

北區區議會文件第 43 /2004 號

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為區議會簡介

《2004 年業主與租客(綜合)(修訂)條例》

《2004 年業主與租客(綜合)(修訂)條例》經已在 6 月 30 日獲得立法會通過，並於 7 月 9 日刊憲當天起生效。

該修訂條例，撤銷《業主與租客(綜合)條例》第 IV 部有關住宅租賃的租住權保障條文，以及第 V 部有關終止非住宅租賃的最短通知期規定。

有關改動，對於所有業主與租客，將有相當廣泛的影響。政府希望除了通過一般宣傳渠道外，亦在區議會的層面，為該修訂條例作有關的解釋及推廣。

進一步資料請參閱夾附的簡介。

差餉物業估價署

2004 年 7 月

引言

《2004年業主與租客(綜合)(修訂)條例》(下稱「修訂條例」)在2004年7月9日刊憲後,關於住宅租賃和非住宅租賃的規定都有若干變更。業主及租客須留意這些變更,及在需要時徵詢專業意見。

法例修訂

住宅租賃 : 撤銷租住權保障的條文。

非住宅租賃 : 撤銷法定終止租賃的最短通知期限。

住宅租賃

撤銷租住權保障

以往有租住權保障時,住宅租客只要願意繳付市值租金,便有權依法重訂租賃。修訂條例撤銷這項制度。

撤銷租住權保障後,業主和租客應如何終止2004年7月9日前已存在的住宅租賃?

撤銷租住權保障後,租賃會於期滿時終止。以下的過渡安排,有助修訂條例生效前已存在的租賃的業主及租客適應轉變:2004年7月9日前已存在的租賃,業主須在租賃期屆滿後,在擬終止租賃日期前至少12個月向租客送達過渡性終止通知書以終止有關租賃。假若租客想終止有關租賃,他必須在租賃期屆滿後,在擬終止租約前至少一個月向業主送達過渡性終止通知書,以終止租賃。

關於過渡性終止通知書的詳細規定,業主及租客可參閱修訂條例。有關規定概述如下,以供參考:

- (1) 過渡性終止通知書可在2004年7月9日或以後任何時間送達,但不得早於下列日期:
 - 若是固定定期租賃(fixed term tenancies),不得早於租賃期最後一日;
 - 若是定期租賃(periodic tenancies),不得早於在2004年7月9日尚未屆滿的那一期租賃的最後一日。
- (2) 過渡性終止通知書的規定亦適用於分租租賃:主租客如果有意終止分租租賃,也須向分租客送達過渡性終止通知書;
- (3) 如果業主想同時終止根據主租賃訂立的任何分租租賃,他應向租客送達中英對照的過渡性終止通知書,並把通知書連續三天張貼在受影響處所的大門或主要入口;

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- (4) 在過渡性終止通知書所訂明的終止租賃日期前,有關租賃將按所有現行條款(包括租金水平)繼續生效;
- (5) 在租賃期屆滿後,業主不論是否已向租客送達過渡性終止通知書,都可以自住為理由,隨時向土地審裁處申請收樓。收樓令一經發出,將凌駕於業主向租客送達的任何過渡性終止通知書;
- (6) 假如出租住宅物業業權轉讓,過渡性終止通知書的規定將適用於新的業權人,如舊業主已發出過渡性終止通知書,則新業主將受該通知書所約束;
- (7) 過渡性終止通知書將凌駕租賃所載任何有關發出終止租賃通知書的明示或隱含條款;以及
- (8) 在向租客送達過渡性終止通知書後,業主宜於通知書上訂明的終止日期臨近時再次提醒租客。租客也應盡早通知業主將遷出的意願。

過渡性終止通知書的樣本,可於差餉物業估價署及各區民政事務處索取,或從差餉物業估價署網站 www.info.gov.hk/rvd 下載。

- 在下列情況下,過渡性終止通知書的規定不適用:
- 租賃的任何條款(包括但不僅限於租金水平),在2004年7月9日或以後經雙方協議而更改;
 - 業主與租客於2004年7月9日或以後,就送達終止租賃通知書期限另有協議;
 - 租賃在2004年7月9日或以後轉讓予新租客;或
 - 業主或租客在2004年7月9日前已展開《業主與租客(綜合)條例》舊有第IV部的重訂租賃程序,在此情況下,業主和租客可沿用舊有條文繼續及完成有關程序。

撤銷租住權保障後,如何終止新住宅租賃?

在2004年7月9日或以後簽訂或重訂的租賃,業主與租客可按照租賃條款,或雙方協定的其他方式予以終止。

如租賃並無規定或雙方亦無協定其他方式終止租賃,

- 固定定期租賃(fixed term tenancies)將在租期屆滿時終止。
- 定期租賃(periodic tenancies)會依據普通法,經發出遷出通知書予以終止。

非住宅租賃

撤銷法定終止租賃的最短通知期限

根據原有的法定規定,即使租賃訂明的租期屆滿,非住宅租賃也不會終止,除非業主或租客在租賃完結前向對方送達終止租賃通知書。業主和租客的通通知期限分別是最少六個月和最少一個月,修訂條例現撤銷這項規定。

終止2004年7月9日前已存在的非住宅租賃的新安排

租期在2004年7月9日尚未屆滿的租賃,業主與租客可依據租賃條款,或雙方協定的其他方式予以終止。如租賃並無規定或雙方亦無協定其他方式終止租賃,固定定期租賃將在租期屆滿時終止。定期租賃會依據普通法,透過任何一方發出遷出通知書予以終止。

至於租期在2004年7月9日已屆滿但仍以按月形式續租的租賃,雙方可透過互訂協議終止租賃,或在擬終止租賃日期之前一個月向對方送達遷出通知書予以終止。

須注意的是在2004年7月9日前根據原有的法定規定送達的終止租賃通知書將繼續適用於該租賃。

其他資料

業主及租客可參閱差餉物業估價署就《業主與租客(綜合)條例》發出的指引概要,內載修訂條例生效後與他們相關的各種事項。業主及租客亦可參閱由消費者委員會聯同地產代理監管局印製的小冊子,內載有關租賃協議的資料。市民可向各民政事務處及有關機構索閱上述刊物。

查詢

如有其他查詢,請致電差餉物業估價署電話熱線(2152 0111),或致函本署租務科,地址是九龍長沙灣道303號長沙灣政府合署15樓。



差餉物業估價署
Rating and Valuation Department

Introduction

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

Legislative Amendments

Domestic tenancies : removal of the security of tenure provisions.

Non-domestic tenancies : removal of the statutory minimum length of notice of termination.

Domestic Tenancies

Removal of Security of Tenure

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

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

Following the removal of security of tenure provisions, a tenancy will end upon expiry. There is a transitional arrangement to help landlords and tenants of **tenancies in existence before** the legislative amendments cope with the change: If the landlord or the tenant of a tenancy created before 9 July 2004 wants to terminate the tenancy, they can do so only by serving, after the term of the tenancy has expired, a transitional termination notice (TTN). Such a TTN must be served either by the landlord on the tenant not less than 12 months, or by the tenant on the landlord not less than 1 month, before the intended termination date.

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

- (a) on or after 9 July 2004, a TTN can be served at any time but must not be earlier than the following dates:
 - for fixed term tenancies - the last day of the term;
 - for periodic tenancies - the last day of the tenancy period current at 9 July 2004.
- (b) the TTN requirement also applies to sub-tenancies: a principal tenant who wants to terminate a sub-tenancy will also have to serve a TTN;
- (c) a landlord who wants to serve a TTN to also terminate any sub-tenancies created under the principal tenancy should serve the TTN on his tenant in both Chinese and English on 3 successive days upon the main door or entrance of the premises affected;

New Law Provides Equal Rights for Landlords and Tenants

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

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

No TTN would be needed in the following situations:

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

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

Tenancies created or renewed on or after 9 July 2004 may be terminated in accordance with the terms of the tenancy or as agreed between the parties. In the absence of a contractual notice requirement or mutual agreement:

- a fixed term tenancy will end upon expiry.
- a periodic tenancy will be terminated by a notice to quit in accordance with the common law.

Non-domestic Tenancies

Removal of Statutory Minimum Length of Notice of Termination

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

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

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

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

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

Other Information

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

Enquiries

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