S.C.M.P. 25/7/1977

Appeal in name of the law

ACCORDING to a vernment spokesman, 296 peals to the Lands Tribunal ve been lodged against the cision of the Commissioner Rating and Valuation in pect of objections to the w 1977 rateable values.

To my mind, this is a not considerable number and monstrates – apart from a termination that justice be en to be done – a faith in the licial process which, pefully, will prove not rely touching but also well unded.

The first appeals will be ard early in September and will be some time before all 6 appeals are out of the y. Appellants who intend pearing before the tribunal person and whose appeals ve been set down for mid-ptember or later would be ll advised to attend the rly hearings (to which the blic have access) with a ew both to familiarising emselves with the ocedures of the tribunal and sampling the kinds of guments advanced for the bunal's consideration on the sue of "reasonableness."

The Lands Tribunal is in u Wing Building, Wellington reet. And this column will ep readers apprised of ecise dates and times of the eptember hearings, rticularly those where the ppellants are represented by ounsel.

BOTH landlords and tenants, either of whom may be liable for payment of rates, may well be concerned about recent public notices stating that all rates for the current quarter must be paid by July 30, 1977. The notices also state that rates must be paid whether a demand has been received or not and that unpaid rates may attract a penalty of five per cent, increasing to 10 per cent after six months. All this, rightly or wrongly, is indeed authorised by the Rating Ordinance and persons liable for payment of rates should take heed accordingly.

If a demand has not been received, the person liable for payment of the rates is necessarily obliged to contact the Department of Rating and Valuation and ascertain the extent of his liability. After all, details of rate liability based, in most cases, on 11½ per cent of rateable value are a matter of public record.

There may, however, be cases where the parties are uncertain who precisely is liable for payment of rates. Some explanation might be helpful.

Section 21 of the Rating Ordinance establishes the following:

- *Both* owner and occupier are *liable* for payment of rates in respect of particular premises *but*, in the absence of any agreement to the contrary, rates must be *paid* by the *occupier*.
- Where the occupier is bound, in accordance with the above, to pay the rates but the rates are instead paid by the owner, the latter may recover the amount of rates so paid from his tenant by way of civil action or distress.
- Where the owner is expressly bound to pay the rates but instead the rates are paid by the occupier, the latter may recover the amount so paid from the owner by way of civil action.

Landlord and tenant

By Barry Lovegrove

IN AN earlier column (S.C.M. Post, June 13), nine questions were directed to the Department of Rating and Valuation on the issue of objections to rateable values fixed by this year's revaluation. To date, it appears that only one of the questions has been answered. Marginally impressive, perhaps – but hardly overwhelming! Hopefully, more information may have been forthcoming by the time the next column in this series appears.

IN THE previous column in this series, consideration was given to the renewal, paradoxically, of non-renewable Crown leases. In today's column, we will consider the renewal of *renewable* Crown leases.

It used to be the practice to grant Crown leases for land outside the New Territories for terms of either seven, 21, 75, 99 or 999 years. Currently, however, it is normal practice to grant a term of 75 years, usually renewable thereafter for a further term of 75 years. Since December 14, 1973, under the Crown Leases Ordinance, all expired renewable Crown leases of land outside the New Territories are deemed to be renewed on expiry at a reassessed rental. This statutory renewal avoids any need for a lessee to give notice exercising his right of renewal. Any lessee not wishing to renew his lease is at liberty to surrender it.

The new Crown rent on renewal is an amount equal to three per cent of the rateable value of the property. In the case of a residentially developed lot, the owner of each tenement or flat in the building pays three per cent of the rateable value *of his tenement or flat* and need not be concerned with the payment of the remainder of the new rent over the property which will be apportioned between other occupiers. On redevelopment of the property, the new Crown rent is again an amount equal to three per cent of the rateable value of the lot as redeveloped *provided* this is higher than the previous Crown rent.

In regard to land in the New Territories, the term of Crown leases dated prior to 1959 used to be expressed to be for the residue remaining of a term of 75 years dating from July 1, 1898 with an option for the tenant to renew the lease at a reassessed rent for a further term of 24 years less the last three days thereof. However, in a fashion similar to the Crown Leases Ordinance, the New Territories (Renewable Crown Leases) Ordinance automatically renewed all such leases – but without any increase in the Crown rent. Any person not wishing to renew his lease was able to surrender it on the expiry of the initial term on June 30, 1973.

Section 4 of the ordinance provides that leases renewed on July 1, 1973 for a term of 24 years less three days should be on terms including the same Crown rent as was payable immediately before the renewal date and subject to the same covenants and conditions contained in the earlier Crown lease, except for the right of renewal and the provision for fixing a new Crown rent at the expiration of the first 10 years of the term. Mortgages and public rights existing immediately before July 1, 1973 continue to affect the land and the renewed leases, as do other encumbrances except those not created by an instrument (a written document) or not expressed to continue beyond June 30, 1973. Section 5 protects Crown rights in respect of the breach of any covenant contained in the earlier Crown lease.

Since 1959, most New Territories Crown leases are expressed to be for the residue of a term of 99 years less the last three days thereof, such term to date from July 1, 1898. Thus, these leases (like the pre-1959 New Territories renewal Crown leases) will expire on June 27, 1997 – three days before the expiry of the Crown's own "lease" from China.

IN SOME Crown Leases for land in the New Territories there is the following clause:

"And this Indenture Further Witnesseth that the Governor doth hereby exempt the said piece or parcel of ground from the provisions of Part II of the New Territories Ordinance." This exemption which is authorised under section 7(2) of the New Territories Ordinance is granted automatically on the grant of Crown leases for land in New Kowloon and increasingly for urbanising areas of the New Territories. It may also be granted on the application of any Crown lessee of New Territories land who acquired his interest after April 17, 1899.

The effect of the exemption is as follows:

- Deeds, wills, judgments and other documents (leases, agreements for leases etc) affecting land will be registrable, under the Land Registration Ordinance, at the Land Office at Victoria rather than in a District Land Office.
- Registration and related fees will be prescribed by the Land Registration Fees Regulations rather than by the Land Registration (New Territories) Fees Regulations.
- Search fees will be payable.
- Stamp duty is assessed subject exclusively to the Inland Revenue Ordinance and not according to the schedule to the Stamp (New Territories) (Exemption and Modification) Regulations.
- The land in the Crown lease will be described by reference to a lot number alone rather than by reference to a Demarcation or Surrey District.

READERS are reminded that their queries are welcomed and should be referred to the writer care of the Editor, S.C.M. Post.