Notes on Signing a Tenancy Agreement
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Many landlords and tenants do not enter into detailed tenancy agreements when they lease or rent properties. Most simply use one of the standard tenancy agreement forms available. Some make oral agreements only. However, if either party subsequently disputes the tenancy agreement, the situation may be difficult to resolve as the obligations and rights of landlord and tenant have not been clearly defined. Both parties are likely to suffer as a result.

In view of this, the Estate Agents Authority and the Consumer Council have compiled Notes on Signing a Tenancy Agreement to assist landlords and tenants in understanding the importance of a tenancy agreement, the terms that should be included in it, and their obligations and rights. The information provided in the booklet is mainly applicable to tenancy agreements for private residential properties.
Before signing a tenancy agreement, both landlord and tenant should request the following information from each other in order to protect their own interests and to avoid future disputes.

**Landlord**

To make sure the tenant has the financial means to fulfil the tenancy agreement, the landlord should ask the tenant about his/her occupation. If necessary, the landlord can also ask the tenant to provide relevant proof regarding work, income and credit-worthiness.

**Tenant**

The tenant should check with the landlord or the Land Registry whether the property is mortgaged. If it is, the tenant should ask the landlord whether the bank has agreed to the property being rented out. Generally, a mortgage agreement will stipulate that, unless the landlord has obtained the bank's approval, the mortgaged property cannot be rented out. Otherwise, the bank will not recognise the tenant's tenure. If the landlord rents out the property without the bank's approval and then stops paying the mortgage, when the bank takes possession, the tenant will lose his/her right to continue renting the property. The tenant may also be unable to get his/her deposit back.
Details of Landlord and Tenant

The tenancy agreement must list the correct personal information of both parties signing the contract (that is, landlord and tenant) to ascertain their identities and to provide contact details. The following information is required from both parties:

- Name (as appears on HK Identity Card)/Company name;
- HK Identity Card number/Business Registration number;
- Correspondence address;
- Contact telephone and fax numbers.
Information about the property for rent should include the following:

- Detailed address, including district, street name and number (lot number of the property, if appropriate), name of estate/building, block number, floor and unit number, etc. (based on the information registered at the Land Registry);
- If it is a sublet unit, the sublet portion, represented by, for example, a room number or a bed number, should be specified;
- If the property is being rented together with a parking space, the allotted number and location of the parking space should be specified. If the property includes a roof, garden, etc., the areas to be included should also be specified;
- If the property includes furniture, electrical appliances, etc., an inventory should be made in addition to clearly specifying the party responsible for the maintenance and repair of such items;
- If there are clubhouse facilities in the building, it should be clearly stated whether the tenant has the right to use those facilities and, if so, the conditions of use;
- Floor plans (if any) of the property should also be attached to the tenancy agreement.

**Landlord**

If the rental property includes furniture, electrical appliances, etc., a detailed inventory should be prepared in advance. The landlord and the tenant should go through and confirm the inventory one day before the tenancy starts.

**Tenant**

The tenant should enquire about the public facilities or clubhouse facilities he/she is entitled to use.

If the rental property includes furniture and electrical appliances, the tenant should check and confirm the condition of items in the inventory before accepting them.
Restrictions on Use

The Government Lease, Occupation Permit and Deed of Mutual Covenant (DMC) contain certain restrictions on a property’s use. Such restrictions should be clearly listed in the tenancy agreement, for example, whether the property can be used for domestic, commercial or industrial purposes.

**Landlord**

The landlord should check and verify the restrictions on the use of the property in the Government Lease, Occupation Permit and Deed of Mutual Covenant before stating the property’s use in the tenancy agreement.

**Tenant**

The tenant should enquire about any restrictions regarding the use of the rental property and comply with such restrictions.
The tenancy agreement should clearly state the following terms regarding the lease term:

- Rental period (expressed in years or months);
- The date when the tenancy commences;
- The date when the tenancy ends;
- Whether a notice needs to be served prior to the expiry of the tenancy;
- Whether the tenant has the option to renew his/her tenancy after the tenancy expires;
- Whether there is a "break clause" which allows either party to terminate the tenancy after a certain period has elapsed or upon occurrence of certain incidents.

Termination of tenancy agreement

With the commencement of the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 on 9 July 2004, security of tenure for residential tenancies has been removed.

Residential tenancies created before 9 July 2004 may only be terminated upon both parties' agreement or by serving a Transitional Termination Notice (TTN). On or after the termination date of the current tenancy, the landlord may serve a TTN on the tenant not less than 12 months before the intended termination date to terminate the tenancy. The tenant can terminate the tenancy by serving a TTN on the landlord not less than one month before the intended termination date.

For residential tenancies signed or renewed on 9 July 2004 or afterwards, both parties can agree on how to terminate the tenancy. If there is no agreement on this:

- Fixed-term tenancies will terminate when the tenancy term expires;
- Periodic tenancies (such as monthly tenancies) may be terminated by issuing a notice to quit with a notice period of similar length to the period of tenancy.

**Landlord**

If the tenant is given an option to renew his/her tenancy after the expiry, the tenancy agreement should clearly state the period during which the tenant must exercise his/her option, the duration and new rental of the renewal tenancy (for example, whether the new rent will be adjusted based on a fixed rate of the current rent, or whether the new rent will be adjusted by negotiation or arbitration).

**Tenant**

The tenant may request a term be contained in the agreement specifying his/her option to renew the tenancy.

If restrictions and conditions apply to early termination of the tenancy, the agreement should specify such restrictions and conditions.
The tenancy agreement should state the following:

- Rental amount;
- Rental by month, by quarter or by year;
- Whether the rent is inclusive of rates, Government rent, parking space rental or management fees;
- Duration of rent-free period (if applicable) and who is responsible for paying expenses such as management fees and rates in that period;
- The time for advance payment of rent (for example, before a certain day of the month);
- Payment method (cash, cheque, autopay, etc.);
- If the rental in advance is not paid on time, it will be considered as non-payment of rent.

The landlord and tenant can freely negotiate the rent. There are no legal restrictions on this.

**Landlord**

When the landlord receives a rental payment, he must issue a receipt to the tenant. Otherwise he will commit an offence.

If the tenant fails to pay the rent by the due date, the landlord has the right to apply to the court/Lands Tribunal for payment of rent arrears or to apply for possession of the property.

**Tenant**

If the tenancy agreement is subject to Part IV of the Landlord and Tenant (Consolidation) Ordinance, the landlord may apply to the court/the Lands Tribunal for possession (when the tenant fails to pay rent) even if there is no such provision in the tenancy agreement.

If the tenant is consistently late in paying rent, he/she can be considered to be causing unnecessary inconvenience to the landlord. The landlord can apply to the court/the Lands Tribunal for possession for this reason.
The following terms should be stated in the tenancy agreement:

- Amount of deposit (normally, the landlord will require the tenant to pay a deposit equivalent to one to three months' rent as security deposit);
- Unless the landlord has agreed beforehand, the deposit cannot be used to offset rental payments;
- Upon termination of the tenancy agreement, the landlord is entitled to deduct from the deposit the amount of rent and fees in arrears;
- The period for the landlord to return the deposit after termination of the tenancy agreement;
- Whether the deposit will be adjusted according to the new rent if the tenancy is renewed.

**Landlord**

After the landlord has received the deposit, he/she should issue a receipt to the tenant.

After the tenant has delivered vacant possession to the landlord and has paid the rent in full without any arrears of payment, the landlord should return the deposit to the tenant within the period stipulated in the tenancy agreement and receive the deposit receipt back in return. Alternatively, the landlord may also ask the tenant to issue a receipt.

The landlord may stipulate in the tenancy agreement that if he/she transfers the rental property to a third party, he/she will be entitled to transfer the deposit to the latter under the same conditions for holding such deposit, and that the tenant will not object to this, nor will the tenant demand the return of the deposit from him/her.

**Tenant**

In general, no interest is payable on the deposit kept by the landlord during the period of tenancy, unless other arrangements are made.

The tenant may ask the landlord to accept a bank guarantee in place of a cash deposit.

If the property is transferred, the tenant may ask the original landlord, prior to the transfer of the deposit to the new landlord, to provide him/her with written confirmation from the new landlord agreeing that the deposit will be returned to him/her according to the original terms.
A detailed tenancy agreement should include terms that allow the landlord or tenant to withhold rent or terminate the tenancy agreement under certain circumstances that are beyond control. The following are some of the situations that should be noted:

- If the rental property has become uninhabitable due to structural problems, fire, storm, flooding, termites, earthquake, subsidence of the ground or natural disaster, the tenant is entitled to withhold rent;
- If the landlord fails to repair the property or restore the property to its original condition after a reasonable period of time, both parties are entitled to terminate the tenancy agreement.
The tenancy agreement should state clearly which party will be responsible for expenses or fees related to the rental property. Expenses and fees usually include the following:

- Rates - may be paid by either the landlord or the tenant, so both parties should come to an agreement on this beforehand. If the tenancy agreement does not mention who is responsible for the rates, the law requires the person occupying the property (that is, the tenant) to pay;
- Management fees - may be paid by either the landlord or the tenant, so both parties should come to an agreement on this beforehand;
- Government rent, property tax - in law, the landlord is responsible for settling these payments;
- Regular expenses such as gas, water and electricity charges are usually borne by the tenant;
- Non-regular expenses, such as costs for repairs to the rental property's structure or external walls, are usually borne by the landlord.

**Landlord**

The tenancy agreement should clearly state which party is responsible for paying rates, Government rent, management fees, etc. The arrangements when such expenses increase or decrease should also be clearly specified.

**Tenant**

The tenant may ask the landlord to state clearly in the tenancy agreement whether rates and management fees are included in the rent.
The question of who is responsible for the maintenance and repair of a rental property often causes disputes between a landlord and tenant. Therefore, both parties should clearly specify their respective responsibilities in the tenancy agreement. These usually include:

- Responsibility for maintenance and repair of the interior of the rental property; and
- Responsibility for maintenance and repair of the exterior of the property and common areas of the building.

**Landlord**

The landlord may request that the following terms regarding repairs be included in the tenancy agreement:

The tenant will:

- Keep the interior of the rental property in good repair and condition, except latent defects, structural problems or natural wear and tear;
- Maintain gas, water and electricity systems, kitchen and bathroom facilities, as well as keep the drainage system clear, replace broken glass of windows and doors, and repair the flooring, walls, doors and locks of the rental property;
- Prevent any damage by fire or wind.

**Tenant**

Usually, the costs of maintenance and repair of the common areas and facilities of the building are borne by all owners of the building. These areas include external walls, common roof, common facilities for electrical appliances, facilities for water and public hygiene, passages, stairs, lifts, water tanks, water pipes, water pumps, drainages and the building's main structures.

The tenant may ask the landlord to specify in the agreement that the landlord be responsible for the contribution that the rental property has to make for the maintenance and repair of the common areas and facilities of the building.

To avoid future disputes, the tenant should examine carefully the condition of the rental property before signing the tenancy agreement. If any damage is found, the tenant should formally notify the landlord, or ask the landlord to repair the damage before handing over the property.
Both the landlord and the tenant should take out insurance to protect his/her interests. The most common types of insurance are:

- **Landlord** - fire, flood and public liability insurance. The landlord should insure the rental property against loss caused by flood, fire and storm, and claims by third parties;
- **Tenant** - property insurance for furniture and insurance covering burglary. The tenant should be insured against loss or damage of property, furniture and fixtures caused by burglary, flood or fire.

**Landlord**

The landlord should inform the tenant of the insurance that has been arranged, and state in the tenancy agreement that if the insurance premium increases due to the tenant’s behaviour, the tenant will be responsible for the additional premium.

**Tenant**

Tenants should avoid behaviour leading to an increase in the insurance premium or making the landlord’s insurance void.
A tenancy agreement should state the following:

- The tenant shall have quiet enjoyment of the property;
- The landlord is entitled to, at reasonable times, inspect the state of repair, take inventories of the fixtures and carry out repairs, by giving reasonable prior notice;
- The tenant shall not cause any nuisance or annoyance, including making a noise, to the landlord or occupants of neighbouring premises;
- The tenant shall not contravene any provision in the Government Lease, Occupation Permit or Deed of Mutual Covenant;
- The tenant shall not use the property for any illegal or immoral purpose;
- The tenant shall not store firearms, weapons, flammable or dangerous goods in the property;
- The tenant shall not damage the structure of the property;
- The tenant shall not block the common areas or facilities of the building where the property is located;
- The tenant shall not breach any laws and regulations relating to the property;
- Upon receipt of a landlord's notice, the tenant shall carry out repairs for which he/she is responsible, as soon as possible;
- The tenant shall take all preventive measures against damage to the property caused by storms or typhoons.

**Landlord**

If the tenant fails to comply with the above provisions, the landlord may sue for damages. He/she may also apply to the court/the Lands Tribunal for possession according to the relevant clauses in the tenancy agreement.

**Tenant**

Even if there is no relevant clause in the tenancy agreement, if the tenancy agreement is subject to Part IV of the Landlord and Tenant (Consolidation) Ordinance, the landlord may still apply to the court/the Lands Tribunal for possession if the tenant has, at any time, caused unnecessary disturbance, inconvenience or annoyance to the landlord, or has used the rental property for illegal or immoral purposes.
The tenancy agreement should clearly state whether the landlord will allow the tenant to sublet the rental property. If the tenant sublets the property without the landlord's consent, when the agreement states that the tenant shall not sublet the whole or any part of the property, the landlord may apply to the court/the Lands Tribunal for a possession order. Under such circumstances, the tenant and sub-tenant may lose tenure.

**Tenant**

Prior to signing a sub-tenancy agreement, the tenant and sub-tenant should find out whether it will breach the tenancy agreement. If there is any doubt, it is better to obtain the landlord's written consent before signing any sub-tenancy agreement.

**Sub Tenant**

To protect his/her interests, a sub-tenant should confirm with the tenant whether the landlord has allowed the property to be sublet.
The tenancy agreement should clearly state whether the landlord will allow the tenant to make alterations to fittings or partitions of the rental property. Generally, the tenant is not permitted to make any alterations to partitions and fittings or make additions to the property without the landlord’s prior written consent. If the tenant wishes to make alterations, he/she should ascertain whether there are any statutory restrictions so that no offence will be committed and safety can be ensured.

**Landlord**

If the landlord allows the tenant to make alterations within the property, he/she may explicitly state in the tenancy agreement that the tenant has to reinstate the property before moving out upon termination of the lease.

To avoid future disputes, the landlord should, for the record, take photographs or videos of the property before the tenant makes any alterations.

**Tenant**

If the tenant wishes to make alterations, to avoid future disputes, he/she should obtain prior written consent from the landlord.

The landlord will usually require the tenant to pay a certain amount of deposit to ensure that the tenant will keep his/her promise of reinstating the property before moving out.

In the absence of a relevant clause in the tenancy agreement, if the tenancy agreement is subject to Part IV of the Landlord and Tenant (Consolidation) Ordinance, the landlord may still apply to the court/the Lands Tribunal for possession on the ground that the tenant has altered the property's structure without the landlord's consent.
To protect the respective interests of the landlord and tenant, the tenancy agreement should state that if any party to the agreement breaches any term or condition in the tenancy agreement, the other party is entitled to terminate the agreement.
Under certain circumstances, parties to the tenancy agreement have to notify the other of their intention and relevant information related to the property, such as, repair notices and demand notes for rent in arrears. Hence, the tenancy agreement should state the following:

- Correspondence addresses and telephone numbers of the landlord and tenant;
- Method of serving a notice, for example, by hand, ordinary mail, registered post, etc.;
- The address to which a notice is to be served.
Certain procedures and fees must be dealt with after signing a tenancy agreement. These include:

- Payment of the stamp duty;
- If the term of the tenancy agreement exceeds three years, the tenant should request that the tenancy agreement be registered at the Land Registry;
- The landlord and the tenant should first reach an agreement to determine which party is going to bear the relevant costs. Such costs include stamp duty, registration fee (if applicable), legal fees (if applicable), etc.;
- It is common practice that all costs related to the signing of a tenancy agreement be equally shared by the landlord and tenant.

**Landlord**

If the tenancy agreement is subject to Part IV of the Landlord and Tenant (Consolidation) Ordinance, after the landlord and the tenant have agreed on a new lease or renewal of tenancy, the landlord must, within one month, lodge Form CR109 ("Notice of New Letting or Renewal Agreement") with the Commissioner of Rating and Valuation for endorsement. If the specified form is lodged after one month, there will be a penalty of $310. The landlord is not entitled to maintain an action to recover rent unless the form has been endorsed by the Commissioner.

Two copies of the tenancy agreement are usually made. After the tenancy agreement is stamped, the landlord and tenant should each keep a copy.

**Tenant**

If both parties agree that the tenancy agreement be drafted by a lawyer instructed by the landlord, the tenant should ask the lawyer whether he/she is also represented, even if the tenant has agreed to pay the legal costs wholly or partially.

To avoid conflict of interest in joint representation or for some other reasons, the tenant can instruct his/her own lawyer.
Properties under the Home Ownership Scheme, Private Sector Participation Scheme and Tenants Purchase Scheme of the Hong Kong Housing Authority are governed by the Housing Ordinance (Cap. 283). Such properties are subject to alienation restrictions. A tenancy must not be entered into before such restrictions are removed.

According to Section 17B of the Housing Ordinance, any agreement purporting to lease such properties, which is in breach of the Housing Ordinance, is void. Section 27A of the same ordinance stipulates that any person leasing such properties, or signing an agreement thereof, commits an offence.

**Landlord**

The landlord should make sure that he has paid the premium and obtained the Certificate for Removal of Alienation Restrictions.

**Tenant**

The tenant should ascertain whether the property is subject to alienation restrictions, and whether a Certificate for Removal of Alienation Restrictions has been issued.
Only licensed estate agents should be appointed by landlords or tenants.

Clients are advised to sign an "Estate Agency Agreement" with their estate agents to protect both parties.

The Agreement should state:
- the period of time the Agreement is valid;
- the responsibilities of the estate agent;
- the amount of commission payable to the estate agent, and the time of payment, as agreed by both the agent and the client (note: if the calculation of the commission is based on the rent, the Agreement should state whether "the rent" includes rates and management fees);
- whether the agency appointment is in the form of "single agency" (that is, the estate agent represents only the landlord or the tenant); or "dual agency" (the estate agent represents both the landlord and the tenant);
- in the case of dual agency, the agent has to disclose to both parties the amount of commission or proportion that he/she is going to receive from the respective parties;
- in the case of an estate agent being appointed by a landlord, whether the type of agency is non-exclusive (that is, the client may appoint one or more estate agents), or exclusive (the client appoints only one estate agent). Under an exclusive agency agreement, the landlord should note that if the property is rented through another estate agent within the validity period of the Agreement, the exclusive agent is entitled to commission from the landlord.

The landlord or tenant may request specific information related to the property from the agent. Such information includes the area of the property, age of the building, restrictions on use, owner of the property, encumbrances, and restrictions on the lease. The landlord or tenant may also ask for other information related to the property, such as Government rent, rates, management fees, etc.

The landlord or tenant should ask the estate agent to provide copies of all documents he/she signed with the agent.

The landlord or tenant should give specific and clear instructions to the estate agent, especially regarding offers and counter-offers during rent negotiations.

After making any payment, the tenant should immediately request a receipt as confirmation from the estate agent.

If the deal is called off, the tenant should ask the estate agent to return any stakehold money immediately.

The estate agent should explain the clauses in the Estate Agency Agreement to his client.
The Rating and Valuation Department is responsible for the administration of the Landlord and Tenant (Consolidation) Ordinance. The Department’s Tenancy Services Section provides a free enquiry and mediation service on tenancy matters for the public. Contact details are:

Address: 15th Floor, Cheung Sha Wan Government Offices  
303 Cheung Sha Wan Road, Kowloon  
Enquiry Hotline: 2150 8229  
Website: www.rvd.gov.hk

The Duty Lawyer Service of the Law Society of Hong Kong runs a recorded legal information service called "Tel-Law" (hotline: 2521 3333 or 2522 8018), which provides information on a number of topics in Cantonese, Putonghua and English. This service is free.

The Duty Lawyer Service also arranges for lawyers to visit nine District Offices to advise members of the public on legal matters. For enquiries, please call the Central Telephone Enquiry Centre of the Home Affairs Department on 2835 2500 during office hours.
The information contained in this booklet is for use as general reference only and should not be relied upon as legal advice. You should seek legal advice if necessary.

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