

GUIDANCE NOTES FOR HEAD LANDLORDS ON THE SUB-TENANT'S NOTICE TO LEAVE

(These notes are for guidance only)

You will use this notice if your Sub-Tenant has a private residential tenancy, as set out in the Private Housing (Tenancies) (Scotland) Act 2016¹ (the Act), and you want to evict them from the Let Property.

This version of the Guidance Notes are in place from 30 March 2022 onwards

WHEN TO USE THIS NOTICE

1. You may serve this notice on your Sub-Tenant only in the following circumstances:
 - a) Your Sub-Tenant has a private residential tenancy; and
 - b) You are seeking to secure repossession using one or more of the following eviction grounds (listed in schedule 3 of the Act):
 - You intend to sell the Let Property
 - Let Property to be sold by the mortgage lender
 - You intend to refurbish the Let Property
 - You intend to live in Let Property
 - A family member intends to live in Let Property
 - You intend to use the Let Property for non-residential purpose
 - Let Property required for religious purpose
 - Tenant not an employee
 - Tenant no longer in need of supported accommodation
 - You have been refused landlord registration or had your registration revoked
 - Your HMO licence has been revoked or renewal has been refused
 - An Overcrowding Statutory Notice has been served on you

¹ <http://www.legislation.gov.uk/asp/2016/19/contents/enacted>

GIVING THE RIGHT AMOUNT OF NOTICE

2. All eviction grounds are discretionary. This means that the First-tier Tribunal for Scotland (Housing and Property Chamber) can exercise discretion and take into account all the circumstances of a case when deciding whether or not to grant an eviction.
 3. You must give your Sub-Tenant the relevant amount of notice. The notice periods are:
 - a) 28 days' notice if the Sub-Tenant has been entitled to occupy the property for six months or less.
 - b) 84 days' notice is required if the Sub-Tenant has been entitled to occupy the property for over six months
 4. The notice period is calculated from the date the Sub-Tenant(s) receives this notice (See 'HOW TO GIVE THIS NOTICE' section which provides important information on delivery times)
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HOW TO COMPLETE THIS NOTICE

5. As Head Landlord you should complete Parts 1 to 4 of this notice and attach a copy of the Notice to Leave served on your Tenant, i.e. the Sub-Tenant's Landlord.
6. If your Sub-Tenant does not leave the Let Property by the date shown in Part 4, you will need to apply to the First-tier Tribunal for Scotland Housing and Property Chamber² to obtain an eviction order for their removal. The Tribunal will ask you to provide evidence to support the eviction ground(s) you are using to evict your tenant. It is advisable to include copies of any evidence along with this notice, to satisfy your Sub-Tenant that the eviction ground you are using is valid. This may encourage them to move out at the end of the notice period without you having to refer the case to the Tribunal.
7. If you end a tenancy or evict a Sub-Tenant wrongfully, by using an eviction ground which does not apply to the Let Property or the Tenant and/or Sub-Tenant in question, the Sub-Tenant(s) can refer the case to the Tribunal and you may be required to pay a compensation amount up to the amount of 6 months' rent.

See 'HOW TO GIVE THIS NOTICE' section which provides important information on delivery times.

HOW TO GIVE THIS NOTICE

8. After you sign and date the notice to leave form you must take steps to ensure your Sub-Tenant receives it as soon as possible. This notice must be served by you on the Sub-Tenant in one (or more) of the following ways:
 - a) by handing it to them
 - b) by sending it to them recorded delivery post at the address of the Let Property
 - c) by emailing it to them at their current email address (if they have previously agreed with their Landlord that email is their preferred contact method).

² <https://www.housingandpropertychamber.scot/>

9. Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies, which means that unless delivered personally, you must allow your Sub-Tenant 48 hours to receive this notice. This delivery time should be added in to the amount of notice you give your Sub-Tenant. Your Sub-Tenant can challenge the 48 hour delivery time, but they must give evidence which shows the exact date they received this notice.
 10. For example , if you are required to give your Tenant 6 months’ notice and you send the notice to leave by e-mail on 10 March, your Tenant will be expected to receive the notice on 12 March. The 6 month notice period will start on 12 March and end on 12 September. If your Tenant chooses not to leave the Let Property following the expiry of the notice period, the earliest date that you can submit an application to the Tribunal for an eviction order is 13 September.
 11. If you have joint Sub-Tenants, all the Sub-Tenants must be named in Part 1 of this document or each Sub-Tenant must receive an individual copy of this notice.
 12. You can also ask a Sheriff Officer to serve this notice on your Sub-tenant(s) either personally or by putting it through the letterbox of the let property and providing either witness or photographic evidence of when this was done.
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THE END OF THE NOTICE PERIOD

WHAT HAPPENS AT THE END OF THE NOTICE PERIOD?

13. If the Sub-Tenant chooses to leave the Let Property without requiring you to obtain an eviction order from the Tribunal, their tenancy will come to an end on the later of either the date shown in Part 4 of the notice, or the day they cease to occupy the property.
 14. If the Sub-Tenant wishes to end their tenancy before the notice period expires, this can only be done with your written agreement.
 15. If the Sub-Tenant chooses not to leave the Let Property at the end of their notice period then, before they have to leave, you must have done two things:
 - Served on them a Sub-Tenant’s notice to leave (the notice which these notes refer to) with the relevant notice period accompanied by a copy of the notice to leave served on your Tenant (i.e. the Sub-Tenant’s Landlord); and
 - Obtained an eviction order from the Tribunal
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IF THE SUB-TENANT CHOOSES NOT TO LEAVE AT THE END OF THE NOTICE PERIOD

16. The date given in Part 4 of the notice is the earliest date that you can start eviction action at the Tribunal. From that date, you can start Tribunal action at any time during the following six months. If you do not start Tribunal action in that six-month period, you would have to serve another notice to leave on your Sub-Tenant before you could start eviction action at the Tribunal.
17. If the Tribunal grants an eviction order, and the Sub-Tenant chooses not to leave the Let Property by the date specified in that eviction order, a Head Landlord can instruct Sheriff Officers to serve a “Charge for Removing” on their Sub-Tenant, which sets a date by which the Sub-Tenant must

leave the Let Property. If the Sub-Tenant does not leave by this date, the Sheriff Officers will remove them after giving them a further two days' notice.

FURTHER GUIDANCE

18. Advice - If you have questions about this notice, contact one of the following:

- your local council
- Shelter Scotland
- your local Citizen's Advice Bureau
- a solicitor
- the Scottish Association of Landlords (a membership organisation)