

GUIDANCE NOTES FOR SUB-TENANTS ON THE NOTICE TO LEAVE

(These notes are for guidance only)

Your Head Landlord will use this notice to leave if you have a private residential tenancy, as set out in the Private Housing (Tenancies) (Scotland) Act 2016¹ (the Act), and they want to evict you and your Landlord from the Let Property.

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

DELIVERY OF THIS NOTICE

1. Your Head Landlord must take steps to ensure that you receive this notice as soon as possible. A notice is only valid if it is served on you by your Head Landlord in one of the following ways:
 - by handing it to you
 - by sending it to you recorded delivery post at the address of the Let Property
 - by emailing it to your current email address (if you have previously agreed that email is your preferred contact method)
 2. If your Head Landlord sends this notice to you by post or email, they must allow you 48 hours to receive it. This delivery time should be added on to the amount of notice your Head Landlord must give you. You can challenge the 48 hour delivery time, but you must give your Head Landlord evidence which shows the exact date you received this notice.
 3. For example, if your Head Landlord sends this notice to you by recorded delivery post on 13 January, you would be expected to receive this notice on 15 January and the notice period will not start until 15 January.
 4. If you have a joint sub-tenancy, all the joint Sub-Tenants must be named in Part 1 of this document or each Sub-Tenant must receive an individual copy of this notice.
 5. Your Head Landlord can also ask a Sheriff Officer to serve this notice on you 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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SITUATIONS WHERE SUB-TENANT PROTECTION DOES NOT APPLY

6. Section 46 of the Private Housing (Tenancies) (Scotland) Act 2016 says that, subject to section 47 of that Act, a lawful Sub-Tenant with a private residential tenancy will be protected from eviction when their Landlord's tenancy has been brought to an end. The Sub-Tenant then becomes the Tenant under a new tenancy which has the same terms as the sub-tenancy.
7. Section 47 says that the Sub-Tenant protection provided by section 46 does not apply if the First-tier Tribunal for Scotland Housing and Property Chamber decides it should not apply for any reason, or if the tenancy of the person who was the Sub-Tenant's Landlord was brought to an end by an eviction order issued on the basis of one of the following eviction grounds:

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

- landlord intends to sell the Let Property
 - the Let Property is to be sold by the mortgage lender
 - landlord intends to refurbish the Let Property
 - landlord intends to live in the Let Property
 - landlord's family member intends to live in the Let Property
 - landlord intends to use the Let Property for a non-residential purpose
 - the Let Property is required for a religious purpose
 - tenant ceases to be - or fails to become - an employee
 - tenant no longer needs supported accommodation
 - landlord has had their registration refused or revoked
 - landlord's HMO licence has been revoked or renewal has been refused
 - An Overcrowding Statutory Notice has been served on the landlord.
8. You have received this Sub-Tenant's notice to leave because the Head Landlord is using one of the eviction grounds listed above to evict your Landlord and wishes to evict you at the same time.
9. If you have become the Tenant of the Let Property (rather than the Sub-Tenant) because your Landlord has already left the Let Property following receipt of their notice to leave (a copy of that notice can be found in Annex 1), this notice will be treated as your notice to leave. This means that if you choose not to leave the Let Property as soon as your notice period ends, your Head Landlord can make an application to the Tribunal for an eviction order without having to serve you with any other notices.

REQUIRED NOTICE PERIOD

10. All eviction grounds are discretionary. This means the First-tier Tribunal for Scotland (Housing and Property Chamber) can exercise discretion to take account of all circumstances of a case when deciding whether or not to grant an eviction..
11. The amount of notice your Head Landlord must give you will depend on the eviction ground used. You must receive 28 days' notice if you have lived in the property for six months or less or 84 days' notice if you have lived in the property for more than six months. At the end of the notice period you can leave the property immediately if you wish. If you do not leave the property the Head Landlord can make an application to the Tribunal for an eviction order.

DETAILS AND EVIDENCE FOR EVICTION GROUND(S)

12. Your Head Landlord should give you evidence to support the eviction, particularly if they are using one of the following eviction grounds:
- they intend to sell the Let Property
 - they intend to refurbish the Let Property
 - they intend to live in the Let Property

- their family member intends to live in the Let Property
 - they intend to use the Let Property for a non-residential purpose.
13. If your Head Landlord applies to a Tribunal for an eviction order, the Tribunal will ask for this evidence when considering the application for an eviction order. The Tribunal must be satisfied that the eviction ground is established.
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THE END OF THE NOTICE PERIOD

WHAT HAPPENS AT THE END OF THE NOTICE PERIOD?

14. The date given in Part 4 of this notice is the earliest date on which the Head Landlord can start eviction action at the Tribunal. From that date your Head Landlord is allowed to start Tribunal action at any time during the following six months. If your Head Landlord does not start Tribunal action in that six-month period they would have to serve another notice on you before they could start eviction action at the Tribunal.
15. If you wish to leave the Let Property without requiring your Head Landlord(s) to obtain an eviction order from the Tribunal, your tenancy will come to an end on the later of either the date shown in Part 4 above, or the day you cease to occupy the property.
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IF YOU CHOOSE NOT TO LEAVE AT THE END OF THE NOTICE PERIOD

16. If you choose not to leave the Let Property at the end of your notice period then, before you must leave your home, your Head Landlord must have done 2 things:
- Served on you a Sub-Tenant's notice to leave (this notice) with the relevant notice period accompanied by a copy of the notice to leave served on your Landlord; and
 - Obtained an eviction order from the Tribunal.
17. If the Tribunal grants an eviction order to your Head Landlord, and you choose not to leave the Let Property by the date specified in that eviction order, your Head Landlord can instruct Sheriff Officers to serve a document called a "Charge for Removing" on you, which sets a date by which you must leave the Let Property. You will usually get 14 days' notice. If you do not leave by this date, the Sheriff Officers will remove you after giving you a further 2 days' notice.
18. Remember that you are liable to pay rent for the Let Property until the notice period expires or you cease to occupy the property, whichever is later. If your Head Landlord has given you notice to leave, and you wish to end your tenancy before the notice period expires, you may be able to end your tenancy early, but remember that this can only be done with your Head Landlord's written agreement. If the Landlord does not agree, you will still have to pay rent for the Let Property until the end of the notice period, even if you have moved out. You should discuss this option with your landlord if this is something you would like to do. If you decide to stay on after the expiry of the notice period, you are liable to pay rent until the date set in the eviction order.
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WRONGFUL TERMINATION OF TENANCY

19. If you leave your home once the notice period has ended, or through an eviction order issued by the Tribunal, and you are not satisfied that your Head Landlord genuinely wanted their property back under the eviction ground(s) outlined in Part 2, you can apply to the Tribunal for a wrongful termination order against your Head Landlord for a compensation amount not exceeding 6

months' rent. More information about this, including how to apply to the Tribunal, is available on the Tribunal's website².

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