

LCQ7: Rental enforcement moratorium

Following is a question by Dr the Hon Wendy Hong and a written reply by the Secretary for Financial Services and the Treasury, Mr Christopher Hui, in the Legislative Council today (January 10):

Question:

The Financial Secretary announced in the 2022-2023 Budget the legislation for a rental enforcement moratorium. In this regard, the Temporary Protection Measures for Business Tenants (COVID-19 Pandemic) Ordinance (Cap. 644) commenced operation on May 1, 2022 upon its gazettal. During the three-month "protection period" (i.e. from May 1, 2022 to July 31, 2022), Cap. 644 caused a deferral of certain actions (including terminating the tenancy) that landlords might take in respect of their tenants' failure to pay rent. In this connection, will the Government inform this Council:

(1) of the number of cases in which the landlords concerned have filed claims in court against business tenants to recover the rent in arrears since the end of the aforesaid protection period;

(2) of the number of business tenants who have ceased their businesses, gone into liquidation or had their tenancies terminated since the end of the aforesaid protection period due to the filing of claims in court by the landlords concerned against them to recover the rent in arrears but they are unable to repay the arrears; and

(3) whether it has examined the benefits and drawbacks of the rental enforcement moratorium for various stakeholders in society?

Reply:

President,

My reply to various parts of Dr the Hon Wendy Hong's question is as follows.

The outbreak of the fifth wave of the coronavirus disease 2019 (COVID-19) epidemic took place around the Chinese New Year in 2022, with unprecedented severity and magnitude. As such, the Government tightened the social distancing measures with a view to ensuring public health and life safety. At that time, many enterprises, in particular small and medium enterprises (SMEs), were facing significant operation and liquidity problems, and rental payment constituted a substantial part of their operating expenses. In this light, the Financial Secretary announced a legislative proposal in the 2022-2023 Budget to impose a moratorium to prohibit landlords from terminating the tenancy, suspending the provision of services, or taking other related legal actions against their business tenants of specified sectors for failing to settle rent on schedule under a protection period of three months (i.e. from May 1, 2022 to July 31, 2022). The Temporary Protection Measures for Business Tenants (COVID-19 Pandemic) Ordinance (Cap.

644) (the Ordinance) had come into effect on May 1, 2022. The Ordinance is intended to provide business tenants of affected sectors with a breathing space, so that they would not be forced out of business by legal or other recovery actions taken by their landlords for failing to pay rent on time, while giving landlords and tenants an opportunity to work out a mutually agreeable rental arrangement in the interim through negotiation.

According to the Ordinance, within the protection period or on the commencement date of the tenancy (if the tenancy commences during the protection period), if the tenants of premises used wholly or primarily as specified premises (Note 1) has failed to pay rent in compliance with the tenancy, the relevant landlord would be barred from taking, or continuing to take, certain rental enforcement actions (Note 2) (or the action is to be stayed if such action has already commenced but is yet to be completed) during the protection period for outstanding rent. Upon the expiry of the protection period, landlords may recover the accrued rent in arrears from their tenants, while tenants should also pay the outstanding rent according to the tenancy.

According to the records of the Rating and Valuation Department, since May 1, 2022 (i.e. when the Ordinance took effect), prosecution action was taken against one case in which the landlord was suspected of taking rental enforcement actions during the protection period, and the landlord had pleaded guilty in the court. Furthermore, information has indicated that the number of applications for winding-up petitions of companies in Hong Kong, with an average of 46 cases per month (as at December 2023), has not shown any rapid increase from August 2022 till now.

The temporary protection measures was implemented under the then exceptional circumstances, with an aim to prevent large-scale closures of SMEs which would result in loss of jobs, especially for those of the lower paid strata who had been hardest hit by the epidemic. At the time of introducing the said temporary protection measures, it was anticipated that around 130 000 SMEs could be benefited from the measures. We believe that the measures have helped to improve job security and stabilise the Hong Kong economy. In fact, some other overseas jurisdictions had also rolled out measures of similar nature in the midst of extremely serious epidemic situation.

Notes:

1. According to the Ordinance, such premises include the scheduled premises as set out in section 2 of the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) (excluding cruise ships and supermarkets), catering business premises, child care centre, kindergarten, private primary day school and private secondary day school, retail shop, tutorial school, premises where hobby classes are provided and premises where a range of businesses, such as travel agents, cruise ships, employment agencies and laundry trade, is carried on, etc.

2. According to the Ordinance, the rental enforcement actions include, amongst others, deducting rent from the deposit held by the landlord,

exercising a right of re-entry or forfeiture, bringing an action in court against the tenant, and presenting a bankruptcy petition or a winding-up petition against the tenant, etc.