



A GUIDE TO TENANCY



地產代理監管局
ESTATE AGENTS AUTHORITY



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Foreword and Disclaimer

Due to various social and economic reasons, many people choose not to purchase a property but to rent a flat instead. Although the amount of money spent on renting a property is much less than purchasing one, there are a number of points that should be paid attention to during the renting process. In view of this, the Estate Agents Authority (“EAA”) produced this booklet to remind the public of some important points about the tenancy of residential properties, and the matters that should be noted and considered carefully in the process.

The information in this booklet is mainly applicable to residential properties and is for general reference only. It does not constitute legal or professional advice. Readers are advised to seek legal or professional advice on matters encountered in specific situations. The content and information in this booklet is based on the law and conditions as of October 2015. The EAA shall not be held liable for any loss or damage incurred or suffered in connection with, arising from, or due to reliance on the whole or any part of this booklet.

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Step 1: Seeking/Leasing a flat

Types of flats for rent

Members of the public may choose the most suitable type of flat to rent based on their personal preferences. Flats directly leased by developers are usually well equipped but the rents are higher. Serviced apartments provide a more flexible lease period and hotel-style services such as laundry and housekeeping, but the rents will also be more expensive and the decor cannot be altered. Most of the flats for rent in the market are leased by individual property owners, and have a larger supply and a greater variety of choice. The amount of rent can be negotiated with the landlord but the standard of maintenance and equipment may vary and the lease period is usually longer, at least one year or more.

The risk of seeking/listing a flat on one's own

Licensed estate agents have professional knowledge in property transactions and are regulated by the EAA. Members of the public may consider appointing them for better protection. If one chooses not to appoint a licensed estate agent but to seek or list a property by oneself or via an online platform, he/she should be extra careful and seek professional advice when necessary. He/she should pay more attention to personal safety when viewing properties or allowing strangers to view his/her property.



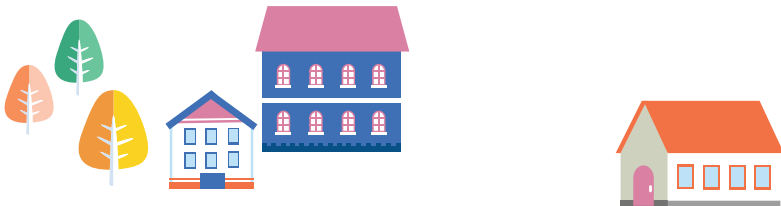


Appointing licensed estate agents

On the other hand, appointing a licensed estate agent provides better protection. As estate agents are required to sign an estate agency agreement with clients, both parties can obtain the particulars of each other. Moreover, one may lodge a complaint with the EAA if one suspects any misconduct by the estate agent during the appointing period. To check whether the appointed estate agent is licensed, one may check with the “Licence List” on the EAA’s website.

Do not specify not leasing to certain types of person

Landlords should note that they should not specify that the flat is only/is not for rent to any person based on their gender, marital status, pregnancy, disability, family status and race. Otherwise it might constitute a discriminatory act and violate Hong Kong’s anti-discrimination ordinances, including the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance and the Race Discrimination Ordinance.





Step 2: Inspection of Property

Entering into an estate agency agreement

According to the Estate Agents Ordinance, licensed estate agents are required to enter into an estate agency agreement with the tenant or the landlord (i.e. Form 6: Estate Agency Agreement for Leasing of Residential Properties in Hong Kong (for use between an estate agent and a tenant) or Form 5: Estate Agency Agreement for Leasing of Residential Properties in Hong Kong (for use between an estate agent and a landlord)) prior to introducing or listing properties for them.

Entering into an estate agency agreement with estate agents can protect landlords or tenants by stating rights and duties of both parties clearly and providing legal protection. Estate agents should explain the terms in the estate agency agreement to the landlord/tenant, including the validity period of agreement, duties of the estate agents, the amount or rate of commission agreed by both parties and the time of payment, the list rental instruction, single or dual agency or potentially dual agency, and the amount or rate of commission payable to the estate agent by both parties in the case of dual agency or potentially dual agency.





Leasing Information Form

After entering into an estate agency agreement, the estate agent is required to provide to the tenant the completed Leasing Information Form (i.e. Form 2) unless the tenant specifically waives his/her right to receive it. Certain information about the concerned property is available in Form 2, including the subsisting encumbrances registered in the Land Registry (such as mortgage or charge), floor area, year of completion, user restrictions and restrictions on leasing.

■ *Subletting property*

In the case of a sub-tenancy, estate agents should review the tenancy agreement between the principal landlord and the principal tenant to see if there is any restriction on subletting and whether prior consent for subletting has to be obtained from the principal landlord. The terms of the sub-tenancy agreement between the principal tenant and the sub-tenant shall not conflict with the terms of the tenancy agreement between the principal landlord and the principal tenant. The term of the tenancy under the sub-tenancy agreement shall not exceed that under the principal tenancy agreement. Estate agents should also, in Part C of Form 2, enter the details of the principal tenancy agreement including the parties thereto, the period of tenancy and any other information the sub-tenant should know such as the saleable area for subletting.

■ *Use of property*

The Government lease, Occupation Permit or the Deed of Mutual Covenant may specify the user restrictions of a property. Both the landlord and tenant should comply with it.



■ *Unauthorised building works*

When handling lease transactions of residential properties, estate agents should conduct land searches to check whether the property is subject to any building orders for the demolition/rectification of unauthorised building works, and if there is, they should inform their clients accordingly and the risks involved, and advise them to seek legal advice before proceeding with the lease of the property concerned.

■ *Undischarged mortgage*

A mortgage agreement will usually stipulate that, unless the landlord has obtained the bank's approval, the mortgaged property cannot be leased out. Otherwise, the bank will not recognise the tenant's tenure. If the landlord lets the property out without the bank's approval and then stops repaying 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.

■ *Leasing restrictions*

There are leasing restrictions for certain types of residential properties. For example, flats under the Home Ownership Scheme or the Tenants Purchase Scheme of the Hong Kong Housing Authority are subject to the Housing Ordinance. Before the alienation restriction is removed, such flats shall not be leased. Estate agents should conduct a land search to ascertain whether a Letter of Removal of Alienation Restriction has been issued for the flat. Tenants should also pay attention to item 5 "Restrictions on leasing" under Part B in Form 2.





Detailed inspection

When inspecting a property, apart from the facilities and maintenance condition inside the flat, prospective tenants should also pay attention to the environment and the transportation links of the property's location, the condition in different weather/times and whether there is any noise or air pollution. If there is any damage or issues found in the flat, he/she should request the landlord to handle them as soon as possible, or list them clearly in the tenancy agreement in order to avoid any disputes in the future.

The financial capacity of the tenant

To ensure that the tenant has the financial means to perform the tenancy agreement, the landlord may ask the tenant about his/her occupation. If necessary, the landlord may also ask the tenant to provide relevant proof regarding work, income and credit-worthiness.





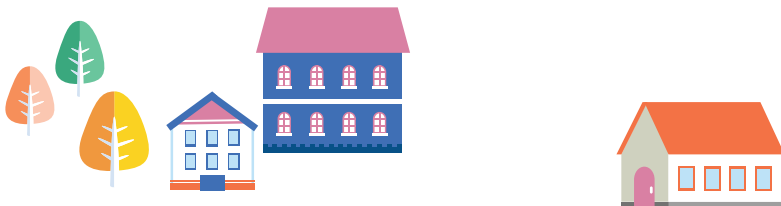
Step 3: Entering into a Tenancy Agreement

Land search

According to the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation, estate agents must, immediately before a tenancy agreement is entered into, carry out a land search of the property and provide a copy of the land search to the tenant. Tenants should remember to request the estate agent to provide and explain the latest information from the land search before signing the provisional tenancy agreement.

Provisional/Formal tenancy agreement

After the landlord and tenant have completed the negotiations for the terms of tenancy, both parties will usually sign a provisional tenancy agreement first, followed by a formal tenancy agreement after the tenant pays the initial deposit to the landlord. The formal tenancy agreement could be prepared by solicitors or estate agents of both parties or by themselves. If the formal agreement is prepared by the estate agent, then he/she is responsible for explaining in detail the terms and content of the tenancy agreement to the client.





Content of the Tenancy Agreement

There is no standard format for a tenancy agreement under the law and its content is usually negotiated by the contracting parties (landlord and tenant). Once it is signed by both parties, it becomes legally binding. Landlords and tenants should carefully set out all the terms of the tenancy agreement and include verbal agreements in the agreement to avoid any disputes in the future.

■ *Particulars of both parties*

The tenancy agreement must list the correct personal information of both parties so as to ascertain their identities and to provide contact details. The information required includes their name or company name; Identity Card number or Business Registration number; correspondence addresses and phone numbers, etc.

■ *Details of the rental property*

Information about the property for lease should include the following in the tenancy agreement: detailed address based on the information registered at the Land Registry; the sublet portion if it is a sublet unit; the allotted number and location of the parking space if the property is leased together with a parking space; the areas of a roof or garden if it is included; whether the tenant has the right to use clubhouse facilities if there are any and, if so, the conditions of use; and the floor plans (if any) of the property may also be attached to the tenancy agreement.



■ *Lease term*

The tenancy agreement should clearly state the following terms regarding the lease term, including the rental period and the date when the tenancy commences and ends. The term of a tenancy is usually two years. However, one should note if there is a “break clause” in the agreement, which allows either party to terminate the tenancy after a certain period of written notice (usually one or two months) or payment in lieu has been given, provided that by then the tenant has at least rented the property for a certain number of months (usually 12 to 14 months depending on the negotiation of both parties).

Moreover, the tenancy agreement should state whether the tenant has the option to renew his/her tenancy after the tenancy expires. If he/she does, the agreement should also clearly state the period during which the tenant must exercise his/her option, the duration and new rental of the renewal tenancy and how it will be adjusted.

■ *Rent*

The tenancy agreement should state clearly the rental amount by month, by quarter or by year; whether the rent is inclusive of rates, Government rent, management fees, and/or parking space rental; duration of rent-free period (if applicable) and who is responsible for paying the expenses (e.g. management fees, rates and utilities) in that period; the time for payment of rent (e.g. a specified day of the month and usually there is also an advance payment) and payment method (e.g. by cash or deposit to bank). When the landlord receives a rental payment, he must issue a receipt to the tenant or else he will commit an offence. If the tenant fails to pay the rent by the due date, the landlord has the right to terminate the tenancy and apply to the court/Lands Tribunal for payment of rent arrears or to apply for repossession of the property.





Inventory of the property

Before entering into a tenancy agreement, estate agents should establish what is to be included in the tenancy of the residential property concerned and prepare a written inventory thereof with the tenancy agreement. If the property includes furniture, electrical appliances, etc., an inventory should be made and it should be clearly specified which party should be responsible for the maintenance and repair of such items. To avoid any disputes in the future, both parties may take pictures of the furniture and electronic appliances included in the tenancy of the property for the record.

Thorough consideration

Before deciding to enter into a tenancy agreement, prospective tenants should consider it comprehensively and thoroughly, including whether the agreement should be handled by a solicitor or by themselves and the landlord. Both the landlord and tenant should bear in mind that the tenancy agreement is a legal document. Once it is signed, it is legally binding and both parties shall act in accordance with the lease terms.





Step 4: After Entering into a Tenancy Agreement

Copies of documents

A tenancy agreement is usually signed in duplicate and kept by the landlord and tenant respectively when the stamp duty has been paid. Before that, both landlord and tenant can keep a copy of the agreement. In addition, both parties should ask the estate agent to provide copies of all documents he/she had signed with the agent.

Amending the tenancy agreement

The tenancy agreement is a legal document. Once it is signed, any amendment should be agreed by all contracting parties and cannot be amended unilaterally.

Paying the deposit

Generally, the landlord will require the tenant to pay a deposit equivalent to one to three months' rent as a 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.



Commission for the estate agent

The amount or rate of commission payable to the estate agent by the landlord or tenant and the time of payment should be stated in the estate agency agreement. If either the landlord or tenant decides to cancel the transaction before entering into the formal tenancy agreement, generally speaking, the party in default will not only have the deposit forfeited to the other party, but also needs to pay the estate agent's commission. He/she may also need to pay the estate agent's commission for the other party if it is so stated in the provisional tenancy agreement.

Registration at the Land Registry

If the term of tenancy exceeds three years, a lease is required in accordance with the Conveyancing and Property Ordinance and it has to be created by a deed and the formal procedure for execution of a deed must be followed. Moreover, the lease has to be registered at the Land Registry in accordance with the Land Registration Ordinance. After the lease has been registered, the rights of the lessee will be protected. If the lessor sells the property, the lessee will be able to enforce the lease against the new owner. If the tenancy agreement contains a clause giving the tenant the option to renew upon its expiry, the tenancy agreement should also be registered at the Land Registry for protection.





Paying the Stamp Duty

According to the Stamp Duty Ordinance, stamp duty is payable on a tenancy agreement or lease of residential properties. The amount of the stamp duty payable depends on the current rates of stamp duty, the term of the lease and the rent payable by the tenant under the lease. Generally speaking, the total stamp duty payable is borne by the landlord and the tenant in equal shares.

The landlord must file Form CR 109 at the Rating and Valuation Department. Form CR 109 can be completed by the landlord or his representative and contains information such as the names of the parties to the tenancy agreement

or lease, tenancy term, rental, the party who will bear and pay the rates and the management fees. The Form has to be filed within one month of the execution of the tenancy agreement or lease. Otherwise, a penalty of \$310 will have to be paid for late filing. Failure to file Form CR 109 will render the landlord unable to take legal action for recovery of the rent in court/Lands Tribunal.

Tenant's taking possession of the flat

The tenant should cross check the written inventory prepared by the estate agent as to what is to be included in the tenancy of the property before entering into a tenancy agreement. If there is anything missing or not matching the inventory or damaged, the tenant should negotiate with the landlord and request him/her to follow up as soon as possible.





Step 5: Moving in

Duties of the estate agent

After arranging for client to enter into the tenancy agreement, other services provided by the estate agent for the client, such as handling the facility maintenance of the flat, receiving rental for the landlord, taking possession of the property for the landlord after the tenancy expires, or other tenancy management issues, are generally not “estate agency work”. If the landlord or tenant wishes the estate agent to provide such services, he/she should negotiate with the estate agent or enter into a related agreement with the estate agent separately.

Do not sublet without the landlord’s consent

If the tenant sublets the property without the landlord’s consent when the tenancy agreement states that the tenant shall not sublet the whole or any part of the property, the landlord may apply to the court/Lands Tribunal for a possession order. Under such circumstances, the tenant and sub-tenant may lose tenure.





Terminating the tenancy agreement

According to the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004, 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; and 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.

Obligations of the landlord and tenant

Tenants should pay the rent on time, shall not damage any part of the property, ensure that the property is only used for residential purpose, and comply with the Deed of Mutual Covenant. Landlords should pay, depending on the provisions of the tenancy agreement, rates, Government rent, management fees, expenses for structural maintenance and repairs or similar expenses of a capital and non-recurrent nature in respect of the property or the building of which the property forms part; and let the tenant peaceably hold and enjoy the property during the term of tenancy without any interference.





Others: Related Regulations, Links and Information

Estate Agents Authority

The EAA is responsible for enforcing the Estate Agents Ordinance (“EAO”) and its subsidiary legislations, and regulating the practice and conduct of estate agency work in Hong Kong. During the appointment of an estate agent, if the landlord or tenant suspects the estate agent is not complying with the EAO, its subsidiary legislations, the *Code of Ethics* or practice circulars issued by the EAA from time to time, he/she may lodge a complaint or make an enquiry with the EAA. Its contact details are:

Address: Room 2601, 26/F, Hopewell Centre, 183 Queen’s Road East, Wanchai, Hong Kong

Hotline: 2111 2777

Website: www.eaa.org.hk

Rating and Valuation Department

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. Its contact details are:

Address: 15/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon

Hotline: 2152 0111

Website: www.rvd.gov.hk





Lands Tribunal

The Lands Tribunal is the major body responsible for handling tenancy disputes. Apart from making orders for possession, the Tribunal also has the power to make orders for the payment of rent, mesne profits, disposal of any property left in the premises by the tenant and payment of damages in respect of any breach of a condition of the tenancy or sub-tenancy. Its contact details are:

Address: 38, Gascoigne Road, Yau Ma Tei, Kowloon

Phone: 2771 3034

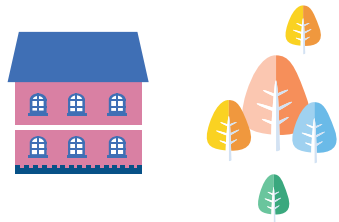
Land Registry

If the term of tenancy exceeds three years, a lease is required in accordance with the Conveyancing and Property Ordinance and registered at the Land Registry. For more details, please visit its website (www.landreg.gov.hk) or call its hotline at 3105 0000.

Buildings Ordinance

If there are any building orders issued in accordance with the Buildings Ordinance registered at the Land Registry against the property, and the owner has not complied with the order to demolish or rectify the unauthorised building works, it may lead to enforcement action by related Government departments or even Government re-entry.





Government Rights (Re-entry and Vesting Remedies) Ordinance

Each property has its own permitted use. Breaching the user restriction, such as living in a non-residential property or using a residential property for other purposes, may lead to the Lands Department's lease enforcement action or vesting action under the Government Rights (Re-entry and Vesting Remedies) Ordinance.

Housing Ordinance

As aforementioned, there are leasing restrictions for certain types of residential properties. For example, flats under the Home Ownership Scheme or the Tenants Purchase Scheme of the Hong Kong Housing Authority are subject to the Housing Ordinance. The landlord must pay the premium to the Housing Authority to remove the alienation restrictions before leasing the property. For more details, please visit the website of the Housing Authority (www.housingauthority.gov.hk).

Anti-discrimination Ordinances

When the landlord leases their property or the estate agent handles a transaction, they must avoid committing any discriminatory act or conducting themselves in ways that may prejudice an individual's right to accommodation. For more information of the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance and the Race Discrimination Ordinance, please visit the website of the Equal Opportunities Commission (www.eoc.org.hk).



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