

Private residential tenancies: information for tenants

Guidance for private sector tenants on the Private Housing (Tenancies) (Scotland) Act 2016.

Overview

The [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#), which is expected to take effect from December 2017, will introduce a new type of tenancy.

This will be known as a 'private residential tenancy' and its purpose is to improve security for you as a tenant and provide safeguards for landlords, lenders and investors.

The tenancy will be open-ended and will last until you wish to leave the let property or your landlord uses one (or more) of 18 grounds for eviction.

Improvements for tenants include:

- more security – it's an open-ended tenancy so your landlord can't just ask you to leave because you've been in the property for a set length of time
- protection from frequent rent increases – your rent can't go up more than once a year and you must get at least three months' notice of any increase
- any rent increase can be referred to a rent officer, who can decide if they're fair
- if you've lived in a property for more than six months, landlords have to give 84 days' notice to leave (unless it's because you've done something wrong)
- if you think you were misled into moving out, you can now apply to the [First-tier Tribunal](#) for a 'wrongful termination order'. If the Tribunal gives the order it can award up to six months' rent in compensation
- local authorities can apply to Scottish Ministers to cap the levels of rent increases in areas where rents are rising too much

This guide is for tenants. If you are a landlord, read '[Private residential tenancies: information for landlords](#)' instead.

Private residential tenancies

Any new tenancy you enter into after the 2016 Act comes into force will be a private residential tenancy as long as:

- the property is let to you as a separate dwelling. A property can still be considered a separate dwelling even if some of the core facilities are shared with other tenants. For example, if a tenant rents only a bedroom in a flat, but has a right to use a shared bathroom and kitchen, the property will be treated as a separate dwelling because the tenant has access to the range of facilities required for it to be regarded as a separate dwelling
- you live in it as your only or main home
- the tenancy isn't excluded under [schedule 1 of the 2016 Act](#)

Even if your tenancy agreement is called something different, you will have all the protections of a private residential tenancy listed in this guide.

Your landlord must provide written terms and conditions

Your landlord must give you a written copy of all of the terms of your tenancy. If you're a new tenant, your landlord has to give you this document before the end of the day on which the tenancy starts.

If you already live in the property under a different type of agreement, your landlord has to give you the document within 28 days of the tenancy becoming a private residential tenancy. For example, if you're initially using the let property as your second home during the week while working away from your main home, you're likely to have a common law tenancy as the let property is not your only or principal home. If the let property later becomes your only or principal home, you will have all the protections of a private residential tenancy from the day your circumstances changed and your landlord must give you the written terms of your private residential tenancy within 28 days of that change.

If the terms of the tenancy change after it's started, your landlord must give you a document explaining the updated terms of the tenancy within 28 days of the change coming into effect. For example, if the written terms of your tenancy state that pets are not permitted in the let property and your landlord subsequently agrees that you can keep a dog, this would be a change to a term of your tenancy and your landlord would be required to provide you with a document outlining this change.

Your landlord can't charge you for providing written tenancy terms or any other information which they legally have to provide.

First-tier Tribunal for Scotland (Housing and Property Chamber)

You can make an application to the [First-tier Tribunal](#) if your landlord does not give you:

- a written copy of all the terms of your tenancy (or any other information they have a duty to give you)
- a document explaining any updated terms of your tenancy within 28 days of the change

Before you can apply to the Tribunal, you have to give your landlord 28 days' notice. You must use the correct form to give your landlord notice – it's called a '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'. The notice period begins on the later of:

- the day your landlord receives the notice from you
- the day after the deadline by which your landlord should have given you the information

If the Tribunal agrees with you, it may order your landlord to pay you up to:

- three months' rent if they haven't provided tenancy terms or haven't provided any other required information
- six months' rent if they haven't provided either

If your landlord isn't registered

If the First-tier Tribunal discovers that your landlord is unregistered, they have to report it to the local council for the area the property is located in. Your landlord is registered if he or she is entered in the [Scottish Landlord Register](#) prepared and maintained by the local authority for the purposes of Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004.

The Tribunal has to pass your landlord's name, their address and the address of the let property to the local council so they can investigate it.

Renting out property without being registered with the council is a criminal offence and your landlord can be served with a Rent Penalty Notice (which prevents them from charging you rent) or fined up to £50,000 if found guilty.

You can check whether your landlord or a property is registered using the [Public Search facility](#) on the Scottish Landlord Register. If your search is unsuccessful, please contact the [relevant local authority](#) for more information.

Your responsibilities

As part of the 2016 Act, you also have new responsibilities around:

- letting your landlord repair the property
- people living with you

Access for repairs

If your landlord needs access to the property you have to give them reasonable access. This includes letting them:

- carry out work when they need to or are allowed to
- inspect the property to see if any work is needed
- carry out a valuation of the property

If your landlord needs to access the property they should always give you at least 48 hours' notice, unless they need access urgently to carry out work or assess what work they are obliged or entitled to do. Your landlord should not enter the property without your consent, except in an emergency.

Residents living in the property

Unless your landlord agrees in writing, you must not:

- sublet the property (rent it out to someone else)
- take in a lodger
- give up your tenancy to someone else

If you have other people living with you in the property — like a partner, family member or carer — you may have to let your landlord know.

You have to tell them in writing about any person who is:

- aged 16 or over
- not a joint tenant
- living with you in the property as their only or main home

You must tell your landlord the person's name and their relationship to you. You also have to let them know if that person moves out.

Rent and other charges

The 2016 Act tells your landlord how they can increase the rent and what other charges they can make.

If you make any rent payments in cash, your landlord has to give you a written receipt saying how much was paid and how much you still owe them.

Increasing your rent

If your landlord wants to increase the amount of rent you pay, they have to give at least three months' written notice before they can do it. They must use the correct form to let you know that they intend to do this – it's called a 'landlord's rent-increase notice to tenant(s)'

The notice period begins on the date you get the notice, and ends three months after that date on the same day of the month (see example 1) or, if there is no such date, the last day of the month (see example 2). So if your landlord sends you the rent increase notice by post or email, they must allow you 48 hours to receive it. This delivery time should be factored into the amount of notice they give you.

Example 1

If your landlord sends you a rent increase notice by recorded delivery post on 23 January, you will be expected to receive the notice on 25 January; the three month notice period will start on 25 January and end on 25 April, so the earliest date a rent increase could take effect would be 26 April.

Example 2

If the three month notice period starts on 30 November, the end date of the notice period would be 28 or 29 February (depending on whether it was a leap year), and the earliest date a rent increase could take effect would be 1 March.

Your landlord can only increase the rent once in a year (they have to wait 12 months before it can be increased again).

If you disagree

If you think the rent increase is too high, you can contact a rent officer. They have the power to decide what the rent for the property should be. Remember that a rent officer can put the rent up for the property if they decide it should be higher, as well as putting it down if they think it is too high.

If you decide to do this, you must contact a rent officer within 21 days of your landlord giving you notice of the rent increase.

You must also tell the landlord you're contacting a rent officer. You do this by completing Part 3 of the 'landlord's rent-increase notice to tenant(s)'.

If you or your landlord disagrees with the rent officer's decision you can ask them to reconsider it, or appeal to the [First-tier Tribunal](#), who will make a final decision, which may agree with the amount set by the rent officer, be higher or lower.

If the rent officer or First-tier Tribunal decides that your rent should be increased, you will have to pay the increased amount from the date in the original rent increase notice from your landlord.

Illegal charges

Other than the rent, your landlord can ask you to pay a refundable deposit. This deposit can be no more than two months' rent.

It's an offence for your landlord to make you pay any other:

- administration fees
- premiums
- further deposits
- additional charges, whether they're refundable or not
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If you think you have been charged an illegal fee you may be able to claim this back and the landlord may be guilty of an offence.

Rent pressure zones

If a local council thinks rents are rising too much in a certain area, they can apply to Scottish Ministers to have that area designated as a 'rent pressure zone'.

This means a cap (a maximum limit) is set on how much rents are allowed to increase for existing tenants each year in that area.

Scottish Ministers must consult landlords' and tenants' representatives before they make any area a rent pressure zone.

Local councils can apply to have an area turned into a rent pressure zone if they can prove that:

- rents in the area are rising too much
- the rent rises are causing problems for the tenants
- the local council is coming under pressure to provide housing or subsidise the cost of housing as a result

What the rent cap might look like

Any cap set by Scottish Ministers will be at least [consumer price index \(CPI\)](#) plus 1%, for example if CPI is 1.6%, the minimum cap set by Ministers would be 2.6%. The cap can last for up to five years and will apply to existing tenants only.

Increasing your rent to reflect improvements

If your property is in a rent pressure zone, your landlord can apply to a rent officer for an additional amount of rent to reflect any improvements they have made to the let property.

These improvements don't include:

- any repairs or maintenance
- decorative work
- any work done which was entirely or partly paid for by you

After your landlord applies to the rent officer, the rent officer will send you a copy of the application. You will have 14 days to respond if you want to 'submit a representation' (give your side of the story).

Before the rent officer decides on the amount your landlord can increase the rent by, they will send you and your landlord a draft of the proposed decision.

If your landlord wants to respond to this, they have 14 days. You will then get a copy of their response, and will have 14 days to reply.

The rent officer has to take all responses into account when coming up with a decision. The rent officer's decision is final and can't be appealed.

Ending the tenancy: notice to leave

This section contains information on what to do if you or your landlord wants to end the tenancy.

If you want to end the tenancy

You have to give your landlord at least 28 days' notice in writing if you want to end the tenancy (unless you ask for shorter notice and they agree in writing).

The notice period will begin on the day your landlord gets your notice, and ends 28 days after that date.

So if you send the notice to your landlord by post or email, you must allow your landlord 48 hours to receive it. This delivery time should be factored into the amount of notice you give your landlord.

If you send your landlord a notice to leave by recorded delivery post on 23 January, they will be expected to receive the notice on 25 January; the 28 days' notice period will start on 25 January and end on 21 February, so the earliest date you could leave the let property would be 22 February.

Your notice has to be given 'freely and without coercion'. This means your landlord must not have pressured you into leaving. If your landlord tries to persuade or force you to leave without following the correct legal process then they could be carrying out an illegal eviction. This is a criminal offence in Scotland. An example of an illegal eviction by coercion could be carrying out work that makes it impossible for you to

continue to stay in the property, e.g. removing the toilet or stopping the drinking water supply.

You cannot give notice before you move into the let property.

If you give your landlord notice but then change your mind before it ends, you can ask them to continue the tenancy instead. It's up to your landlord to decide whether to agree.

To end a joint tenancy, all the joint tenants must agree to end the tenancy and sign the notice to leave. One joint tenant cannot terminate a joint tenancy on behalf of all the joint tenants.

If your landlord wants to end the tenancy

Your landlord can only end your tenancy by using one of the [18 grounds for eviction](#). When your landlord gives you notice to leave, they must tell you what eviction ground(s) they are using and may provide evidence to support this.

Notice needed

The amount of notice your landlord has to give you will depend on how long you've lived in the property and the grounds your landlord is using to evict you. Your landlord must give you at least 28 days' notice if you have lived in the let property for six months or less, regardless of what eviction ground they are using. Regardless of how long you have lived in the let property, your landlord must give at least 28 days' notice if they are using one or more of the following eviction grounds:

- tenant is no longer occupying the let property
- tenant has breached a term(s) of tenancy agreement
- tenant is in rent arrears over three consecutive months on the date the landlord applies to the Tribunal for an eviction order
- tenant has a relevant criminal conviction
- tenant has engaged in relevant anti-social behaviour
- tenant associates with a person who has a relevant conviction or has engaged in relevant anti-social behaviour

Your landlord must give you at least 84 days' notice if you have lived in the let property for more than six months and they aren't only relying on one of the grounds above.

The notice period will begin 48 hours after the notice was sent. So if your landlord sends you the notice to leave by post or email, they must allow you 48 hours to receive it. This delivery time should be factored into the amount of notice your landlord gives you.

Eviction orders

If your landlord gives you a notice to leave and you don't move out as soon as the notice period ends, they can apply to the First-tier Tribunal for an eviction order. When your landlord applies for an eviction order they must give the [First-tier Tribunal](#) a copy of the 'notice to leave' they gave you, stating which of the grounds for eviction they gave you.

Your landlord can only make an application for an eviction order if it's been less than six months since the notice they gave you expired.

Sub-tenants

If you are a sub-tenant, you will be protected from eviction unless your landlord is being evicted using certain grounds.

A sub-tenant is someone who is legally renting the property from a landlord/head tenant. The landlord must have permission from their landlord (the 'head landlord') to sub-let the property to you.

If the Head Landlord wants to bring a sub-tenancy to an end, they have to give you a 'sub-tenancy notice to leave', which includes a copy of the notice they gave your landlord/head tenant.

The Head Landlord must give you at least 28 days' notice if you've lived in the property for six months or less, or 84 days' notice if you've lived there for more than six months.

Grounds for eviction

There are 18 different grounds (reasons) for eviction. If your landlord wants you to leave the property at least one of these grounds must be given.

If you refuse to leave your landlord can apply to the [First-tier Tribunal](#) for an eviction order under these grounds.

Mandatory grounds

The first eight grounds for eviction are 'mandatory'.

This means that if the Tribunal agrees that the ground exists, you must leave the property.

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.

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 in a court) saying this is what they are going to do.

5. 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.

6. 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.

7. 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.

8. 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.

Discretionary grounds

The next eight grounds for eviction are 'discretionary'.

This means that even if the Tribunal agrees that the ground exists, it still has to decide whether it is reasonable to issue an eviction order.

9. 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.

10. 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.

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 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.

13. 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.

14. 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

15. 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.

16. 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.

Grounds which could be mandatory or discretionary

The final two grounds can be either mandatory or discretionary, depending on the circumstances of the case.

17. 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.

If you still owe at least a month's rent by the first day of the Tribunal hearing, the ground is mandatory and the Tribunal must issue an eviction order. The Tribunal must also be satisfied that the arrears were not due to a delay or failure in the payment of a relevant benefit.

If you owe less than a month's rent (or are no longer in arrears) by the first day of the Tribunal hearing, the ground is discretionary and the Tribunal will decide whether it is reasonable to issue an eviction order. 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.

18. 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.

The First-tier Tribunal will have to give an eviction order if either:

- your landlord applies within 12 months of you no longer being an employee
- you never became an employee and your landlord applies within 12 months of the tenancy starting

The Tribunal will be able to decide whether to give an eviction order if:

- your landlord applies on or after the date 12 months after you stopped being an employee
- you never became an employee but your landlord applies on or after the date 12 months after the tenancy started

Protection from wrongful termination

If your tenancy has ended and you think you were misled into leaving, you can apply to the First-tier Tribunal for a 'wrongful termination order'.

The Tribunal may make a wrongful termination order if it decides that your landlord:

- misled the Tribunal into issuing an eviction order it shouldn't have
- wrongly made you leave the property

If your landlord gets a wrongful termination order, they'll be told to pay you compensation of up to six months' rent.

What happens to existing tenancies issued under the Housing (Scotland) Act 1988

On the date the new tenancy comes into force, any existing short assured or assured tenancy will continue until either you or your landlord bring it to an end by serving notice to quit the let property. If your short assured tenancy is renewing on a contractual basis, this can continue to renew under the Housing (Scotland) Act 1988 until either you or your landlord bring it to an end by serving notice to quit the let property.

Sources of advice and support

If you are unsure of your rights and responsibilities as a tenant you should get advice as quickly as possible. You may be able to get this from an organisation which gives advice on housing matters such as your local authority, [Shelter Scotland](#) or your local Citizens Advice Bureau, or from a solicitor (you may get legal aid depending on your income).