

# Private Residential Tenancy

## Statutory Terms

## Supporting Notes

.....and other essential housing information

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*This version of the Statutory Terms Supporting Notes is in place from October 2022. The Cost of Living (Tenant Protection) (Scotland) Act 2022 introduces emergency measures during the cost of living crisis in relation to ‘Rent Increases’ (Statutory Term 2) and ‘Ending the Tenancy’ (Statutory Term 9). These measures are temporary and are aimed at helping tenants during this emergency situation. These notes reflect those changes.*

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October 2022

## Private Residential Tenancy Statutory Terms Supporting Notes

It's the law that your landlord must give you all the written terms of your tenancy.

If you have a private residential tenancy, there are nine tenancy terms which your landlord must include in your written terms by law. They are called 'statutory terms'.

These Supporting Notes can help you understand the 'statutory terms'. The section numbers and titles relate to the number given to each tenancy term as they are listed in the Private Residential Tenancies (Statutory Terms) (Scotland) Regulations 2017.

In order to make you aware of your other renting rights and responsibilities, we have also included some other essential housing information that you may find useful.

If you need more information about any clauses in your tenancy agreement which are not covered by these Notes, you may want to discuss them with your landlord, or contact the advice groups listed at the end of these Notes.

If you have a new tenancy, your landlord must give you all your tenancy terms in writing and a copy of these Notes before the end of the day on which the tenancy starts.

If you have a different type of tenancy which is changing into a private residential tenancy, your landlord has 28 days after the day when the tenancy becomes a private residential tenancy to give you your new tenancy terms and a copy of these Notes.

If your landlord does not give you written terms of the tenancy and/or these Notes when they are supposed to, you can apply to the First-tier Tribunal for Scotland Housing and Property Chamber ("the Tribunal"). The Tribunal may then give you a written tenancy and/or order your landlord to pay you up to six months' rent.

You must give your landlord 28 days' notice if you are going to apply to the Tribunal for this reason, and you must apply using the 'Tenant's notification to a landlord of a referral to the First-tier Tribunal for failure to supply in writing all tenancy terms and/or any other specified information'. There are guidance notes available to help you to fill in this form if needed.

### In these Supporting Notes:

- The word "**Agreement**" means the tenancy agreement or written tenancy terms for the property which is being leased; and

The "**Tribunal**" is the First-tier Tribunal for Scotland Housing and Property Chamber, which deals with disputes for tenancies of homes. The process should be easy and there is no cost to apply to the Tribunal. You can access the form here:

<https://www.housingandpropertychamber.scot/sites/default/files/hpc/REPAIRS%20APPLICATION%20FORM%20CHAMBER.pdf>

The Form has guidance notes to help. You can also get help from the advice groups listed at the end of these Notes.

- The **landlord** might appoint an **agent** to manage the Agreement and if they do, then when these Notes refer to the landlord, in practice that might instead be a reference to the landlord's agent who will be acting on behalf of the landlord.

THE NINE 'STATUTORY TERMS' ARE AS FOLLOWS:

### **STATUTORY TERM 1 – RENT RECEIPTS**

If the tenant pays rent in cash then the landlord must give the tenant a written receipt.

That receipt must show:

- the amount paid,
- the date on which that amount was paid; and
- whether the rent is now paid up to date - and, if it is not, how much is still to be paid.

### **STATUTORY TERM 2 – RENT INCREASES**

The rent can only go up once a year. Before the rent can go up, the tenant must be given an official notice called a rent-increase notice. This notice might be sent by email if the Agreement allows for this. Any rent-increase notice must be given to the tenant by the landlord at least 3 months before the date that the rent is to go up.

If the tenant receives a rent-increase notice, and the tenant thinks that the new rent would be higher than is being charged at that time for similar properties, then the tenant can ask a Rent Officer to decide whether the increase is fair.

"Fair" here means an amount similar to the rent which is, at that time, being charged for similar properties on new lettings. It does not mean how much the tenant can afford to pay.

Tenants must follow certain steps to ask the Rent Officer to make this decision and there is a 21 day time limit for this to be done. If these steps are not followed by the tenant within the 21 day time limit then the tenant will lose their right to challenge the rent increase - and the rent will be increased to the amount wanted by the landlord.

These steps are as follows:

- The tenant must return Part 3 of the rent-increase notice to the landlord - to tell the landlord that the tenant intends to ask the Rent Officer to decide whether the rent increase is fair;
- The tenant then fills in a form called the Tenant's Rent Increase Referral to a Rent Officer under section 24 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 to be used for this purpose, a copy of which can be accessed on the Scottish Government website, or through Rent Service Scotland – see Useful Contacts and Links at the end of these Notes; and
- The tenant then sends the finished form to the Rent Officer.

All of this must be done within 21 days after the tenant receives the rent-increase notice. If this is not done then the rent increase will go ahead.

If the tenant accepts the rent increase, they should return Part 3 of the rent-increase notice to the landlord to tell them that.

Part 3 of the rent-increase notice can also be returned to the landlord by the tenant to say if the tenant has not been given long enough notice of a rent increase - so if less than 3 months' notice was given. If the landlord gives less than the 3 months' notice, then the tenant will not need to pay the increased rent until 3 months have passed. So the landlord cannot try and increase the rent on one month's notice for example.

If the property is in a Rent Pressure Zone, the tenant cannot go to a Rent Officer about the rent increase. That is because the Scottish Ministers have already limited the amount by which the rent can be increased. As the landlord cannot increase the rent higher than the cap, the tenant doesn't need to pay any rent above the cap. The tenant has a number of options:-

- only pay the rent up to the limit of the cap as the tenant is at no risk of eviction;
- contact one of the advice groups listed at the end of these Notes; or
- apply to the Tribunal to draw up the terms of the tenancy (as the terms of tenancy have changed as the rent has increased).

You should tell your landlord what you intend to do. In any event, if you apply to the Tribunal, your landlord must be given 28 days' notice.

The Cost of Living (Tenant Protection) (Scotland) Act was introduced in October 2022. It is an emergency response to the situation caused by the impact of the cost crisis on people who rent their home in Scotland. From 6 September 2022, there is a temporary cap on rent increases during private tenancies. From 1 April 2023, the cap is set at 3% and is expected to stay in place until 31 March 2024 at the latest. Private landlords can apply to Rent Service Scotland (RSS) for a rent increase of up to 6% to help cover certain increases in costs in defined and limited circumstances. Your landlord must inform you when they make this application. Full details of the emergency measures can be found at the link: [www.mygov.scot/rent-cap-landlords](http://www.mygov.scot/rent-cap-landlords)

### **STATUTORY TERM 3 – SUBLETTING ETC**

The Agreement will probably only give the landlord's permission for the tenant(s) that are named in the Agreement to live in or use the property.

The tenant is not allowed to:

- enter into another agreement to sublet the property (or part of it) to another person, or
- take in a lodger, or
- enter into an agreement to try to transfer the tenancy (or part of it) to somebody else, or
- allow another person to start living in the property (or part of it) or using it for some other purpose.

As a general rule, if the tenant wants to allow anyone else to live in or use the property as their only or main home, then the tenant must get the landlord's written permission. The landlord does not have to give that permission.

### **STATUTORY TERMS 4 AND 5 – NOTIFICATION ABOUT OTHER RESIDENTS**

If a person who is over 16 lives at the property with the tenant as their only or main home, then the tenant has to write to the landlord (or email the landlord if email is the agreed method of contact). The tenant's letter (or email) must tell the landlord the name of the person who has started to live at the property with the tenant and the tenant's relationship with that person.

If that person leaves the property, the tenant must also tell the landlord that this has happened. For example, if a couple take a joint tenancy and live with their two children aged 14 and 15, when each of those children become 16, the landlord should be notified. Also, where a husband takes a single tenancy but lives with his wife, he should notify the landlord that his wife lives with him.

If a tenant dies while they are the only tenant under a private residential tenancy, a partner, family member or carer can inherit their tenancy under certain conditions, as long as the tenant did not inherit the tenancy from someone else in the first place.

In order for a person to inherit the tenancy, they must:

- have been living in the property as their only or main home at the time of the tenant's death, and
- the tenant must have already notified the landlord .

There are several types of relationship with the tenant which might allow someone to inherit the tenancy:

1. If the person was married or in a civil partnership with the tenant at the time of the tenant's death, the person will inherit the tenancy, as long as:

- they have been living in the property as their only or main home at the time of the tenant's death, and
  - the tenant must have already notified the landlord .
2. If the person was a partner of the tenant (but was not married to them or in a civil partnership with them) to be allowed to inherit the tenancy:
- they must have been living in the property as their only or main home **for at least 12 months without any breaks** up to the tenant's death, and
  - the tenant must have already notified the landlord

The 12 months will be counted from the time when the tenant told the landlord that the person was living in the property. Any time when the person was living in the property before the landlord was told will not count.

3. If the tenant does not have a partner to inherit their tenancy, any **qualifying family members** who are at least 16 years of age when the tenant dies can inherit the tenancy, if:
- they have been living in the property as their only or main home **for at least 12 months without any breaks** up to the tenant's death, and
  - the tenant must have already notified the landlord

The 12 months will be counted from the time when the tenant told the landlord that the person was living in the property. Any time when the person was living in the property before the landlord was told will not count.

### **STATUTORY TERMS 6, 7 AND 8 – ACCESS FOR REPAIRS ETC.**

The tenant must by law let the landlord (or their workmen or advisers) have reasonable access onto the property for "authorised purposes".

The tenant should be given at least 48 hours' notice before this happens - unless it is an emergency. If it is an emergency, then less than 48 hours' notice might be given, or immediate access might be needed (with no notice beforehand). An emergency might include a dangerous electrical fault or a burst water pipe in the property which is flooding the property or any flat below it. Emergencies are repairs that are causing danger or, if left, are likely to cause damage to the property or property nearby if they are not repaired quickly.

Reasonable access, for non-emergency work, would generally mean access during the working day (8 a.m. to 6 p.m.) Monday to Friday. If both landlord and tenant agree, then the tenant could allow access outwith such times if this would allow work to be done more quickly.

A landlord will usually hold a set of keys for the property. However, unless it is for an emergency, the landlord is not allowed to use those keys to enter the property without the tenant's consent.

If the tenant does not give consent then the landlord can apply to the Tribunal for an order to take access. The Tribunal will try and agree a date for access with the tenant. If the tenant refuses to agree a date for repairs then the Tribunal can fix a date when the landlord can enter.

#### **Authorised purposes are:**

- carrying out work in the property which the landlord must carry out or is allowed to carry out, in either case by law or in terms of the tenancy or in terms of any other agreement between the landlord and the tenant;
- checking the property to see whether any work needs to be done - for example repairs; and
- carrying out a valuation of the property.

#### **STATUTORY TERM 9 – TERMINATION**

This section details the ending of the Agreement by the landlord or the tenant.

##### **Tenant ending the Agreement**

The tenant can end the tenancy at any time by giving written notice to the landlord. That written notice **must say** that:

- the tenant wants to end the tenancy and
- the date on which the tenancy is to end.

(If it is a joint tenancy, all of the tenants must give the notice, not just one or some of them. See more detail later in this section.)

The tenant's **notice must be given to the landlord 28 days (or 4 weeks) before the date on which the tenant wants the tenancy to end.**

If the tenant gives the notice to the landlord by hand, then the notice would have to be given 28 days (or 4 weeks) before the date on which the tenant wants the tenancy to end.

If the tenant:

- posts the notice or
- sends the notice by email (if this has been agreed as the method of communication),

then the notice would have to be posted or emailed at least 30 days before the date on which the tenant wants the tenancy to end. This allows time for the notice to be received by the landlord.

If the tenant wants to end the tenancy **sooner than 28 days**, they may be able to agree this with their landlord. This landlord's agreement must be in writing. If the landlord does not agree, the tenancy will continue for the **minimum 28 day period** even if they move out of the property sooner.

If the Agreement is a **joint tenancy** then all of the joint tenants have to agree to the ending of the Agreement. One joint tenant cannot end the Agreement on behalf of all tenants. Any notice from the tenant to end the tenancy would have to be signed by all of the joint tenants.

If a joint tenant wants to end the tenancy by sending notice to the landlord by email then this would be done either:

- by each of the people who are joint tenants sending their own email to the landlord, all saying that the tenancy is to end on the same date; or
- by each of the joint tenants signing a paper copy notice to the landlord and then one of those joint tenants scanning or taking a photo of that signed paper copy notice and attaching it to an email and emailing it to the landlord, on behalf of all of the joint tenants.

There are times, such as where there has been domestic violence, where a court can make an exclusion order or order the transfer of a joint tenancy into the name of one tenant, or a tenancy in the name of one partner into the name of the other. This is under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 or the Civil Partnership Act 2004. If a tenant needs advice about this, they could contact one of the advice groups listed at the end of these Notes or Scottish Women's Aid (<http://womensaid.scot/>)

### **Landlord ending the Agreement**

The Landlord can bring the tenancy to an end only if one of the 18 grounds for eviction in schedule 3 to the 2016 Act applies. For the period when the Cost of Living (Tenant Protection) (Scotland) Act 2022 is in force, 3 additional, temporary eviction grounds will apply. These have been temporarily added to schedule 3 of the 2016 Act.

The landlord's written notice to the tenant, ending the tenancy, must say:

- which one or more of the 21 grounds is the reason why the landlord is ending the tenancy;
- why the landlord thinks that ground applies; and
- the date on which the landlord expects to become entitled to make an application for an eviction order to the First-tier Tribunal for Scotland Housing and Property Chamber..

The landlord should provide the tenant with a copy of any supporting evidence for the eviction ground when they serve the Notice to Leave on the Tenant.

The **tenancy end date** will be set out in the Notice to Leave. There are four possible options for the tenant:-

1. The tenant could choose to leave on the date in the Notice to Leave.
2. Despite the date set out in the notice, the tenant may ask the landlord to agree to a later date, in which case the tenancy will end on that date - this is only if the landlord agrees.
3. If the tenant believes that the ground(s) for ending the Agreement given in the notice do not apply, then they should discuss this with the landlord and also contact the advice groups listed at the end of these Notes.
4. The other option would be for the tenant to wait for the landlord to apply to the Tribunal for an Eviction Order, as at that stage the landlord will be asked by the Tribunal to **prove** that the ground(s) specified for eviction do apply. The tenant does not need to move out until an Eviction Order is granted by the Tribunal.

### **Where the tenant chooses not to leave**

If the tenant does not leave the property on the tenancy end date, the landlord can apply to the Tribunal to get an order to evict the tenant. The tenancy then ends on the date set out in that eviction order.

If the landlord applies to the Tribunal for an eviction order, the Tribunal will ask the landlord to prove to the Tribunal why the ground set out in the landlord's notice applies to allow the landlord to end the tenancy.

### **This Tenancy may be ended by:-**

- **The Tenant giving notice to the Landlord**
  - **The Tenant giving the Landlord at least 28 days' notice in writing to terminate the tenancy, or an earlier date if the Landlord is content to waive the minimum 28 day notice period. Where the Landlord agrees to waive the notice period, his or her agreement must be in writing. The tenancy will come to an end on the date specified in the notice or, where appropriate, the earlier date agreed between the Tenant and Landlord. To end a joint tenancy, all the Joint Tenants must agree to end the tenancy. One Joint Tenant cannot terminate the joint tenancy on behalf of all Joint Tenants.**
- **The Landlord giving notice to the Tenant, which is only possible using one of the 21 grounds for eviction set out in schedule 3 of the Act. (For the period when the Cost of Living (Tenant Protection) (Scotland) Act 2022 is in force, 3 additional, temporary eviction grounds will apply.**

These have been temporarily added to schedule 3 of the 2016 Act.) This can happen either:-

- By the Landlord giving the Tenant a Notice to Leave stating one or more of the eviction grounds, and the Tenant choosing to leave. In this case, the tenancy will come to an end on the day specified in the Notice to Leave, or the day on which the Tenant actually leaves the Let Property, whichever is the later.

or:-

- By the Landlord giving the Tenant a Notice to Leave stating one or more of the eviction grounds and then, if the Tenant chooses not to leave on the day after the notice period expires, subsequently obtaining an eviction order from the Tribunal on the stated eviction ground(s). In this case, the tenancy will come to an end on the date specified in the eviction order.

The Landlord can bring the tenancy to an end only if one of the 21 grounds for eviction apply. If the Landlord serves a Notice to Leave on the Tenant, he or she must specify which eviction ground(s) is being used, and give the reasons why they believe this eviction ground applies.

If the Landlord applies to the Tribunal for an eviction order, the Tribunal will ask the Landlord to provide supporting evidence for any eviction ground(s) being used.

The amount of notice a Landlord must give the Tenant will depend on which eviction ground is being used by the Landlord and how long the Tenant has lived in the Let Property.

The Landlord must give the Tenant 28 days' notice if, on the day the Tenant receives the Notice to Leave, the Tenant has been entitled to occupy the Let Property for six months or less, or if the eviction ground (or grounds) that the Landlord is stating is one or more of the following. The Tenant:

- is not occupying the Let Property as his or her only or principal home
- has breached the tenancy agreement
- is in rent arrears for three or more consecutive months
- has a relevant criminal conviction
- has engaged in relevant antisocial behaviour
- has associated with a person who has a relevant conviction or has engaged in antisocial behaviour.

The Landlord must give the Tenant 84 days' notice if, on the date the Tenant receives the Notice to Leave, the Tenant has been entitled to occupy the Let Property for over six months and the Notice to Leave does not rely exclusively on one (or more) of the eviction grounds already mentioned in this paragraph.

**The Landlord must secure repossession only by lawful means and must comply with all relevant legislation affecting private residential tenancies.**

## **There are 21 grounds that allow a landlord to end a tenancy**

All grounds for eviction are 'discretionary' whilst COVID-19 emergency procedures are in place.

More detail on all of the above 18 grounds is given below.

### **1. Landlord intends to sell the let property**

This ground applies if your landlord plans on putting the property up for sale within three months of you moving out.

They'll need evidence to prove it – this could include a letter from a solicitor or an estate agent, or a recent home report for the property.

#### **1A. Landlord intends to sell property to alleviate financial hardship**

This ground applies if the landlord is entitled to sell the let property, is suffering financial hardship, and intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. They'll need evidence to prove it such as a letter of advice from an approved money advisor or local authority debt advice service, a letter of advice from an independent financial advisor, a letter of advice from a chartered accountant, a letter of engagement from a solicitor or estate agent concerning the sale of the let property or an affidavit stating that the landlord has that intention.

### **2. Let property to be sold by lender**

This ground applies if your landlord's mortgage lender wants to repossess the property and sell it.

### **3. Landlord intends to refurbish the let property**

This ground applies if your landlord wants to carry out major works to the let property that are so disruptive you wouldn't be able to live there at the same time.

Example of evidence could include planning permission, or a contract between your landlord and an architect or a builder for the work to be carried out.

### **4. Landlord intends to live in the let property**

This ground applies if your landlord wants you to move out of the property so they can move in. Evidence could include an affidavit (a written statement, signed under oath in the presence of a Notary Public or a Justice of the Peace, that can be used as evidence at the Tribunal) saying this is what they are going to do.

#### **4A. Landlord intends to live in let property to alleviate financial hardship**

This ground applies if the landlord is suffering financial hardship, and intends to alleviate that hardship by occupying the let property as the landlord's only or principal home for at least 3 months.

### **5. Landlord's family member intends to live in the let property**

This ground applies if a member of your landlord's family plans to move into the property as their only or main home for at least three months.

Members of your landlord's family who qualify for this are:

- their spouse
- their civil partner
- someone living with them as though they were married to them
- a parent or grandparent
- a child or grandchild
- a brother or sister
- step or half relatives (like a stepson or half-sister)
- a person being treated as someone's child even if they aren't related biologically or legally
- any family member (as listed above) of your landlord's spouse, civil partner or person living with them as though they were married
- the spouse or civil partner of any family members listed above, or someone living with them as though they were married

Your landlord will need evidence for this ground. This could include an affidavit stating that this is what their family member intends to do.

#### **6. Landlord intends to use the let property for non-residential purpose**

This ground applies if your landlord wants you to move out so they can use the property for something other than a home. Evidence could include planning permission that will let them use the property for a different purpose.

#### **7. Let property required for religious worker**

This ground applies if the property is held to be available for someone who has a religious job (like a priest, nun, monk, imam, lay missionary, minister, rabbi or something similar). The ground only works if the property has been used for this purpose before.

#### **8. Tenant has stopped being — or has failed to become — an employee**

This ground applies if your landlord let you move in because you were their employee (or were going to be one), and now you aren't.

#### **9. Tenant no longer needs supported accommodation**

This ground applies if you moved into the property because you had a need for community care and you've since been assessed as no longer having that need.

#### **10. Tenant is no longer occupying the let property**

This ground applies if the property isn't being used as your main or only home. This doesn't count if your landlord failed their duty to keep the property in good repair and you had to move out for your own safety.

#### **11. Tenant has breached a term of the tenancy agreement**

This ground applies if you haven't complied with one of the terms of tenancy. This doesn't apply to cases where you haven't paid your rent (known as 'rent arrears') – there's a separate ground for this.

#### **12. Tenant is in rent arrears over three consecutive months**

This ground applies if you've been in 'rent arrears' (owed rent payments) for three or more months in a row. In deciding whether it is reasonable to evict, the Tribunal will consider whether you being in arrears is due to a delay or failure in the payment of a relevant benefit.

#### **12A. Tenant has substantial rent arrears**

This ground applies if the tenant has accrued rent arrears under the tenancy in respect of one or more periods and the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant.

#### **13. Tenant has a relevant criminal conviction**

This ground applies if you're convicted of an offence punishable by imprisonment that involved you either:

- using the property for illegal reasons
- letting someone use the property for illegal reasons
- committing a crime within or near the property

Your landlord has to apply to the Tribunal within a year of you being convicted, unless they have a reasonable excuse for not applying before then.

#### **14. Tenant has engaged in relevant antisocial behaviour**

This ground applies if you've behaved in an antisocial way to another person, by doing something which either:

- causes them alarm or distress
- is a nuisance or annoyance
- is considered harassment

The First-tier Tribunal will consider the behaviour, who it involved and where it occurred to decide whether to issue an eviction order.

To use this ground, your landlord has to apply to the Tribunal within a year of the behaviour taking place, unless they have a reasonable excuse.

#### **15. Tenant has associated in the let property with someone who has a criminal conviction or is antisocial**

This ground applies if you allow someone into the property and they behave in an antisocial way that would have them evicted if they were the tenant.

This person could be:

- a sub-tenant
- your lodger
- someone you let into the property on more than one occasion

To use this ground, your landlord has to apply to the Tribunal within a year of the conviction or behaviour taking place, unless they have a reasonable excuse.

#### **16. Landlord has had their registration refused or revoked**

This ground applies if your landlord isn't registered as a landlord in the local council area where the property is located.

This could be because the local council has either:

- refused to enter them in the register
- removed them from the register

### **17. Landlord's HMO licence has been revoked**

This ground applies if the HMO (House of Multiple Occupancy) licence for the property has been removed and keeping all the tenants in the property would no longer be legal.

### **18. An overcrowding statutory notice has been served on the landlord**

This ground applies if an 'overcrowding statutory notice' has been served on your landlord because the property is overcrowded to the extent that it may affect the health of the people living there.

The Tenant agrees to remove all of his or her belongings when the Tenancy ends. The Tenant's belongings may include personal effects, foodstuffs and consumables, belongings, and any other contents brought in to the Let Property by the Tenant.

### **Unlawful Eviction**

If the landlord tries physically or by force to remove a tenant from the property without the Tribunal's permission, the landlord is committing a crime. If the landlord physically removes the tenant from the property, or threatens to do so, or if the landlord changes the locks, the tenant should report the matter to the police. (The non-emergency number to contact the police is 101.)

For an eviction to be lawful (so allowed by law), after the landlord obtains the eviction order from the Tribunal, the eviction (or removal of the tenant from the property) must be done by Sheriff Officers, not by the landlord or by the landlord's employees or agents.

The law protects the tenant against harassment and unlawful eviction in two ways:

- by making harassment and unlawful eviction crimes; and
- by allowing the tenant to claim damages (ask for money) through the courts.

The law against harassment applies if the landlord personally harasses or evicts the tenant unlawfully or if somebody else does it for the landlord.

### **Wrongful Termination Orders**

If the tenant has left the property and thinks they have been misled into leaving the property, they can apply to the Tribunal for a 'wrongful termination order'. The Tribunal may make a wrongful termination order if it decides that the landlord:

- misled the Tribunal into giving an eviction order it should not have
- misled the tenant into leaving the property.

An example of a possible wrongful termination would be where the landlord serves notice to leave on the tenant on the ground that they intend to sell the property, but then takes no action to do so, and simply lets it out to another tenant.

If a wrongful termination order is issued, the landlord will be told to pay the tenant a payment of no more than six months' rent. The local council will also be told about the order being made and will take this into account when deciding if the landlord is (or remains) a "fit and proper" person registered to be a landlord.

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## Essential information

The following essential housing information has been included in here to help you understand your rights and responsibilities as a tenant:

### Tenant

If there is more than one person named on the Agreement as the Tenant the tenancy will be a **joint tenancy**. This means that each person is responsible on their own individually - as well as equally along with all of the others - for all of the payments and other things the tenant is required to do under the tenancy. For example, if any of the tenants in a joint tenancy fell into rent arrears, the landlord could ask one of the other named tenants to pay the money owed.

That person must pay the landlord the full sum that is owed and then try to get the other people who are also joint tenants to repay them their share.

The Agreement could include details of tenant email addresses and telephone numbers.

- If the Landlord and Tenant agree that formal written notices will be given by email instead of by letter (see note on Communication), then email addresses must be provided. If the Agreement does not allow notices to be given by email then it is not essential for email addresses to be given.
- It is not essential for telephone numbers to be given, but it might be useful to have telephone numbers available in an emergency or to speed up communications between the landlord and tenant.

### Letting Agent

The landlord might use an agent to manage the tenancy. The Agreement will then have details of how to contact the agent.

All letting agents are required by law to follow a Letting Agent Code of Practice:

<https://www.gov.scot/publications/letting-agent-code-practice/>

From 2 October 2018, all businesses who carry out "letting agency work" as defined by section 61 of the Housing (Scotland) Act 2014 must have applied to join a register of letting agents. Where this applies, the registration number should be provided in the Agreement. Not all agents will be carrying out letting agency work as defined by this Act so not all agents will have a registration number. Those agents will still need to be assessed by the local authority under the landlord registration scheme.

The idea of these schemes is to make sure that private landlords and their agents are "fit and proper persons" to be involved in letting properties. Tenants can check if their agent has registered by looking them up at <https://register.lettingagentregistration.gov.scot/search> and/or <https://www.landlordregistrationscotland.gov.uk/>

The Agreement says which services the agent will be doing for the landlord. The landlord might use an agent for some things, for example sorting out repairs or cleaning of common areas.

The Agreement will state the matters the tenant should contact the agent about, instead of the landlord. For example, the landlord might want the tenant to contact the agent (instead of the landlord) if there is problem with water coming into the property or if something (like a cooker or fridge or boiler) has broken down.

Where the agent is a company, the Agreement should say which person is the first person that the tenant should try to contact.

## **Landlord**

The names and addresses of the landlord(s) should be shown on your Agreement.

Landlord email addresses and telephone numbers might also be given.

- If the Landlord and Tenant agree that formal written notices will be given by email instead of by letter (see note on Communication) then email addresses must be shown here. If the Agreement does not allow notices to be given by email then email addresses don't need to be given.
- The Agreement does not say that any formal notice or other type of contact can be made by phone, so phone numbers don't need to be given. However, it might be useful to have phone numbers in an emergency or to speed up contact between the landlord and tenant.

The registration number of the landlord should be given. This is the landlord's number under the landlord registration scheme run by local councils. The idea of this scheme is to make sure that a private landlord is a "fit and proper person" before that landlord can rent out property. Landlords must register and you can check if your landlord has registered by looking them up at <https://www.landlordregistrationscotland.gov.uk/>

## **Communication**

The Agreement should say whether notices and letters must be sent by paper letter form only or whether emails will be used instead.

You can sign the Agreement "electronically" by typing your name - instead of signing a paper copy. It will still be a legal document that the landlord and tenant must comply with by law.

The tenant does not need to agree to receive notices under the Agreement by email. If the tenant agrees to receive notices by email this could include important

messages. For example telling the tenant that the rent is to go up or that the Tenancy is being brought to an end. You should think about whether email would be the right way to receive important information. The landlord and the tenant must tell each other about changes to their email addresses.

If you don't inform your landlord about a change of email address you might miss an important email such as a Notice to Leave. That would mean that the Notice to Leave sent to the old email address would still be accepted by the Tribunal as having been properly sent even though the notice was not actually received by the tenant. In this case you can still be evicted. In the event that the email correspondence method is unavailable or unusable by either party, the Tribunal may take a view that recorded delivery would be acceptable. This is at the discretion of the Tribunal.

When the notice is sent by email or recorded delivery post, then an extra 2 days should be added to the notice period to allow time for delivery. This is required by law, even if it is not stated in the tenancy agreement. This applies both when a tenant is sending a notice to their landlord, or when a landlord is sending a notice to their tenant.

For example, if one months' notice needs to be given before 31 December 2017, then if the notice is being given by post or by email, it should be posted or emailed no later than 28 November 2017. If the notice is being delivered by hand (this would normally involve a Sheriff Officer if a landlord was giving a notice of removal - Paragraph 34.8 of the [Act Of Sederunt \(Sheriff Court Ordinary Cause Rules\) 1993 No.1956 \(S.223\)](#) refers), it should be delivered no later than 30 November 2017.

### **Details of the property**

The Agreement will contain the address and other details about the property - for example whether the property is a flat or a bungalow.

The Agreement should make it clear:

- what areas and facilities are included in the property and if any of those are to be shared; and
- what (if any) areas are not included.

This information is helpful if the property is part of a larger building where it might not be obvious which parts of the larger building are included in the property being let.

The Agreement may list shared areas, such as a shared garden or communal entrance area.

The Agreement may list parts not included in the property being let, such as, for example, a part of the garden or a parking space which is only to be used by another tenant of the building.

The Agreement should say whether or not the property is to have any furniture provided by the landlord. If there is furniture, it will probably be listed in an Inventory and Record of Condition. This is a list of all the items included so that the landlord

and tenant can agree what was there at the start of the Agreement, and the condition of these things at the start of the Agreement.

The Agreement should say whether the property is in a Rent Pressure Zone. If it is, then the landlord will only be allowed to increase the rent by a certain amount each year. More information on this can be found on the Scottish Government's website: <https://www.gov.scot/publications/private-residential-tenancies-tenants-guide/pages/rent-and-other-charges/>

The Agreement should say whether the property is a House in Multiple Occupation (HMO). A home is an HMO:

- if it is occupied by three or more adults (aged 16 or over)
- they are from three or more families
- the home is their only or main residence
- it is either a house, premises or a group of premises owned by the same person with shared basic amenities (a toilet, personal washing facilities, and facilities for the preparation or provision of cooked food) (as defined in section 125 of the Housing (Scotland) Act 2006)

If the property is an HMO, the Agreement should give the 24 hour contact number and the date on which the licence for the HMO will finish.

HMO landlords must have a licence from the local authority to make sure that the property is managed properly and meets legal safety standards. Because the landlord needs to get a licence if the property is an HMO, it is important that the tenant tells the landlord if extra people move into the property (see note on Notification about other Residents).

### **Start date of the Tenancy**

The Agreement must state the date when the tenancy begins, which will be when the tenant can move into the property.

### **Occupation & Use of the property**

The tenant is to live at the property as the tenant's home.

The tenant must get the landlord's written consent, in advance, if the tenant wants to use the property for any work or business, in addition to living in the property.

There are many reasons why a landlord might not agree to allow any work or business use of the property, including for example:

- the deeds which set out the landlord's ownership of the property do not allow that use; or
- the planning permission (from the local council) for use of the property does not allow work or business use; or

- the landlord thinks that the actual work or business which the tenant wants to do at the property would be likely to disturb or annoy neighbours; or
- use of the property for any work or business might make the landlord's insurance for the property more expensive or even invalid; or
- the terms of the landlord's mortgage policy do not allow the property to be used for work or business.

## Rent

The Agreement should specify the amount of rent, and how often that amount is to be paid. The payment times might be weekly, every 2 weeks, every 4 weeks, monthly, 4 times a year or once every 6 months.

The rent payments could be due to be paid in advance (at the beginning of each such amount of time) or in arrears (after that amount of time has passed). The maximum amount of rent which a landlord can ask their tenant to pay in advance is 6 months' rent.

The Agreement should say:

- the date on which the first payment is to be made and how long that amount of money will cover; and
- on which date rent will next need to be paid.

The Agreement lets the landlord say how the rent should be paid. For example, the landlord might want the rent payments to be paid by bank transfer or by cheque. It is possible for the tenant to pay using another way, if that is fair. For instance, it might not be considered fair to pay the rent by a method which would result in a high bank charge to the landlord, such as payments made using some credit cards.

The Agreement should also state if any services are to be included in the rent. This is to make it clear that the tenant would not have to pay extra for those services. For example, the rent might include the cost of lighting a shared hall or stair cleaning costs. Any services which are paid monthly should be included as part of the rent. For example, if a landlord pays for stair and window cleaning and charges the tenant monthly for this cleaning that would be included. The services which are included in the rent should be listed in the Agreement along with the amount for each service.

Where there are one-off payments throughout a tenancy, such as where the landlord agrees to carry out a repair for the tenant for a fee, then this will not form part of the rent.

The landlord is not allowed to charge a tenant for other services - such as the cost of preparing a lease, 'key money', administration charges, or for the cost of preparing an inventory etc. These charges are known as 'premiums'. If the landlord charges a premium, the tenant should write and ask for a refund. If the landlord refuses to

provide a refund, then a claim could be made through the Tribunal. The tenant could also contact the local council's landlord registration team, or, if the landlord holds a HMO licence, the tenant could contact the local council's licensing team to help with this.

Rents of tenants with a private residential tenancy in a rent pressure zone can only rise, each year, by an amount set by Scottish Ministers which is linked to inflation (rises in the cost of living generally). More detailed information on this is available at <https://www.gov.scot/publications/private-residential-tenancies-tenants-guide/pages/rent-and-other-charges/>

A landlord in a Rent Pressure Zone can also apply to the Rent Officer to allow a further increase to your rent because the landlord has done work to improve the property. This increase in rent would be in addition to any inflation related increase in the rent.

## **Deposit**

When a tenant moves into a rented home, most landlords will ask for a deposit. This is a sum of money which acts as a guarantee against various things, such as damage that the tenant may do to the property, costs for any cleaning which may be needed, bills (for example electricity) that are left unpaid, as well as any unpaid rent.

The total amount of the deposit cannot be more than 2 months' rent. If the tenant is charged more than two months' rent, then the tenant can contact Shelter Scotland or a Citizens Advice Bureau for advice about claiming back the extra amount. It is an offence to require payment of any premium (in addition to the rent and a refundable deposit of no more than two months' rent) as a condition of the grant, renewal or continuance of a tenancy.

A deposit must be held by a tenancy deposit scheme until the end of the tenancy. This is to stop the landlord using a deposit as if it was their own money. Tenancy deposit schemes are run by independent companies which are approved by the Scottish Government. The landlord has to pay the deposit to one of the schemes within 30 working days from the start of the tenancy (working days are usually Monday to Friday - so 30 working days is usually 6 weeks). When a deposit is paid in instalments then each instalment must be lodged within 30 working days of that instalment being paid. There will be no charge to the tenant or landlord to pay the deposit into one of the schemes.

It is good practice for a landlord or letting agent to pay a deposit, or part deposit (when joint tenants pay their share of a deposit), to one of the approved tenancy deposit schemes as soon as possible after the start of the tenancy. This is very important as a landlord or letting agent has no authority to retain any deposit/part deposit at any time.

A landlord or letting agent is not permitted to charge any premiums. By paying any deposit received into a scheme promptly, a landlord/letting agent is clearly

demonstrating that any deposit received is always being treated as a deposit and not as a premium.

Any retention of a deposit by a landlord or letting agent is a serious matter, as deductions from tenancy deposits can only be done by one of the approved tenancy deposit schemes in accordance with the Tenancy Deposit Regulations. The First Tier Tribunal (Housing and Property Chamber) will not look favourably at cases where the landlord or letting agent has deviated from paying the money into a tenancy deposit scheme. When a tenant has signed a tenancy and changes their mind a day or two before the tenancy is due to start, the deposit should be returned as any deduction from it would be equivalent to charging a premium.

Sometimes a landlord or letting agent will insert a discretionary (their own) clause in the private residential tenancy agreement to make clear about any reimbursement of expenses they will require if a tenant that has committed to a tenancy decides not to take up the tenancy shortly before it starts. Such reimbursement should not be deducted from the deposit. It is essential that a landlord or letting agent makes this clear from the outset in writing. A tenant should never be in any doubt about what they are signing up to and what obligations a landlord or letting agent has placed on them.

#### What happens when a deposit is lodged?

The tenant should receive a letter or email from the tenancy deposit scheme confirming that their deposit has been lodged. The letter will set out the amount of the deposit and explain how it will be repaid and how any disputes can be settled.

If the tenant does not receive a letter from an approved deposit scheme after 6 weeks, they should contact their landlord. If the landlord has not lodged their deposit, the tenant should raise a complaint with the Tribunal. If the landlord has not used one of the schemes, the Tribunal can order the landlord to pay up to 3 times the deposit to the tenant.

Within 30 working days after the start of the tenancy the landlord must give the tenant all of this information about the deposit:

- the amount of the deposit;
- the date that the landlord received the deposit and the date that the landlord paid the deposit into a scheme;
- the address of the property to which the deposit relates - so the property let to the tenant;
- a statement from the landlord confirming the landlord is registered or has applied to be registered with the local council;
- the name and contact details of the tenancy deposit scheme where the deposit was paid;
- and the terms on which the deposit is held - including (1) when the deposit is to be returned to the tenant and (2) the circumstances where the landlord can be

paid some or all of the deposit at the end of the tenancy, instead of the deposit being paid back to the tenant.

Examples of money that the landlord can ask to be paid by the scheme (and not paid back to the tenant) are:

- unpaid rent
- other amounts not paid or the cost of any repairs needed if the tenant caused the damage
- to pay bills left unpaid by the tenant

If there are no issues like that at the end of the tenancy, then the landlord should ask the scheme to pay the full amount of the deposit back to the tenant.

At the end of the tenancy the landlord should ask the tenancy deposit scheme to release the deposit and the amounts payable to the tenant and the Landlord.

The deposit scheme will contact the tenant to check whether the tenant agrees with the landlord's figures.

Different things happen, depending on whether the tenant agrees with the landlord's figures or not:

- If the tenant agrees with the landlord's figures, then the scheme will pay those amounts to the landlord and tenant.
- If the tenant does not agree with the landlord's figures, then the tenant must contact the landlord. The landlord and the tenant need to try to agree what, if any, amount is to be deducted from the deposit and kept by the landlord. If the landlord and tenant cannot agree, the tenant can ask the Tenancy Deposit Scheme which holds their deposit to use their dispute resolution process. The dispute will be sent to an independent adjudicator who has the role of reaching a decision in a dispute. The adjudicator will be given any evidence (for example photographs or receipts) and will come to a decision about the amount (if any) to be given by the scheme to the landlord and the amount to be repaid to the tenant.

If the tenant does not respond within 30 days, then the landlord will be paid the amount that the landlord requested be deducted for rent, repairs and other costs - and the rest (if anything is left) will be repaid to the tenant. If the landlord has not, by the time that the tenancy ends, asked the scheme to release the deposit, then the tenant can apply to the deposit scheme for repayment. In that case, the deposit scheme will contact the landlord to ask whether the landlord agrees that the whole deposit should be repaid to the tenant or whether the landlord thinks that an amount should be taken off and paid to the landlord.

If the landlord does not agree that the whole deposit should be repaid to the tenant, then the landlord can try to agree the figures with the tenant. But if the landlord and

tenant cannot agree the figures, then the decision is referred to an independent decision-maker.

## **Overcrowding**

The tenant must not allow the property to become overcrowded. If the tenant does allow this to happen, then the landlord can evict the tenant.

What counts as overcrowding for a property depends on the number and size of the rooms, as well as the age, gender (male or female) and relationships of the people that live there.

There is a **room standard** and a **space standard** when working out if there is overcrowding. The Scottish Government's Guidance to local authorities gives details of the standards at Annex A. This guidance can be accessed here:

<https://www.gov.scot/publications/licensing-multiple-occupied-housing-statutory-guidance-for-scottish-local-authorities/>

If too many people do live at a property, the local authority might do something to stop the overcrowding.

A home is an HMO:

- if it is occupied by three or more adults (aged 16 or over)
- they are from three or more families
- the home is their only or main residence
- it is either a house, premises or a group of premises owned by the same person with shared basic amenities (a toilet, personal washing facilities, and facilities for the preparation or provision of cooked food) (as defined in section 125 of the Housing (Scotland) Act 2006)

The local authority will tell the landlord how many people are allowed to live in any HMO property.

More advice on overcrowding is available from Shelter Scotland or the council.

## **Insurance**

The landlord will pay the premiums if they insure the property and any items which belong to the landlord, for example any furniture on the inventory.

The tenant can choose whether or not to insure the things that the tenant brings into the property. Insuring the tenant's belongings is not the responsibility of the landlord.

The tenant must pay for the cost of any damage caused by the tenant (or by any visitors) to the property or fixtures and fittings, for example kitchen cupboards, fitted wardrobes and fitted kitchen appliances.

Any defect or breakdown caused by normal wear and tear does not need to be paid for by the tenant. Wear and tear is allowed, because if you use something in the normal way, then it will become worn out over time. The tenant should not have to pay to replace things which have just been worn out by being used in a normal way.

## **Absences**

A long absence from the property may affect the landlord's insurance costs. If the tenant is not going to be at the property for more than 2 weeks at a time, then the tenant must do three things:

- Before the property is left unoccupied, the tenant must tell the landlord that they won't be there and for how long;
- Before leaving, the tenant must do anything reasonable that the landlord has asked the tenant to do to keep the property secure during the tenant's absence - this means to stop the property being broken into or lived in by anyone else; and
- Before leaving, the tenant must have checked the property to be sure that, during the tenant's absence, reasonable care will still be taken of the property, as set out in note below on Reasonable Care. For example, if the property is going to be empty during the winter time the tenant should make sure that (1) the heating is on timer, to stop the property getting damp inside and (2) the water is turned off, to prevent damage that might be caused by burst pipes.

## **Reasonable Care**

The tenant must take reasonable care of the property and of any common areas that the tenant is allowed to use.

"Reasonable care" is the sort of care that a reasonable occupier would take to keep the property in good condition, to keep safety systems in working order and to limit the risk of any harm being done to other properties or to neighbours.

Such "reasonable care" under the Agreement includes, for example, the tenant taking all reasonable steps to:

- keep the property adequately ventilated (aired out) and heated;
- not bring any hazardous (dangerous) or combustible (easily catch fire) goods or material into the property. The tenant can keep petrol and gas for garden appliances (mowers etc.), barbecues or other commonly used household goods or appliances in the property (or garden shed) provided that these things are safely stored in appropriate containers;
- not put any oil, grease or other harmful or corrosive substance into any toilet, sink, bath, shower, washing machine, dishwasher or drain;
- prevent water pipes freezing in cold weather - by not removing any lagging and by keeping the property appropriately heated;

- avoid danger to the property or neighbouring properties by way of fire or flooding - for example, not leaving lit candles unattended or overloading electricity sockets with too many plugs or leaving taps running;
- keep the property and its fitted items clean;
- not to do anything to stop the smoke detectors, carbon monoxide detectors, heat detectors or the fire alarm system from working as they should; and
- not to remove or prevent the working of or do anything else to door closer mechanisms.

## **The Repairing Standard Etc & Other Information**

### 1. The Repairing Standard

The landlord must ensure that the property is in the condition, and has the facilities, set out in the **Repairing Standard**.

If the property is not in that condition, or does not have any of those facilities, the tenant or the local council can apply to the Tribunal to tell the landlord to do what is needed.

The Repairing Standard means:

- The property must be wind and water tight and in all other respects fit for people to live in. For example, there should not be any gaps between window or door frames and walls or any missing roof slates or tiles, which result in wind or rain getting into the property.
- The structure and exterior (including drains, gutters and external pipes) must be in a reasonable state of repair and in proper working order. For example, walls must be in a reasonable condition, as must roofs so as to avoid water leaking through the roof into the property.
- Installations for water supply, gas and electricity and for sanitation, heating and heating water must be in a reasonable state of repair and in proper working order.
- Pipes, tanks, boilers, meters and cables, toilets, radiators and other heaters - must all be in a reasonable state of repair and in proper working order.
- Any fixtures, fittings and appliances that the landlord provides under the tenancy must be in a reasonable state of repair and in proper working order. Appliances include, for example, kitchen and laundry equipment such as cookers, microwave ovens, fridges and freezers, washing machines, tumble dryers, kettles, toasters and the like.

- Any furnishings (such as chairs, settees and beds) that the landlord provides under the tenancy must be capable of being used safely for the purpose for which they are designed. One thing that this will mean is that they meet fire retardant standards.
- The property must have a way (such as smoke alarms wired to the mains electricity supply or tamper proof long-life lithium battery alarms) of detecting fires and for giving warning in the event of a fire or suspected fire. (The Scottish Government guidance on this is found at <https://www.gov.scot/publications/fire-safety-guidance-private-rented-properties/>)
- The property must have a way to warn if carbon monoxide is present in a concentration that is dangerous for people. (The Scottish Government guidance on this is found at <https://www.gov.scot/publications/carbon-monoxide-alarms-in-private-rented-properties-guidance/>)

Before the tenancy begins, the landlord must check whether the property meets the Repairing Standard. If it does not, the landlord must notify the tenant of any work that needs to be done to make the property meet the Repairing Standard - and the landlord must then get that work done (at the landlord's cost) within a reasonable time.

The landlord must also make sure the property meets the Repairing Standard throughout the tenancy - except that the landlord does not have to repair any damage that was caused by the tenant (which goes beyond normal wear and tear).

If the tenant tells the landlord about a defect, then the landlord must fix it within a reasonable time. If the landlord causes any damage when they are carrying out repairs, the landlord must also repair that damage.

If the tenant thinks the landlord has failed to make sure the property meets the Repairing Standard, then the tenant should first contact the landlord. If the landlord does not sort the problem out, then the tenant can apply to the Tribunal.

The Tribunal might do one of three things:

- It might reject the application; or
- It might agree with the tenant and order the landlord to carry out repairs; or
- It might suggest that the dispute could be resolved by both the tenant and the landlord, perhaps with the help of mediation - which is a third person meeting with the landlord and tenant to try to find a way of sorting things out.

If the landlord is ordered to carry out repairs, the order will give them a reasonable amount of time to carry out the repairs. If they do not do so, the Tribunal can issue a rent relief order. The rent relief order is an order reducing the rent the tenant has to pay by an amount not exceeding 90%. The tenant should not withhold rent without a rent relief order being issued by the Tribunal.

## 2. Structure & Exterior

The landlord must keep the structure of the building in good repair.

This includes:

- drains, gutters and outside pipes;
- roof;
- outside walls, doors, windowsills, window catches, sash cords, and window frames;
- inside walls, floors, ceilings, doors, door frames, inside stair cases and landings;
- chimneys, chimney stacks, and flues;
- pathways, steps or other means of access;
- plaster work;
- boundary walls and fences.

Sometimes the landlord might be responsible, along with owners of homes nearby, to keep certain common parts of a building or walls between two properties in good repair. Examples of this might be where the property is a flat in a tenement building. In that case the common parts would usually include items such as the roof, common doors, the staircase giving access to all flats and the back court area. The landlord would need to carry out repairs to these things - but this would be shared with the owners of all of the other flats within the tenement.

## 3. Gas Safety

If the property has a gas supply, then the landlord must arrange for a gas safety check to be carried out, by a gas safe registered engineer, on all gas pipes and appliances (for example fire, hob, oven and boiler) in the property which have been supplied by the landlord. This must be done every year.

After each yearly check, the engineer signs a Landlord Gas Safety Record, which notes the results of the checks and confirms whether each gas appliance meets the safety standard it needs to.

The landlord must make sure that the property is safe. If the tenant has any concerns about the safety of any gas item in the property, or knows that any gas appliances or pipework are not working properly - for example, there's a smell of gas or the pilot light in a boiler does not stay lit - then the tenant must tell the landlord.

The landlord must give the tenant a copy of each yearly Landlord Gas Safety Record which is issued by the gas safe registered engineer. If the landlord does not do this, the tenant can contact the Health & Safety Executive for advice or can get gas safety advice at [www.gassaferegister.co.uk](http://www.gassaferegister.co.uk). Also, the tenant could contact the local council, which could require the landlord to provide the Record to the tenant or face losing their registration as a landlord with the local council.

If a gas engineer decides that any gas appliance is unsafe - which is often called "condemned" - then the tenant must not use that appliance.

Carbon monoxide detectors go off (so the alarm sounds) if carbon monoxide is present in a property. Carbon monoxide is a dangerous gas which can cause illness or even death. Unlike the gas which powers the appliances in a property (like the boiler and hob), carbon monoxide does not have any smell - the only way to know that carbon monoxide is in a property is by having a carbon monoxide detector. Because of this, the landlord must have carbon monoxide detectors installed in the property if there are appliances which use carbon based fuel - which would be gas, wood, coal, other solid fuel or oil.

A carbon monoxide detector must be in:

- each room or inter-connected space such as a garage, that has a fixed carbon based fuel powered appliance (except one solely used for cooking) - so, for example, every room or inter-connected space that has a fire, heater or a boiler; and
- if the flue from any carbon based fuel powered appliance passes through any bedroom or living room, then in each of those rooms too.

The Scottish Government guidance about carbon monoxide alarms in private rented homes is at <https://www.gov.scot/publications/carbon-monoxide-alarms-in-private-rented-properties-guidance/>

#### 4. Electrical Safety

The landlord must ensure that all electric fittings and items in the property are in a reasonable state of repair and in proper and safe working order.

As part of this duty to keep electric fittings and items in a reasonable state of repair, the landlord must arrange for an electrical safety inspection to be carried out at least every 5 years. That inspection must be carried out by a qualified person who then issues two reports:

- an Electrical Installation Condition Report (EICR) on any fixed installations; and
- a Portable Appliance Testing Report (PAT) on moveable appliances - and the inspector should also stick a label on each tested item which sets out the inspection date and when the next test is due, and each label should be signed by the inspector.

The landlord must give the tenant copies of both reports.

If the tester says that testing should be more frequent than once every five years (for example, once every 3 years), then the landlord must follow this advice.

The EICR must cover:

- Installations for the supply of electricity,
- Electrical fittings, such as switches, sockets and visible wiring
- Visual inspection of fixed electrical equipment such as electric showers, hard-wired smoke and fire detectors/tamper proof long-life lithium battery alarms and storage or panel heaters.

The PAT covers movable appliances, which are any electrical items provided by the landlord, that are not fitted or fixed in, but can be moved about easily. These include appliances like kettles, lamps, vacuum cleaners, and white goods such as fridges or washing machines.

The Scottish Government statutory guidance on electrical installations and appliances in private rented property can be found at <https://www.gov.scot/publications/electrical-installations-and-appliances-private-rented-properties/>

## 5. Smoke Detectors and heat alarms

The smoke and heat alarms in the property must be powered by the electrical mains or be tamper proof long-life lithium battery alarms.

There must be one working smoke alarm in:

- The room which is most often lived in during the daytime, which would likely be the living or dining room
- Every circulation space, such as hallways and landings
- There must also be a heat alarm in the kitchen.
- All alarms should be linked (radio-linked alarms are acceptable).

The landlord also needs to make sure that the property is fit and safe for people to live in. Therefore, the landlord must make sure that there are no fire hazards in the property, like loose wiring.

If the tenant thinks there are fire risks in the property, then the tenant should contact the landlord. If the landlord refuses to fit smoke or heat alarms or to fix any fire risks, the tenant can contact the Tribunal or contact the local authority's Environmental Health Department.

Guidance on fire detection in private rented properties can be found at: <https://www.gov.scot/publications/fire-safety-guidance-private-rented-properties/>

## 6. Installations

Anything which was in the property (or is part of the property) at the start of the lease is something provided by the landlord. These items must be kept, by the landlord, in proper working order - and repaired when needed.

This duty on the landlord does not apply to things brought into the property by the tenant.

The installations in the Let Property may include the following:

- basins, sinks, baths, toilets, and showers;
- gas or electric fires and central heating systems;
- electrical wiring;
- door entry systems;
- cookers;
- extractor fans;
- carbon monoxide detectors;
- smoke alarms;
- heat detectors;

- fire extinguishers and blankets (but only if the property is a House in Multiple Occupation).

## 7. Energy Performance Certificate

Before the tenancy starts, the landlord must give the tenant a copy of the Energy Performance Certificate (EPC) for the property if one is needed. If the tenancy is for renting a room with shared access to other rooms such as a kitchen, bathroom and living room, an EPC is not needed.

It is a requirement under law that the EPC must be 'affixed' to the building - it will often be located in the boiler or meter cupboard.

The EPC must not be more than 10 years old. The EPC has to be made available to a tenant free of charge.

The EPC tells the tenant about the energy efficiency of the property. If a property is energy efficient, the fuel bills for the person living in the home (for heating and lighting) will be lower than if the property is not energy efficient.

The EPC ratings can be A, B, C, D, E, F or G.

An "A" rating on an EPC is the best rating - this would be given to a home which was very energy efficient and should have low bills for fuel and lighting.

A "G" rating on an EPC is the worst - so the least energy efficient, which may have higher bills for fuel and lighting.

## 8. Furnishings

The landlord must make sure that:

- all upholstered furniture (like settees, arm chairs and dining chairs with soft seat coverings) and
- all mattresses

which are in the property at the start of the tenancy meet the standards set out in the Furniture & Furnishings (Fire Safety) Regulations 1988 as amended so should have labels attached to them which show that they meet these Regulations.

Tenants should report worn or broken furnishings and coverings to the landlord as these can make furniture unsafe and present a fire risk.

## 9. Defective Fixtures & Fittings

The landlord must keep all fixtures and fittings in the property at the start of the tenancy in a good state of repair. This applies, for

example, to fitted kitchen units and fitted wardrobes, toilets, sinks, baths, showers and fitted kitchen appliances such as hobs and ovens.

The tenant should tell the landlord if any fixtures and fittings need to be repaired. The landlord must get the repairs done within a reasonable time.

## 10. Repair Timetable

Often, a landlord will only find out that something in the property is not working or needs to be repaired when the tenant tells their landlord about it.

The tenant must tell the landlord as soon as they can about any repair being needed or if there is something urgent. The landlord then has to carry out any repairs as soon as they reasonably can.

The tenant must give the landlord reasonable access to get the repair work done.

What is a reasonable period to carry out repairs will vary depending on the type of repair which is needed and how dangerous or unsafe it might be to leave that item not repaired.

If the landlord does not carry out repairs within a reasonable period, the tenant can ask the Tribunal to order the landlord to carry out these repairs. Also, for some major repairs or those that cause a safety issue, the tenant might be able to get the local council to order the landlord to do the work or the local council might do the work and ask the landlord to pay the costs. The local council also has powers to report the landlord to the Tribunal for their failure to meet the Repairing Standard.

## 11. Payment for Repairs

If damage was caused by the fault or negligence of

- the tenant or someone living with the tenant at the property or
- someone visiting,

then the tenant is responsible.

This means that the tenant must pay for the damage to be fixed. The tenant should discuss with the landlord having the repair carried out. The landlord might prefer to arrange to get the damage fixed and send a bill for the costs to the tenant.

Damage would be caused by fault if it was done on purpose.

Damage would be caused by negligence if it was not done on purpose but the person who caused the damage did not take normal care to

avoid the damage. For example, a person is negligent if he leaves a skylight window open all day when rain is forecast and this results in the carpet and furnishings in the room below being damaged by the rain. Another example might be a person causes a burn mark to appear on a kitchen table by placing a pot, straight from a hot burner on the cooker hob, onto the table top.

## 12. Information

The tenant will be asked by the landlord to meet the costs of any repairs and the landlord should supply them with copies of the receipts for such costs.

The landlord must give the tenant copies of:

- the Landlord's Gas Safety Record (see note above on Gas Safety);
- the Electrical Safety Inspection Report and the Portable Appliance Testing Report (see note above on Electrical Safety); and
- the Energy Performance Certificate (EPC) for the property (see note above on Energy Performance Certificate).

These must be given to the tenant before, or at the start of, the tenancy.

## **Legionella**

The landlord must take all reasonable steps to reduce the risk of the presence of legionella bacteria.

Legionnaires' disease is caused by legionella bacteria and is a kind of pneumonia (or lung infection).

The legionella bacteria which causes the disease is sometimes present in cold or hot water systems in buildings. It is therefore important to try to keep the risk as low as possible by taking certain steps.

The landlord must carry out a risk assessment.

Simple control measures can help to minimise the risk of exposure to Legionella. These include:

- flushing out a water system before the start of a tenancy - so flushing all toilets and running water through all cold and hot water taps and showers for a period of time;
- avoiding debris getting into the system - for example by making sure that any cold water tanks have a tight fitting lid; and
- making sure any pipework which is no longer used is removed.

If a property is served directly by mains cold water, then there is only a low risk of legionella bacteria in the cold water, as it flows from a moving supply, not from stored water.

If a property is served by hot water:

- from a tank which is regularly heated to over 60 degrees centigrade; or
- from an instant hot water boiler - which does not store heated water, but heats it as it is used,

then, again, there is only a low risk of legionella bacteria in the hot water system.

To keep the risk of legionella bacteria being present in the property low, tenants:

- should not alter the controls on any hot water system in a way which would increase the legionella risk (for example lowering the regular heat temperature to below 60 degrees); and
- should regularly clean shower heads - as these result in a spray of tiny drops of water which might be breathed into the lungs.

### **Respect for Others**

The tenant and anyone living at the property must not be involved in antisocial behaviour at the property.

“Antisocial behaviour” means behaving in a way:

- which causes, or is likely to cause, alarm, upset, nuisance or annoyance; or
- which is harassment.

‘At the property’ includes to other people in the property, any neighbour, any visitor, the landlord or those acting for the landlord or any tradesman.

Examples of antisocial behaviour are:

- making too much noise - including from televisions, CD players, digital media players, radios and musical instruments, DIY or power tools;
- not controlling pets (including allowing them to bark too much) or allowing pets to foul or cause damage to other people’s property or common areas of the property such as the garden;
- allowing visitors to the property to be too noisy;
- vandalising or damaging the property or any part of the common areas or neighbourhood;
- leaving rubbish other than in the bins provided or leaving rubbish out to be picked up on a day when it is not due to be picked up;

- allowing the tenant and/or any other person (including children) living in or using the property to cause a nuisance or annoyance to other people;
- harassing any other tenant or occupier, visitors, neighbours, family members of the landlord or employees of the landlord or agent, or any other person or persons in the house, or neighbourhood, for whatever reason. This includes behaviour due to that person's race, colour or ethnic origin, nationality, gender, sexuality, disability, age, religion or other belief, or other status;
- using or carrying weapons;
- using, selling, growing, making or supplying unlawful drugs or selling alcohol;
- storing or bringing onto the property any type of unlicensed firearm or firearm ammunition including any replica or decommissioned firearms;
- using the property, or allowing it to be used, for illegal or immoral purposes - an example of an illegal purpose might be for carrying on a business for which local council consents have not been obtained; and
- threatening or assaulting any other tenant or occupier, visitors, neighbours, family members of the landlord or employees of the landlord or agent, or any other person or persons in the house, or neighbourhood, for whatever reason.

The above list of examples does not include every sort of antisocial behaviour. There could be other actions, failures to act or words spoken (or shouted) which would amount to antisocial behaviour.

The landlord can take action against the tenant if there is a breach of the antisocial behaviour clause in the tenancy.

Landlords have a responsibility to try to stop antisocial behaviour taking place. So if the tenant is involved in antisocial behaviour the landlord must do something to try to stop it. This could include:

- investigating complaints about the tenant's behaviour;
- writing to the tenant to explain that the behaviour is causing concern and asking the tenant to stop the behaviour;
- giving advice on how to reduce noise to an acceptable level;
- asking the local council to apply for an Antisocial Behaviour Order or ASBO against the tenant;
- going to court to get an order of the court (called an "interdict") to stop the tenant from behaving in a certain way; and

- warning the tenant that they may be removed from the property if they do not stop the antisocial behaviour.

If the landlord's attempts to deal with antisocial behaviour do not work, the landlord can ask the local council to step in to assist. If the antisocial behaviour continues, the landlord may begin the process to evict the tenant.

If a landlord does not try to stop the antisocial behaviour, the local council can serve an Antisocial Behaviour Notice on the landlord ordering the landlord to take action to deal with the problem, for example to evict the tenant, or at least warn the tenant that they may be evicted if they continue to behave in that way.

If the landlord does not do what the local council's Antisocial Behaviour Notice says, then the local council can ask the Court to stop rent payments to the landlord or to give the local council control of the property.

If a tenant is affected by other people's antisocial behaviour, the tenant should keep a written record of what happens, each time it happens, with dates and times. Depending on how bad things are, the tenant should contact:

- the nearest Citizens' Advice Bureau or the Antisocial Behaviour team at the local authority - both of which can give the tenant advice on the tenant's rights and what might be the best action for the tenant to take (which could be to contact the police); or
- the local authority's antisocial behaviour team; or
- the police - who can take action to stop certain behaviours.

### **Equality Requirements**

Under the Equality Act 2010, the landlord is not allowed to show bias against a tenant, or against a person who wants to become a tenant of a property, on the basis of:

- that person's disability, sex or gender reassignment; or
- that person's pregnancy or the fact that the person has a baby or babies or child or children; or
- that person's race, religion or belief or sexual orientation.

If a tenant thinks they have been unfairly treated by a landlord because of a protected characteristic, then the tenant can:

- complain directly to the landlord; or
- in some cases to make a claim through the Tribunal, if for example an Agreement contains a discriminatory clause that the Tribunal could remove or if that discrimination led to an unfair rent or unlawful eviction; or

- contact the Equality Advisory Support Service for help and advice. <https://www.gov.uk/equality-advisory-support-service>

## Data Protection

The landlord must comply with the requirements of the Data Protection Laws to ensure that the tenant's personal data is held securely and only disclosed where there is a lawful basis for doing so.

**“Data Protection Laws”** means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the GDPR.

**“GDPR”** means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

Under data protection law, "personal data" is protected.

Landlords need to comply with the following requirements regarding personal data:

Personal data shall be:-

- (a) processed lawfully, fairly and in a transparent manner in relation to individuals ('lawfulness, fairness and transparency');
- (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes ('purpose limitation');
- (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');
- (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');
- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes subject to implementation of the appropriate technical and organisational measures required by the GDPR in order to safeguard the rights and freedoms of individuals ('storage limitation');

(f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').

Landlords might need to give tenants a privacy notice to tell them what can be done with data which they hold and how they might use it.

There are some situations where the landlord can disclose data about the tenant.

For example, they are allowed to give the tenant's details to the local council or utility companies if that is covered by a privacy notice issued by the landlord to the tenant.

Further guidance on data protection law in relation to tenancies can be found on the Information Commissioners Office website at <https://ico.org.uk/>

### **Tenant's belongings to be removed**

The tenant must remove the tenant's belongings when the tenancy ends. This will include everything that the tenant has brought into the property.

If the tenant leaves items behind, and the landlord then has to spend money removing them or storing them, then it is likely that the tenant will have to pay the costs of removal or storage.

The landlord should supply the tenant with copies of the receipts for such costs.

## USEFUL CONTACTS AND LINKS

### ***Regulation***

#### **First-Tier Tribunal for Scotland (Housing and Property Chamber)**

Glasgow Tribunals Centre  
20 York Street  
GLASGOW G2 8GT  
Tel: 0141 302 5900  
<https://www.housingandpropertychamber.scot/home>

#### **Rent Service Scotland**

2nd Floor Endeavour House  
1 Greenmarket  
Dundee DD1 4QB  
Tel: 0300 244 7000  
Email: [rss.dundee@gov.scot](mailto:rss.dundee@gov.scot)

#### **Scottish Landlord Register**

*To check on line if a landlord is registered.*  
[www.landlordregistrationscotland.gov.uk/](http://www.landlordregistrationscotland.gov.uk/)

### ***General Advice***

#### **Citizens Advice Scotland**

*Citizens Advice Bureau which can help with money, legal, consumer and other problems.*  
Tel: 0808 800 9060  
[www.cas.org.uk](http://www.cas.org.uk)

#### **Energy Saving Trust**

*Gives independent help and advice on how to save energy in the home.*  
Tel: 0800 512 012  
[www.energysavingtrust.org.uk/scotland](http://www.energysavingtrust.org.uk/scotland)

#### **Office of the Gas and Electricity Markets (Ofgem)**

*Protects the interests of gas and electricity consumers.*  
Tel: 0141 331 2678  
[www.ofgem.gov.uk](http://www.ofgem.gov.uk)

### ***Housing advice***

#### **Shelter Scotland**

*Offers advice, information and advocacy to tenants in privately rented housing.*  
Tel: 0808 800 4444  
[www.shelterscotland.org](http://www.shelterscotland.org)

### ***Tenancy Deposit Schemes***

#### **Letting Protection Service Scotland**

Tel: 0844 472 6666  
[www.lettingprotectionscotland.com](http://www.lettingprotectionscotland.com)

**Safe Deposits Scotland**

Tel: 0845 604 4345

[www.safedepositsscotland.com](http://www.safedepositsscotland.com)

**Mydeposits Scotland**

Tel: 0845 634 5400

[www.mydepositsscotland.co.uk](http://www.mydepositsscotland.co.uk)

**Safety advice****Gas Safe Register**

*Offers gas safety advice and can take action to ensure that gas appliances in a property are safe.*

Tel: 0800 408 5500

[www.gassaferegister.co.uk](http://www.gassaferegister.co.uk)

**Health and Safety Executive**

*Provides a range of health and safety advice.*

[www.hse.gov.uk/contact](http://www.hse.gov.uk/contact)

**Electrical Safety First**

*UK charity that provides electricity safety advice for the home.*

<https://www.electricalsafetyfirst.org.uk/>

**Scottish Fire and Rescue Service**

*Fire safety advice*

[www.firescotland.gov.uk](http://www.firescotland.gov.uk)

**Landlord and letting agent representatives****Scottish Association of Landlords**

*Represents the interests of landlords and letting agencies in Scotland.*

Tel: 0131 564 0100

[www.scottishlandlords.com](http://www.scottishlandlords.com)

**Scottish Land and Estates**

*Represents the interests of rural landlords in Scotland.*

Tel: 0131 653 5400

[www.scottishlandandestates.co.uk](http://www.scottishlandandestates.co.uk)

**Landlord Accreditation Scotland**

*Scotland's national landlord and letting agent accreditation scheme and training provider.* Tel: 0131 553 2211

[www.landlordaccreditationscotland.com](http://www.landlordaccreditationscotland.com)

**ARLA Propertymark**

*An association for registered letting agents.*

Tel: 0844 387 0555

[www.arla.co.uk](http://www.arla.co.uk)

## RELEVANT LEGISLATION

Rent (Scotland) Act 1984 -clarification of illegal premiums.

Housing (Scotland) Act 1987 - landlord's identity requirement; overcrowding and serious disrepair regulation.

Antisocial Behaviour etc (Scotland) Act 2004 - landlord registration regulation, anti-social behaviour.

Housing (Scotland) Act 2006 - Housing in Multiple Occupation regime; Tenancy Deposit Scheme regulatory framework; landlord's right of access; Repairing Standard and right to adapt properties.

Equality Act 2010 - discrimination, including in relation to alterations.

Interpretation and Legislative Reform (Scotland) Act 2010 - timing of service of notices

Private Rented Housing (Scotland) Act 2011 - changed the registration of private landlords; amendments to the Housing in Multiple Occupation licensing regime; introduction of Overcrowding Statutory Notices.

The Tenancy Deposit Schemes (Scotland) Regulations 2011 - tenancy deposit schemes

Housing (Scotland) Act 2014 - introduced regulatory system for letting agents.

Private Housing (Tenancies) (Scotland) Act 2016 - established the private residential tenancy.

Regulations under the Private Housing (Tenancies) (Scotland) Act 2016:

The Private Housing (Tenancies) (Scotland) Act 2016 (Consequential Provisions) Regulations 2017

The Private Residential Tenancies (Statutory Terms) (Scotland) Regulations 2017

The Private Residential Tenancies (Information for Tenants) (Scotland) Regulations 2017

The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017, S.S.I. 2017/297

The Private Residential Tenancies (Information for Determining Rents and Fees for Copies of Information) (Scotland) Regulations 2017, S.S.I. 2017/296

The Notice to Local Authorities (Scotland) Amendment Regulations 2017, S.S.I. 2017/295

The Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 2 and Saving Provision) Regulations 2017, S.S.I. 2017/293

Data Protection Act 2018 - The landlord must comply with the requirements of the Data Protection Laws to ensure that the tenant's personal data is held securely and only disclosed where there is a lawful basis for doing so.

**PLEASE NOTE** these hyperlinks links to [legislation.gov.uk](http://legislation.gov.uk) may show the enactments as originally made, so may not always show amendments.