

# Keeping your home and where to get advice

## Information for social tenants



the *moray* council

December 2015

We try to review our leaflets regularly to make sure you have the most up-to-date information.

However the contents of this leaflet is only correct at the time the leaflet is published.

For information or advice contact us on 0300 1234566 or visit our website at [www.moray.gov.uk](http://www.moray.gov.uk).

We have sent you this leaflet because by law your landlord must tell us when they take court action to repossess your house. Your home is at risk. We want to help you keep your home. The quicker you act, the more likely you are to be able to keep your home and get yourself out of debt.

If you are confused or worried about what to do, phone us now.



**0300 123 4566**

If you feel able to cope, please read on. We will explain what you need to do and where you can get free and confidential information.

**Whatever you decide, please do something and act now. If you ignore court papers, your lender can get a judgement against you automatically. This may mean that you lose your home and become homeless.**

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## Act now

There are many different grounds for eviction. Your landlord must state which ground they are using against you. Rent arrears are one of these grounds. If your landlord wants to evict you because of rent arrears they have to follow a set of **pre-action requirements** before they can start any eviction action. They must:

- give you clear information about the terms of your tenancy agreement, the rent you pay, or any other cost you owe your landlord;
- make reasonable efforts to give you help and advice regarding housing benefit or other forms of financial help;
- help you with debt management and refer you for more specialist debt advice where necessary;
- try to agree an affordable and realistic re-payment plan with you;
- consider:
  - any housing benefit applications and whether this will help you to pay off your arrears
  - any steps you are taking which could result in you paying off your arrears in a reasonable time
  - whether you are sticking to the terms of any agreed repayment plan;

- encourage you to contact other agencies for support, including the council for help if you have a private tenancy.

Only after your landlord has followed these pre-action requirements can they start an eviction action for rent arrears. If the case goes to court the sheriff will take all the factors into account before deciding if it is reasonable to grant an eviction order.

**The possibility of becoming homeless often makes people feel anxious, frightened, depressed and unable to cope. You may feel that your world is crashing in on you. Remember, everyone facing homelessness feels like that. The first step is asking for help.**

You can get free legal and money advice to help you access your rights, take control of your life, and save your home. This leaflet tells you what you can do to prevent homelessness and where you can get free legal advice and assistance and support for any other problems you might have.

## **Types of tenancies and eviction**

Landlords must follow specific legal procedures to evict

tenants. You can only be evicted once your landlord has got an order from the sheriff court stating that you have to leave the property. Whether you can be evicted and how depends on the type of tenancy agreement you have. If you are the tenant of a social landlord, you will either have a Scottish secure tenancy (SST), or a short Scottish secure tenancy (SSST). If you are not sure, you can ask your landlord or check with a solicitor or advisor.

### **Short Scottish secure tenancies**

If you have a short Scottish secure tenancy (SSST), your landlord can ask for a court order when your tenancy runs out without having to provide a good reason. Your landlord can only do this if they have brought your tenancy to an end and have given prior written notice that they want the property back once the tenancy has come to an end. To legally end your tenancy, they must have served you with a valid “notice to quit”.

If your landlord does this correctly, the court may grant an order for eviction.

### **Scottish secure tenancies**

If you have a Scottish secure tenancy and your landlord is trying to evict you, they will have to get a court order. In all eviction actions against Scottish secure tenants the court must be satisfied whether it is reasonable to grant an order

for eviction having regard to the following things:

- the level and circumstances of any rent arrears;
- how and why the arrears have come about;
- if you or someone living with you, has caused alarm, distress, nuisance or annoyance to the people around you by being noisy, destructive or verbally abusive, or by failing to control pets. The behaviour need not have happened in your home but could have happened in your neighbourhood;
- the impact of eviction on other members of your household, and whether your landlord has done anything to help you address the problem of arrears before taking you to court.

## **What is the eviction process?**

The eviction process breaks down into the following steps:

- your landlord will send a 'notice of proceedings' to you and anyone living in your house who is over the age of 16. This is like a final warning, which allows them to apply to the court (within six months of sending you the notice) to evict you.
- your landlord will start legal action against you and you will be sent a summons. A summons is a letter from the sheriff court to tell you that your landlord has asked for a court order to end your tenancy and evict you and your household. The summons will give you the date when your case will be heard at court.



- your case will come to court.
- if the court grants your landlord permission to end your tenancy, they will evict you and your household. You may also have to pay your landlord's court costs.

## **What rights do I have if my landlord takes court action?**

You have the right to defend legal proceedings for eviction. It is important to make sure that you have a solicitor or advisor to represent you in court.

## **Will I need a solicitor?**

Yes. You can access one through the agencies listed at the end of this leaflet. You will need to meet with a solicitor or advisor prior to your case calling in court, so please remember to bring the following paperwork with you:

- the court papers served on you;
- proof of your income; and
- letters from your landlord or Sheriff Officers.

## **Can I get help to cover the cost of a solicitor?**

If you have a low income/savings you may get free or cheap legal advice and help. You may be entitled to civil legal aid or advice and assistance which can pay for outlays and whatever needs to be done to defend you. For more information contact the Civil Legal Advice Office (Highlands and Islands), which covers the Moray area

(their contact details are at the end of this leaflet).

## **How will I know my landlord is taking court action to evict me and repossess my home?**

If your landlord is taking court action against you to evict you and recover your home, you will get court papers. These are called a 'summons.'

## **What is on the summons?**

The summons comes on a special form, which includes the following information.

- your name and address
- your landlord's name and address
- the name and address of your landlord's solicitors
- the claim – why your landlord is taking you to court
- the return date – the date you must reply to the court by if you do not want to be evicted or you want the eviction delayed
- the calling date – the date your case will be heard in court
- the reply section – the section for you to write in if you want to reply to the court

You can find more information on the Scottish Courts website at [www.scotcourts.gov.uk](http://www.scotcourts.gov.uk).

## **What should I do if I get a summons?**

**Do not ignore it!** If you don't do anything, you may be evicted.

### **Replying to the summons**

If you are not sure of what to do, you can ask for independent advice on your legal rights from one of the advice agencies listed at the end of this leaflet. If you do not respond to the summons, or do not reply properly, it's likely that the court will grant an order for your eviction. This may also happen if you don't go to court on the calling date.

Do not fill in the time to pay form attached to the summons. This will seriously weaken your legal position in an eviction case and will result in a court order (decree) for payments by instalment.

You will find instructions about how to reply to the summons on the summons itself. You will also find a guide to replying to the summons on the sheriff court website at [www.scotcourts.gov.uk](http://www.scotcourts.gov.uk).

### **The claim**

The claim is the section where your landlord will ask for a possession order and say why they want it (for example, because you owe them rent or you have behaved antisocially).

## **Return date**

The return date is the date that you should reply to the court by if you do not want to be evicted. If you do not agree with the reasons for your landlord taking you to court or you do not want to be evicted, you should reply to the court by the return date.

If the return date has passed and you have not replied, you will still be able to go to court on the calling date to explain to the sheriff why you shouldn't be evicted.

## **Calling date**

This is the date and time when your case will be heard in court. It's very important that you go to court on this date. If you do not go to court, or someone else does not go on your behalf, the sheriff is more likely to grant an order to evict you.

## **What decisions can the sheriff make?**

The sheriff can do any of the following.

- Continue the case

The sheriff may decide not to make a decision at the hearing and arrange another hearing.

This is usually to allow time for you to:

- make a payment (or for a cheque to clear if you owe rent);
- make a claim for Housing Benefit and for it to be processed; and

- get more evidence to support your side of the case. The sheriff will tell you the date of the next hearing at the end of this hearing.
- Dismiss the case  
If the sheriff dismisses the case it means that they have decided there is no case to hear. This could be because:
  - your landlord has asked for the case to be dismissed, for example if you have paid in full any rent that you owe; or
  - the sheriff has decided that your landlord has not followed the proper procedures to take you to court.
- Suspend (sist) the case  
If the sheriff suspends your case, they can call you back to court at a later date. This is called ‘sisting’ the case. For example, they may suspend your case to give you time to show:
  - that you can keep to a repayment arrangement if you owe rent; or
  - show continuous good behaviour if your landlord has taken you to court because of antisocial behaviour.
 If you fail to keep to the arrangement you have made, your landlord can bring your case back to court.
- Grant a decree  
If the sheriff grants a decree, it means that they have made a decision to grant the order your landlord asked for. This means that they have given your landlord

permission to end your legal right to live in the property and evict you and order you to pay the costs of taking you to court.

If you do not understand, you can ask the sheriff to explain this to you.

### **What will happen if the court grants a decree?**

If the court grants a decree, your landlord can legally evict you. However, you will have 14 days to appeal against the court's decision after the decree has been granted. If you want to appeal against the decision you should get independent legal advice.

If the landlord exercises their right to evict you they must issue you with a letter which tells you the date you have to be out of the property by. This should be within the 24 weeks period that is stated on the 'Notice of Proceedings'. You no longer have a legal right to live in the property. You will no longer have the rights that you previously had under your Scottish secure tenancy. For example, you will no longer have the right to buy, the right of succession or the right to exchange your home.

### **What should I do if my landlord is taking court action against me because of rent arrears?**

You will of course have to pay your rent and repay arrears. The best advice is to start paying your rent and as much

as you can realistically afford to arrears until you get independent advice on a repayment plan. At the end of the day it's up to the court to decide whether a repayment plan is reasonable or not.

If the sheriff agrees your payment arrangement this will stop your landlord from getting an order for eviction. When you have cleared the rent arrears you can ask for the case against you to be dismissed.

### **Can I get any financial help?**

If your wages are low or you're in receipt of benefits you might be entitled to help from the Council to pay your rent. This is known as Housing Benefit and the amount of money you will get depends on your financial and personal circumstances.

The most important thing to remember is that you need to claim as soon as possible. If you have delayed in submitting your claim you might still be able to get it backdated so you don't lose out if you have a good reason for the delay (known as good cause). For example, you could not apply straight away as you were ill or waiting on the outcome of another benefit claim. Your solicitor or advisor can help you with this.

If you are already getting Housing Benefit but it doesn't cover all of your rent this might be because an

overpayment of housing benefit is being deducted. It's worth checking with your advisor whether this could be challenged.

Or, if you are not getting full Housing Benefit it might be worth applying to the Council for a discretionary Housing Benefit payment. If successful this could result in a modest one-off payment or extra ongoing payments that could help reduce your rent arrears.

Importantly, the onus is on you to make a claim for Housing Benefit. You can get free help to do so from one of the agencies, such as Moray Citizens Advice Bureau, listed at the end of this leaflet.

### **Can you increase your regular weekly income or get a one off extra sum of money?**

This could help pay your rent arrears. The checklist below contains some suggestions. Remember there could be other possibilities and you can discuss all of these with one of the agencies listed at the end of this leaflet.

- ✓ Are you receiving all the welfare benefits, or the correct levels of welfare benefits, you are entitled to?
- ✓ Do you have any insurance policies you might be able to claim on? For example, payment protection insurance, or loss of earnings insurance?
- ✓ If you are not working, can you or any partner get a part-



time job? If you work for 16 hours or more per week you may be eligible for Working Tax Credits which could increase your income. Support might be available to help you re-train for work and develop new skills.

- ✓ If you have kids and are separated are you getting all the maintenance you are entitled to?
- ✓ Are you paying too much tax? (including income tax and council tax).
- ✓ Do you own anything you could sell to raise some cash? (don't sell something you owe money on).
- ✓ If you have a spare room, can you take in a lodger? (ask your landlord for permission first).
- ✓ Have you had credit card or bank charges applied to your account(s)? Your advisor might be able to reclaim these.
- ✓ If you are a student, can you get a larger student loan or an emergency payment?

### **Can you find ways of spending less money?**

You could put any money saved towards your rent and arrears. The checklist below contains some examples:

- ✓ Are you repaying arrears on other debts and bills? If so it might be possible to reschedule those debts to free up some money to put towards your rent arrears. If you don't pay your rent or arrears, you may be evicted, so this needs to be treated as a priority debt.
- ✓ Are you finding it impossible to meet the interest and

charges applied to multiple debts? Your advisor might be able to get the interest delayed or frozen and charges stopped.

- ✓ Can you refinance and get a cheaper rate of interest on loan(s)?
- ✓ Can you save some money by spending less on entertainment?
- ✓ Are you buying anything on credit that you could return?
- ✓ Can you cut back on non-essential items?
- ✓ Have you got the cheapest tariff for your mobile phone, phone, gas, electricity, internet or insurance? It might be worth shopping around for better deals.

### **What should I do if a date for eviction is set?**

Once your home has been repossessed and the locks have been changed it will be too late to do anything about this. However, even if a court order (decree) has been granted for the eviction it might still be possible to save your home prior to the locks being changed.

It may be possible for a solicitor or advisor to lodge a minute for recall of decree. Once this is lodged at the sheriff court and served on your landlord it cancels the eviction until the case is reconsidered by the court.

You will not be able to apply for a minute for recall of decree if you have already defended the case or

previously applied for a minute for recall of decree in the same case.

## **Do I have any other housing options?**

Yes. If you have no prospect of saving your home or become homeless, the Council may have a duty to provide you with temporary or permanent accommodation. Our Housing Options team can give more information and help. You can also get independent advice on your legal rights from one of the advice agencies listed at the end of this leaflet.

## **Advice agencies that can help you**

### **The Moray Council**

Housing & Property



0300 123 4566



housing@moray.gov.uk



www.moray.gov.uk

### **Civil Legal Advice Office (Highlands and Islands)**

This covers the Moray area.

2nd Floor, 16 Union Street, Inverness, IV1 1PL



0845 123 2353



mail@pvs.slab.org.uk



www.slab.org.uk/civiloffice

## Legal Aid Helpline



0845 122 8686

## The Money Advice Service

Money Advice, The Moray Council, PO Box 6760,  
Elgin, IV30 9BX



0300 123 4561



[money.advice@moray.gov.uk](mailto:money.advice@moray.gov.uk)



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

## Moray Citizens Advice Bureau

6 Moss Street, Elgin, IV30 1UU



01343 550088



[bureau@moraycab.casonline.org.uk](mailto:bureau@moraycab.casonline.org.uk)



[www.moraycab.org.uk](http://www.moraycab.org.uk)

## Shelter

4th floor, Scotiabank House, 6 South Charlotte  
Street, Edinburgh, EH2 4AW



0808 800 4444 (calls are free from UK  
landlines and main mobile networks (Virgin,  
Orange, 3, T-mobile, Vodafone and O2).



[www.scotland.shelter.org.uk](http://www.scotland.shelter.org.uk)

## **Scottish Legal Aid Board**

More than 80% of applications for legal aid for mortgage rights and repossession cases.

Recent changes to eligibility for civil legal aid mean that more people than ever before now qualify financially for civil legal aid.



[www.slab.org.uk](http://www.slab.org.uk)

**If your landlord wants to evict you get advice immediately. If you ignore court papers your lender can get a judgment against you automatically and you may lose your home.**

**For more information about housing options in Moray please visit [www.moray.gov.uk](http://www.moray.gov.uk) or phone 0300 123 4566.**



If you need information from the Moray Council in a different format, such as Braille, audio tape or large print, please contact:

如果閣下需要摩里議會用你認識的語言向你提供議會資訊的話，請要求一位會說英語的朋友或親人與議會聯繫

Jeżeli chcieliby Państwo otrzymać informacje od samorządu rejonu Moray w swoim języku ojczystym, Państwa przyjaciel lub znajomy, który mówi dobrze po angielsku, może do nas

Se necessita de informação, do Concelho de Moray, traduzida para a sua língua, peça o favor a um amigo ou parente que fale Inglês para contactar através do:

Jeigu Jums reikalinga informacija iš Moray regiono Savivaldybės [*Moray Council*], kurią norėtumėte gauti savo gimtąja kalba, paprašykite angliškai kalbančių draugų arba giminaičių susisiekti su mumis

Чтобы получить информацию из Совета Морэй на Вашем языке, попросите, пожалуйста, Вашего друга или родственника, говорящих по английски, запросить ее

Si necesitas recibir información del Ayuntamiento de Moray en tu idioma. Por favor pide a un amigo o familiar que hable inglés que:



Project Officer  
Chief Executive's Office  
High Street  
Elgin, IV30 1BX



Phone: 01343 563319



Email: [equalopportunities@moray.gov.uk](mailto:equalopportunities@moray.gov.uk)



Textphone (Wednesday or Thursday only):  
18002 01343 563319