

LCQ14: Cases of breaching the tenancy terms of Government land and properties

Following is a question by the Hon Judy Chan and a written reply by the Secretary for Development, Ms Bernadette Linn, in the Legislative Council today (November 13):

Question:

It has been reported that from time to time there are tenants of government land and properties breaching the terms of the tenancies. For instance, some tenants who rent the shipyard sites along Ap Lei Chau Praya Road from the Lands Department (LandsD) are suspected to have profited from turning the shipyards into ship berths to let without permission. Some tenants of shops and market stalls managed by the Housing Department (HD) and the Food and Environmental Hygiene Department (FEHD) are also suspected to have sub-let the shops/stalls without permission and made a profit out of the price difference through such sub-letting arrangements. The increase in rents has caused some tenants to pass the operating cost onto consumers. In this connection, will the Government inform this Council:

(1) as the LandsD indicated last year in its reply to media enquiries that it would investigate the alleged sub-letting of the aforesaid shipyard sites by tenants in breach of the tenancy agreement, of the findings of the relevant investigation, and the follow-up actions that have been taken;

(2) whether it has assessed if the alleged sub-letting of the aforesaid shipyard sites by tenants in breach of the tenancy agreement will have negative impacts on the work of promoting yacht tourism as proposed in the 2024 Policy Address;

(3) of the number of cases of sub-letting in breach of the tenancy agreement by tenants of shops under the HD and market stalls under the FEHD in each of the past five years, and the relevant follow-up actions, with a tabulated breakdown of the information by case; and

(4) whether the authorities have plans to amend the tenancy terms of land and properties leased out by different government departments for stronger prevention against breaches of the tenancy agreement (e.g. sub-letting); if so, of the details and the timetable; if not, the reasons for that?

Reply:

President,

To make optimal use of land resources, the Lands Department (LandsD)

will in consultation with relevant government bureaux/departments grant short-term tenancies (STTs) for sites on unleased and unallocated government land (including government land not yet planned for any long-term use) which are suitable for temporary uses by way of tender or direct grant at market rental level in general.

Other government departments may also lease out government land or properties under their management for specific uses having regard to their policy needs. For example, the Housing Department (HD) and the Food and Environmental Hygiene Department (FEHD) lease out shop premises and market stalls under their management respectively, while the Government Property Agency (GPA) leases out government properties that are vacant but suitable for commercial purposes at market rent.

Government departments which lease out properties will monitor their tenants' compliance with the tenancy terms. If breach of tenancy terms is substantiated, the department concerned will, depending on the circumstances, require the tenant to rectify the irregularities. In case of non-compliance, the department will take enforcement actions, which may include termination of tenancy.

Having consulted the Environment and Ecology Bureau, the Financial Services and the Treasury Bureau, the Housing Bureau, and the Transport and Logistics Bureau (TLB), we set out the reply to the various parts of the Hon Chan's question below:

(1) With the policy support of the TLB, currently 29 sites along Ap Lei Chau Praya Road are granted STTs for ship building or repairing uses. Following receipt of a media enquiry in May last year on suspected leasing of some shipyard sites for berthing (i.e. suspected breaching of tenancy terms), the LandsD, together with the TLB and the Marine Department (MD), conducted four joint site inspections (including surprise inspections) on all the shipyards subject to STTs along Ap Lei Chau Praya Road in batches between May and July last year, and examined the relevant job sheets and invoices to ascertain whether the shipyards concerned engaged in ship building or repairing activities. After the inspections and examination of the supporting documents provided by the tenants, it was considered that the shipyards concerned were all engaged in ship building or repairing activities.

Upon receipt of a complaint between September and October this year on suspected subletting of one of the shipyard sites along Ap Lei Chau Praya Road by the tenant (which was also one of the shipyard tenants subject to investigation last year) in breach of tenancy terms, the LandsD wrote to the tenant concerned to demand explanations. After receiving the tenant's explanations in October this year, the LandsD, together with the TLB and the MD, conducted in November a site inspection on the shipyard concerned, while at the same time conducting surprise inspection on the other 11 shipyard sites along Ap Lei Chau Praya Road held under STTs. No irregularities (such as subletting and sole use for berthing) were found. The LandsD will, in collaboration with the TLB and the MD, continue to strengthen monitoring of the tenancies of the sites concerned, conduct joint site inspections

(including surprise inspections) at more frequent intervals so as to ensure that the use of the sites complies with tenancy terms. If there is evidence to substantiate breaching of tenancy terms in the use of the shipyard sites, the LandsD will take appropriate tenancy enforcement actions.

(2) It was mentioned in the Chief Executive’s 2024 Policy Address that yacht tourism would be promoted at the expansion area of Aberdeen Typhoon Shelter and the other two locations. The Development Bureau intends to invite the private sector by or in the middle of next year to explore the construction and operation of a marina for yacht berthing in the expansion area of the Aberdeen Typhoon Shelter and express their interest. It is preliminarily estimated that about 100 to 200 berths could be accommodated there. We will also take the opportunity of the above-mentioned development to review the STT arrangements of the shipyard sites concerned and consider whether adjustments will be necessary, so as to optimise use of land for providing services for yachts at the marina club and other vessels. At this stage, as mentioned above, the LandsD will continue to monitor the relevant tenancies and take appropriate tenancy enforcement actions to ensure that the use of the sites complies with tenancy terms.

(3) In the past five years, no subletting of shop premises under the management of the Hong Kong Housing Authority (HA) was found. Regarding the public market stalls under the management of the FEHD, the department shall forthwith terminate the tenancy agreement of any stall tenant found to be subletting the stall. The relevant figures of the past five years are as follows:

	2019	2020	2021	2022	2023
Number of tenancy agreements terminated by the FEHD due to subletting by tenants	3	5	1	6	8

(4) STTs granted by the LandsD generally include terms stipulating the specific uses and prohibiting tenants from letting/subletting the land or properties covered by the tenancy agreements to others. According to the LandsD’s guidelines, District Land Offices (DLOs) will conduct site inspections in respect of STT sites on a regular basis to review whether there is any breach of tenancy terms. Furthermore, upon receiving complaints or referrals, DLOs will carry out investigations to decide whether to take appropriate tenancy enforcement actions.

Specifically, if breaching of tenancy terms (such as subletting) is substantiated, the LandsD will require the tenant to rectify the situation within a reasonable time frame (usually one to three months, depending on the circumstances). If the tenant fails to rectify within the grace period, the DLO concerned will consider taking appropriate enforcement actions, including termination of tenancy. With regard to those cases with breaching of tenancies identified in the past, DLOs will step up proactive inspections as appropriate to monitor the compliance. At the same time, when the LandsD

conducts open tenders for STTs, it will consider the bidder's past or current performance as a government tenant (such as whether the tenant has a poor record of compliance with other government tenancy agreements) when evaluating the tenders, in order to decide whether to award the STT to a particular bidder.

â€œTo enhance monitoring and management work of STTs, the LandsD launched an enhanced version of the Tenancy Information System in March this year. The enhanced system strengthens data analysis, monitoring functions and management of STTs, allowing for more time-efficient, effective and systematic follow-up actions on STTs with breaches identified and improving the department's efficiency in planning for enforcement actions.

Other government departments which lease out properties are responsible for managing the tenancies granted under their purview, including formulation of tenancy terms according to their policy needs, monitoring tenants' compliance with the tenancies and taking enforcement actions according to the tenancies. For example, the GPA, having regard to the nature of the leased properties, incorporates terms to prohibit subletting as well as monitors and conducts inspections on the use of the leased properties. If irregularities are found, it will certainly follow up and take appropriate actions including termination of tenancies and repossession of the premises.

The existing tenancy agreements for FEHD's public market stalls already stipulate that subletting of stalls is prohibited. Breach of this condition will lead to immediate termination of tenancy, repossession of the stalls, and forfeiture of a sum equivalent to two months' rent and two months' air conditioning charge (if applicable). The FEHD also requires the public market stall tenant to furnish a declaration to confirm that he understands the tenancy terms (including the prohibition of subletting the stall) before signing the tenancy agreement. For shop premises under the management of the HA, the tenancy agreement sets out clauses stipulating that the tenant shall not transfer and assign the tenant's rights and obligations, or sublet, licence, share or otherwise part with possession of the shop premises or any part thereof to any third party without the prior consent of the HA. Otherwise, the HA shall have the right to terminate the tenancy agreement and recover the shop premises.