of that term unless notice is served by the landlord, not less than 6 months, or by the tenant, not less than 1 month, before that end. *(Added 52 of 1981 s. 12)*

(2) Nothing in this section shall be construed as permitting any tenancy to be determined earlier than would have been the case had this Part not been enacted or, subject to sections 124A to 124C, as affording any tenant any security of tenancy beyond the period of 6 months required for a notice of termination. *(Amended 39 of 1979 s. 21; 52 of 1981 s. 12)*

(3) Where notice of termination is served on a tenant and in addition is posted on 3 successive days, together with a copy in Chinese, upon the main door or entrance of the premises affected, such notice of termination shall, subject to sections 124A to 124C, take effect terminating also any sub-tenancies created under the tenancy to which it relates. *(Amended 39 of 1979 s. 21)*

(4) When but for subsection (1) a tenancy would have terminated, the tenancy shall continue—

(a) at the same rent until a notice of termination expires or but for an order under section 124B(2) would have expired; and

(b) thereafter, where an order is made under section 124B(2), at a rent payable in accordance with section 124C(1),
upon such of the covenants, conditions and other terms of the original tenancy as are appropriate to a month to month tenancy, together with, in the absence of any express covenant for the payment of rent and condition of forfeiture, the covenant and condition implied in every tenancy by section 126.  

(Replaced 39 of 1979 s. 21)

(5) A notice of termination may be served in any manner which would constitute effective service of a notice to quit but shall not be valid if served in respect of any premises before they become subject to this Part.  

(Amended 39 of 1979 s. 21)

(6)  

(Repealed 76 of 1981 s. 54)

(7) Where a notice of termination served prior to 18 December 1979 is due to expire on or after that date, and before the expiration of the notice the tenancy becomes subject to Part II by virtue of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1980 (6 of 1980), the notice of termination shall cease to be of any effect.  

(Added 6 of 1980 s. 17)  

(14 of 1962 s. 3 incorporated)  

(For savings and transitional provisions see Ord. No. 39 of 1979 s. 25(3))

Exclusion of tenancies from this Part

123.  

(1)  

(Repealed 52 of 1981 s. 13)  

(For savings see Ord. No. 52 of 1981 s. 13(2))

(2) The Governor in Council may in his absolute discretion by order exclude from the further application of this Part or of any provisions contained in this Part any class of tenancy, and class of premises or any particular tenancy or premises.  

(Amended 39 of 1979 s. 22)

(3)  

(Repealed 52 of 1981 s. 13)  

(For savings see Ord. No. 52 of 1981 s. 13(2))

(Added 18 of 1974 s. 5)

Landlord may substitute notice

124. Where subsequent to the giving of a notice by the landlord under section 122 the tenancy is excluded from the application of this Part, the landlord may thereupon substitute for such notice a notice to quit of such duration as would validly determine the tenancy but for the enactment of this Part. Such substituted notice shall take effect notwithstanding the existence of the notice given under section 122.

(14 of 1962 s. 5 incorporated)

Application of sections 124A, 124B and 124C

124A.  

(1) Subject to subsection (2), this section applies to business premises which—

(a) are excluded from Part I by section 3(1)(i); and

(b) are used partly for human habitation.  

(Replaced 40 of 1984 s. 37)

(2) This section does not apply to business premises which have, at any time since the publication of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1979 as a Bill in the Gazette, been used wholly for purposes other than human habitation.
(3) For the purpose of determining whether premises are or have been used for human habitation within the meaning of subsection (1)(b) or (2) the following types of habitation shall be disregarded—

(a) habitation by caretakers or watchmen;

(b) habitation by office attendants or their families;

(c) habitation by a guest of an hotel or boarding house of a particular portion of the hotel or boarding house which is let to him by the keeper of the hotel or boarding house.

(Added 39 of 1979 s. 23)

Tenant may apply for notice of termination not to take effect

124B. (1) Where a tenant of premises to which section 124A applies is served with a notice of termination, he may apply to the Tribunal not later than 3 months before the notice of termination is to take effect for an order under subsection (2).

(2) Subject to subsection (3), upon the application of a tenant under subsection (1), the Tribunal shall make an order that the notice of termination which has been served upon him shall not take effect and that no further notice of termination shall be served upon him in respect of the same premises until a period of 1 year, or such lesser period as the Tribunal may specify, has elapsed since the first mentioned notice was served upon him.

(3) The Tribunal shall refuse to make an order under subsection (2) if the landlord satisfies it that—

(a) the tenant has committed a breach of covenant or condition of the tenancy which is, or would but for the service of a notice of termination have been, a cause for forfeiture;

(b) the premises are required by the landlord for occupation as a residence for—

(i) himself;

(ii) his father or mother; or

(iii) any son or daughter of his over 18 years of age:

Provided that the Tribunal shall, notwithstanding that the circumstances of the case fall within this paragraph, make an order under subsection (2) if it is satisfied that, having regard to all the circumstances of the case, including whether other accommodation is available for the persons for whose occupation the premises are required, greater hardship would be caused by refusing to make such an order than by making it;

(c) the tenant has caused—

(i) to the landlord by non-payment of rent or otherwise; or

(ii) to any occupant of the premises,

unnecessary annoyance, inconvenience or disturbance which has continued after a warning in writing has been served by the landlord on the tenant; or
(d) the landlord intends to rebuild the premises.  *(Added 32 of 1985 s. 23)*  
 *(Added 39 of 1979 s. 23.  Amended 76 of 1981 s. 55; 32 of 1985 s. 23)*

**Rent where notice of termination is ordered not to take effect**

124C. (1) Where the Tribunal makes an order under section 124B(2) in respect of any premises there shall be payable, by way of rent for those premises from the date upon which the tenancy would but for the order have ceased, an amount equivalent to—

(a) the aggregate of the following—
   (i) the prevailing market rent of the premises; and
   (ii) where the rates in respect of the premises are payable by the landlord, the amount of the rates; or

(b) the aggregate of the following—
   (i) the current rent of the premises;
   (ii) one-third of the current rent of the premises, disregarding any cents included in the quotient; and
   (iii) where the rates in respect of the premises are payable by the landlord, the amount of the rates,

whichever is the lesser.

(2) Where the Tribunal makes an order under section 124B(2) in respect of any premises it shall proceed to determine the new rent for the premises calculated in accordance with subsection (1).  *(Added 39 of 1979 s. 23.  Amended 76 of 1981 s. 56; 29 of 1983 s. 46)*

125. *(Repealed 52 of 1981 s. 14) (For savings see Ord. No. 52 of 1981 s. 14(2))*

**Covenant to pay rent to be implied**

126. In the absence of any express covenant for the payment of rent and condition for forfeiture, there shall be implied in every tenancy a covenant to pay the rent on the due date and a condition for forfeiture for non-payment within 15 days of the due date.  *(Added 37 of 1965 s. 3)*

**Saving of rights arising out of breach of tenancy**

127. Nothing contained in this Part shall affect any right or remedy arising, either before or after 14 April 1962 out of any breach of condition or other term in any tenancy or out of any condition providing for a right of re-entry in the event of the tenant’s business being wound up, the tenant suffering execution to be levied or a receiving order in bankruptcy to be made, assigning the lease for the benefit of creditors or entering any agreement or making any arrangement with creditors for the liquidation of debts by composition or otherwise:
Provided that a covenant to yield up possession on a specified date shall be construed as a covenant to yield up possession on such later date as may be necessary to permit the giving of notice of termination as required by this Part.

(14 of 1962 s. 6 incorporated)

**Tribunal may determine disputes**

**127A.** The Tribunal on the application of a landlord, tenant or sub-tenant may—  
(*Amended 76 of 1981 s. 57*)

(a) entertain and determine any dispute or difference which may arise under this Part between a landlord and a tenant, or a tenant and a sub-tenant, or any of them, including any dispute as to the rent that is payable for, or the right to possession of, any premises;  
(*Amended 32 of 1985 s. 24*)

(b) apportion any rent which becomes payable under section 124C(1);

(c) entertain and determine concurrently with any other application, any application for the payment of rent or mesne profits of any premises to which this Part applies,

and make such order thereon, subject to section 127B, as the Tribunal shall think fit.

(*Added 39 of 1979 s. 24*)

**Sub-tenants not to have greater security than tenants**

**127B.** Nothing in this Part shall afford to any sub-tenant any security of tenure greater than that enjoyed by his principal tenant.

(*Added 39 of 1979 s. 24*)

**PART VI**

**Small Tenements Recovery**

**Interpretation**

**128.** In this Part, unless the context otherwise requires—

"agent" includes any person usually employed by the owner in the management of his property, or in the letting of the premises, or in the collection of the rents thereof, or specially authorized to act in the particular matter by writing under the hand of such owner;

"Collector of Rates" has the meaning assigned to it in section 2 of the Rating Ordinance (Cap. 116);  
(*Added 37 of 1986 s. 7*)

"house" includes a matshed or other structure;

"owner" means the person entitled to the immediate reversion or, in cases within section 132, to the possession of the premises, or, if the property is held in joint tenancy or tenancy in common, means any one of the persons entitled to such reversion or possession;
"premises" means lands (including leaseholds), houses, and other corporeal hereditaments;

"rateable value" means—

(a) in the case of premises being a tenement included in a valuation list maintained by the Collector of Rates under section 14A of the Rating Ordinance, the rateable value shown in that list; or

(b) in any other case, the rateable value certified under section 128A;

(Added 37 of 1986 s. 7)

"warrant" means a warrant issued under section 131.

(27 of 1897 s. 2 incorporated)
[cf. U.K. 1838 c. 74 s. 7]

Certificate as to rateable value

128A. For the purposes of ascertaining the rateable value of any premises in connection with any proceedings under section 129 or 132 a certificate purporting to be under the hand of an officer of the Rating and Valuation Department not below the rank of Rent Officer showing in respect of any particular day—

(a) in the case of premises being a tenement included in a valuation list maintained by the Collector of Rates under section 14A of the Rating Ordinance, the rateable value shown in that list; or

(b) in any other case, whether or not the rateable value of those premises exceeds the sum mentioned in section 129 or 132, as the case may be, shall be admissible in any proceedings on its production and without further proof and shall be prima facie evidence of the facts stated therein.

(Added 37 of 1986 s. 8)

Summoning of tenant of premises with a rateable value not exceeding $30,000 unlawfully holding over

129. When and so soon as the term or interest of a tenant of any house, land, or other premises, held by him at will or for any term not exceeding 7 years, with a rateable value at the time of an application by an owner under this section not exceeding $30,000, and upon which no fine has been reserved or made payable, has ended or has been duly determined by a legal notice to quit or otherwise, and the tenant, or (if the tenant does not actually occupy the premises or only occupies a part thereof) any person by whom the same or any part thereof is then actually occupied, notwithstanding that demand for possession has been made, refuses or neglects to quit and deliver up possession of the premises or of such part thereof respectively, the District Court may on application being made by the owner of such premises or his agent, issue an originating summons requiring the person alleged to be in possession of the premises to appear at a certain time and place before the District Court to show cause why he should not quit and deliver up possession of the premises.

(27 of 1897 s. 3 incorporated. Amended 4 of 1951 s. 6; 35 of 1969 Schedule; 37 of 1986 s. 9)
[cf. U.K. 1838 c. 74 s. 1]
Service of originating summons

130. An originating summons issued under section 129 may be served either personally or by leaving the same with some person being in and apparently residing at the place of abode of the defendant:

Provided that if the defendant cannot be found, and the place of abode of the defendant is not known or admission thereto cannot be obtained for serving the originating summons, the posting up of the originating summons on some conspicuous part of the premises shall be deemed to be good service on the defendant.

(27 of 1897 s. 4 incorporated. Amended 51 of 1911; 2 of 1912 Schedule; 27 of 1937 Schedule; 37 of 1986 s. 10)

[cf. U.K. 1838 c. 74 s. 2]

Issue of warrant for possession of premises

131. If the person served with an originating summons under section 130 does not appear before the District Court at the time and place mentioned in the originating summons, or fails to show cause why he should not quit and deliver up possession of the premises, the District Court may issue its warrant to any bailiff of the High Court or the District Court, commanding him to enter (by force, if needful) into the premises, and give possession of the same to the owner thereof or his agent: (Amended 37 of 1986 s. 11)

Provided that—

(a) entry, upon a warrant, shall not be made at any time except between 9 a.m. and 5 p.m.;

(b) nothing herein contained shall be deemed to protect any person on whose application a warrant may be granted from any action which may be brought against him by a tenant or occupier for and in respect of such entry and taking possession, where such person had not, at the time of granting the same, lawful right to the possession of the said premises.

(27 of 1897 s. 5 incorporated. Amended 50 of 1911 s. 4; 51 of 1911 s. 4; 1 of 1912 Schedule; 21 of 1912 s. 2; 29 of 1962 s. 2; 35 of 1969 Schedule; 92 of 1975 s. 59)

[cf. U.K. 1838 c. 74 s. 1]

Recovery of land in case of illegal encroachment or inclosure with a rateable value not exceeding $30,000

132. When any person by whom any illegal encroachment or inclosure has been made upon the land of another person, the rateable value of which at the time of any demand made under this section does not exceed $30,000, refuses or neglects, upon demand made, to quit and deliver up possession of the same, or any part thereof, to the owner of such land or his agent, the possession thereof may be recovered by such owner or agent under this Part, in like manner as if the occupier of such encroachment or inclosure were the tenant of premises the possession of which is recoverable under this Part, whose term or interest had ended.

(27 of 1897 s. 6 incorporated. Amended 4 of 1951 Schedule; 37 of 1986 s. 12)
Amendment of sections 129 and 132 by Legislative Council

132A. The Legislative Council may by resolution amend the sums mentioned in sections 129 and 132.

(Added 37 of 1986 s. 13)

Stay of warrant

133. In every case in which the person on whose application, or on whose behalf, a warrant is granted had not, at the time of granting the same, lawful right to the possession of the premises, the obtaining of the warrant shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry may be made by virtue of the warrant; and, in case any such tenant or occupier shall become bound with 2 sureties as hereinafter provided, to be approved of by the District Court, in such sum as to it may seem reasonable (regard being had to the value of the premises and to the probable costs of an action), to sue the person on whose application, or on whose behalf, the warrant was granted, with effect and without delay, and to pay all the costs of the proceedings in the action in case judgment shall pass for the defendant or the plaintiff shall discontinue or not prosecute his action or become nonsuit therein, execution of the warrant shall be delayed until judgment has been given in the action; and if, on the trial of the action, judgment passes for the plaintiff, the judgment shall supersede the warrant so granted, and the plaintiff shall be entitled to reasonable damages in the action.

(27 of 1897 s. 7 incorporated. Amended 35 of 1969 Schedule) [cf. U.K. 1838 c. 74 s. 3]

Giving of bond and proceedings thereon

134. Every such bond as herein before mentioned shall be made to the complainant or his agent at the cost of such complainant or agent, and shall be approved of and attested by the District Court, and if the bond so taken is forfeited or if, on the trial of the action for securing the trial of which such bond was given, the judge by whom it is tried does not certify that the condition of the bond has been fulfilled, the party to whom the bond has been so made may bring an action and recover thereon: (Amended 35 of 1969 Schedule)

Provided that the court where such action as last aforesaid is brought may, by an order, give such relief to the parties upon such bond as may be agreeable to justice, and such order shall have the nature and effect of a defeasance to such bond.

(27 of 1897 s. 8 incorporated) [cf. U.K. 1838 c. 74 s. 4]

Protection of District Court and bailiff acting under this Part

135. No action or prosecution shall be brought against the District Court by whom a warrant is issued, or against a bailiff by whom the warrant is executed, for issuing the warrant or executing the same respectively, by reason that the person on whose application, or on whose behalf, the warrant is granted had not lawful right to the possession of the premises.

(27 of 1897 s. 9 incorporated. Amended 29 of 1962 s. 3; 35 of 1969 Schedule) [cf. U.K. 1838 c. 74 s. 5]
Recovery of bailiff's expenses

136. The expenses incurred by a bailiff in the execution of a warrant may be recovered from the complainant.  
(Added 29 of 1962 s. 4)

PART VII
MISCELLANEOUS

Remission and refund of fees

136A. (1) All fees payable to the Commissioner of Rating and Valuation under this Ordinance are due at the time the application or submission to which the fee relates is made to him, but where in any particular case the Commissioner is of the opinion that a fee payable ought to be wholly or partly remitted or, having been paid, ought to be refunded, he may so direct.  
(Added 32 of 1985 s. 25.  Amended 37 of 1986 s. 14)

(2) Any public officer or class of public officer employed in the Rating and Valuation Department and authorized in writing in that behalf by the Commissioner may exercise the powers of the Commissioner conferred on him by this section.  
(Added 37 of 1986 s. 14)

Provisions transitional to the enactment of the Landlord and Tenant (Consolidation) (Amendment) (No. 2) Ordinance 1981

137. (1) A District Court or tenancy tribunal which has heard or commenced to hear any matter or proceeding which, by the Landlord and Tenant (Consolidation) (Amendment) (No. 2) Ordinance 1981 (76 of 1981), becomes a matter or proceeding within the jurisdiction of the Lands Tribunal or the Commissioner of Rating and Valuation shall continue to have jurisdiction in relation to, and shall dispose of, such matter or proceeding as if the Landlord and Tenant (Consolidation) (Amendment) (No. 2) Ordinance 1981 had not been enacted.

(2) Any matter or proceeding pending before a District Court or tenancy tribunal but which a District Court or tenancy tribunal has not heard or commenced to hear and which, by the Landlord and Tenant (Consolidation) (Amendment) (No. 2) Ordinance 1981, becomes a matter or proceeding within the jurisdiction of the Lands Tribunal or the Commissioner of Rating and Valuation shall be continued before the Lands Tribunal or Commissioner, as the case may be; and the Lands Tribunal may give such directions as it thinks fit as to the lodging or filing of papers and otherwise in relation to the procedure in such a matter or proceeding.  
(76 of 1981 s. 59 incorporated)

Effect of substitution of “prevailing market rent” for “fair market rent”

138. “Prevailing market rent”, where it appears in any provision of this Ordinance, shall be construed in the same manner as was “fair market rent” in that provision before 10 June 1983.  
(Added 29 of 1983 s. 46)
Provisions transitional to the enactment of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1983


(2) Section 11(e)(ii) and (f), section 30(c)(i) and section 45(e) of the amending Ordinance 1983 shall not affect any tenancy or sub-tenancy ratified under section 50(7) before 10 June 1983.

(3) Section 15(b)(vi) of the amending Ordinance 1983, so far as it adds new paragraph (h) to section 53(2), shall apply to a case where the tenant has sublet before 10 June 1983 as it applies to a case where the tenant has sublet on or after 10 June 1983.

(4) Sections 15(b)(iii) and 15(f) of the amending Ordinance 1983 shall have effect in any proceedings pending in the Lands Tribunal on 10 June 1983.

(5) Section 15(c) of the amending Ordinance 1983 shall have effect in any proceedings pending in the Lands Tribunal on 10 June 1983.

(6) Section 15(g) of the amending Ordinance 1983, so far as it refers to tenancies or sub-tenancies arising under section 53(6A), shall have effect in any proceedings pending in any court or tribunal on 10 June 1983.

(7) Section 15(h), (i) and (j) of the amending Ordinance 1983—

(a) shall not apply to an order mentioned in section 53(7) obtained before 10 June 1983; and

(b) subject to paragraph (a), shall apply to any use or continued use on or after 10 June 1983.

(8) Sections 13(a) and 30 of the amending Ordinance 1983 shall have effect in any proceedings pending in any court or tribunal on 10 June 1983.

(9) Section 20(b) of the amending Ordinance 1983 shall not apply to applications under section 57 received by the Commissioner before 19 December 1983.

(10) Sections 33 and 35 of the amending Ordinance 1983 shall have effect in any proceedings pending in the Lands Tribunal on 10 June 1983.

(11) Section 37 of the amending Ordinance 1983—

(a) shall not apply to a case where the decision of the Lands Tribunal is made before 10 June 1983; and

(b) subject to paragraph (a), shall apply to any use or continued use on or after 10 June 1983.

(29 of 1983 s. 49 incorporated)

Provisions transitional to the enactment of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1984

140. (1) Section 2 of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1984 (40 of 1984) ("the amending Ordinance 1984") shall not affect any proceedings commenced in the Lands Tribunal before 1 July 1984.
(2) Section 3 of the amending Ordinance 1984 shall not apply to applications under section 7A (which it repeals) received by the Commissioner before 1 July 1984.

(3) Sections 7, 9, 10, 18 and 28 of the amending Ordinance 1984 shall apply to any document (except a notice under section 55 as amended) executed before 1 July 1984 as they apply to documents executed on or after that date.

(4) Sections 13, 14(a), 31, 32(c) and (d) and 36(a) of the amending Ordinance 1984 shall have effect in any proceedings pending in any court or tribunal on 1 July 1984 or commenced on or after that date.

(5) Section 17 of the amending Ordinance 1984 shall apply to tenancies and sub-tenancies entered into before 1 July 1984 as it applies to tenancies and sub-tenancies entered into on or after that date.

(6) Sections 19, 20 and 33 of the amending Ordinance 1984 shall have effect in any proceedings pending in the Lands Tribunal on 1 July 1984 or commenced on or after that date.

(7) Section 21 of the amending Ordinance 1984 shall have effect in any proceedings pending in any court or tribunal on 1 July 1984 or commenced on or after that date.

(8) Section 22 of the amending Ordinance 1984 shall apply to alterations in rent taking effect before 1 July 1984 as it applies to alterations taking effect on or after that date.

(9) Section 23 of the amending Ordinance 1984 shall not apply to applications under section 57 received by the Commissioner before 19 December 1984.

(10) Section 34 of the amending Ordinance 1984 shall apply to an event mentioned in section 119L as amended occurring before 1 July 1984 as it applies to such an event occurring on or after that date.

(11) Section 36(b) of the amending Ordinance 1984 shall not apply to tenancies and sub-tenancies entered into before 1 July 1984.

Provisions transitional to the enactment of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1985

141. (1) Section 2 of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1985 (32 of 1985) ("the amending Ordinance 1985") shall not apply in respect of any notice served under section 10(1A) before 1 July 1985.

(2) Section 3(b) of the amending Ordinance 1985 shall not apply in respect of any agreement lodged under section 18(2)(c) before 1 July 1985.

(3) Section 4(b) of the amending Ordinance 1985 shall not apply in respect of any proposed agreement a copy of which is submitted under section 28(2) before 1 July 1985.

(4) Section 9 of the amending Ordinance 1985 shall apply in relation to a fee paid under section 51(4B)(b) before 1 July 1985 as it applies in relation to a fee paid on or after that date.
(5) Section 11(b) of the amending Ordinance 1985 shall not apply in respect of any agreement lodged under section 52A(2)(b) before 1 July 1985.

(6) Sections 13, 20, 21(b) and 26 of the amending Ordinance 1985 shall have effect in relation to proceedings pending on 1 July 1985 as they have effect in relation to proceedings commenced on or after that date.

(7) Section 14(b) of the amending Ordinance 1985 shall not apply in respect of a notice lodged under section 55(1) before 1 July 1985.

(8) Section 15 of the amending Ordinance 1985 shall not apply in respect of applications under section 57 that are received by the Commissioner of Rating and Valuation before 19 December 1985.

(9) Section 17 of the amending Ordinance 1985 shall apply in relation to a sub-tenancy created before 1 July 1985 as it applies in relation to a sub-tenancy created on or after that date.

(10) Section 19(a) of the amending Ordinance 1985 shall not apply in respect of a tenancy that is submitted before 1 July 1985 for endorsement under section 116(4).

(11) Section 25 of the amending Ordinance 1985 shall not apply in relation to any fee paid before 1 July 1985, or payable on or after that date by reason of anything occurring before that date.

(32 of 1985 s. 28 incorporated)

Provisions transitional to the enactment of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1986

142. (1) Section 2 of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1986 (37 of 1986) ("the amending Ordinance 1986") shall not apply in respect of any notice served under section 10(1A) before 1 August 1986.

(2) Section 3 of the amending Ordinance 1986 shall not apply in respect of any application under section 57 received by the Commissioner before 19 December 1986.

(3) Section 6 of the amending Ordinance 1986 shall not apply in respect of any request for a warrant under section 101 before 1 August 1986.

(4) Sections 9, 10 and 11 of the amending Ordinance 1986 shall not apply to an application by or on behalf of an owner under section 129 made before 1 August 1986.

(5) Section 12 of the amending Ordinance 1986 shall not apply to an application by or on behalf of an owner under section 132 made before 1 August 1986.

(37 of 1986 s. 15 incorporated)

Provision transitional to the enactment of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1988

143. Section 2 of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 1988 (77 of 1988) shall not apply in respect of any notice served under section 10(1A) before the commencement of that Ordinance.

(77 of 1988 s. 10 incorporated)
FIRST SCHEDULE
(Repealed 76 of 1981 s. 58)

SECOND SCHEDULE [s. 47]
FORM 1 [s. 19(1)]
NOTICE OF RENT PAYABLE BY PRINCIPAL TENANT TO LANDLORD

To all tenants in
occupation of

(1) ...................................................

YOU ARE INFORMED, in accordance with section 19(1) of the Landlord and Tenant (Consolidation) Ordinance, that the rent payable by me, to (2) ...................................................

my landlord in respect of (1) ...................................................
is ................................................... dollars per (3) ...................................................

................................................... dollars per (3) ...................................................

................................................... dollars per (3) ...................................................

and is made up as follows—

(1) Standard rent is ................................................... dollars per

(3) ...................................................

(2) Permitted increase(s) is/are—

(4) ...................................................

...................................................

Dated the ................................................... day of ..................................................., 19......

Principal Tenant.

Notes.
(1) Identify premises.
(2) Give full name and address of landlord.
(3) State whether per week, month, etc.
(4) Give particulars of any permitted increase and state authority for charging the same (i.e. section of Ordinance or date of decision of tribunal).

FORM 2 [s. 21]
NOTICE OF TERMINATION OF PRINCIPAL TENANCY

I/WE HEREBY TERMINATE the tenancy of you (name) ................................................... the principal tenant of the above premises, under section 21 of the Landlord and Tenant (Consolidation) Ordinance and require you peaceably to deliver up the premises [on or before the expiration of one month from the third consecutive day of posting this notice on the main door or entrance, namely on or before the ..................................................., 19 *].

You may elect either to deliver up the whole of the premises or to retain for your own use any part of the premises used by you before service of the notice for your own occupation. If you retain such portion you will pay a proportionate part of the rent previously paid to me/us with an addition of 30% under the Ordinance and will be a monthly tenant. You are required to elect by notice in writing to me/us within 14 days of service of this notice.

* [Substitute, if a period of notice is required by the contract between the landlord and the principal tenant—

on or before the ..................................................., 19 ......]
To all tenants and sub-tenants in occupation of ..................

TAKE NOTICE that with effect from the said date the ......................... 19, you will be a tenant of me/us upon the same terms and conditions as you were a tenant of the principal tenant and the permitted rent under the Ordinance is thereafter to be paid to me/us. I/we shall be responsible for any obligations previously undertaken by the principal tenant.

Sgd. ........................................
Address ........................................

Date ........................................

(Second Schedule added 22 of 1953 s. 33)

THIRD SCHEDULE
(Repealed 93 of 1975 s. 20)

FOURTH SCHEDULE [s. 80]
Fees to be levied in distraints for rent

<table>
<thead>
<tr>
<th>Sum sued for</th>
<th>Fee for every affidavit, warrant to distrain, notice or other document</th>
<th>Commission on sum realized</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $5,000.00</td>
<td>$60.00</td>
<td>$10.00 for every $100.00 or part thereof.</td>
</tr>
<tr>
<td>$5,000.00 or above but under $20,000.00</td>
<td>$120.00</td>
<td></td>
</tr>
<tr>
<td>$20,000.00 or above</td>
<td>$250.00</td>
<td></td>
</tr>
</tbody>
</table>

1. This scale does not include auctioneer’s commission and expenses but includes all other expenses, except in actions where the tenant disputes the landlord’s claim and witnesses have to be subpoenaed, in which case an additional fee for each subpoena is payable at $25.00.
2. Where watchmen are kept in charge of property distrained, a fee of $200.00 per day or part thereof is payable for each watchman.
3. Where property is removed and stored, the necessary expenses are payable as fixed by the Registrar.
4. Expenses for conveyance or transportation shall be payable as fixed by the Registrar.

(Replaced 32 of 1985 s. 26. Amended L.N. 103/88)

FIFTH SCHEDULE [s. 82]

FORM 1

AFFIDAVIT IN SUPPORT OF APPLICATION FOR WARRANT OF DISTRESS

In the District Court of Hong Kong

Holden at

A.B., Plaintiff

v.

C.D., Defendant
I, A.B., an inhabitant of , make oath and say that C.D., of
arrears of rent of the house and premises No. in the sum of $ for
in the , 19 , due for months, to wit, from the
day of , 19 , to the day of , 19 , at
the rate of per mensem.

(Signed) A.B.

Sworn before me at on the day of

(Signed)

(Amended 1 of 1953 Fourth Schedule)

FORM 2

WARRANT OF DISTRESS

In the District Court of Hong Kong

Holden at

To E.F., Bailiff of the court.

I hereby direct you to distrain the goods and chattels on the premises of C.D. situate at in the for the sum of $ being the amount of months' rent due to A.B. for the same on the day of , 19 , according to the provisions of Part III of the Landlord and Tenant (Consolidation) Ordinance, Chapter 7.

Before proceeding to distrain under this warrant, you shall demand payment of the amount endorsed hereon.

Dated the day of , 19

[L.S.]

(Signed)

(Amended 1 of 1953 Fourth Schedule)

FORM 3

NOTICE UNDER SECTION 89

In the District Court of Hong Kong

Holden at

To C.D.

Take notice that I have this day seized the goods and chattels contained in the attached inventory and appraisement, for the sum of $ being the amount of months' rent due to A.B. on the day of , 19 , and that unless you pay that amount together with the costs of this distress within 5 days, from the date thereof, or obtain an order from the court to the contrary, the same will be sold on the day of , 19 , pursuant to the provisions of Part III of the Landlord and Tenant (Consolidation) Ordinance, Chapter 7.

Dated the day of , 19

(Signed) E.F.

(Amended 1 of 1953 Fourth Schedule)