



Keeping Your Home

Information for private tenants



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✉️ **Moray Council**, High Street Elgin, IV30 1BX

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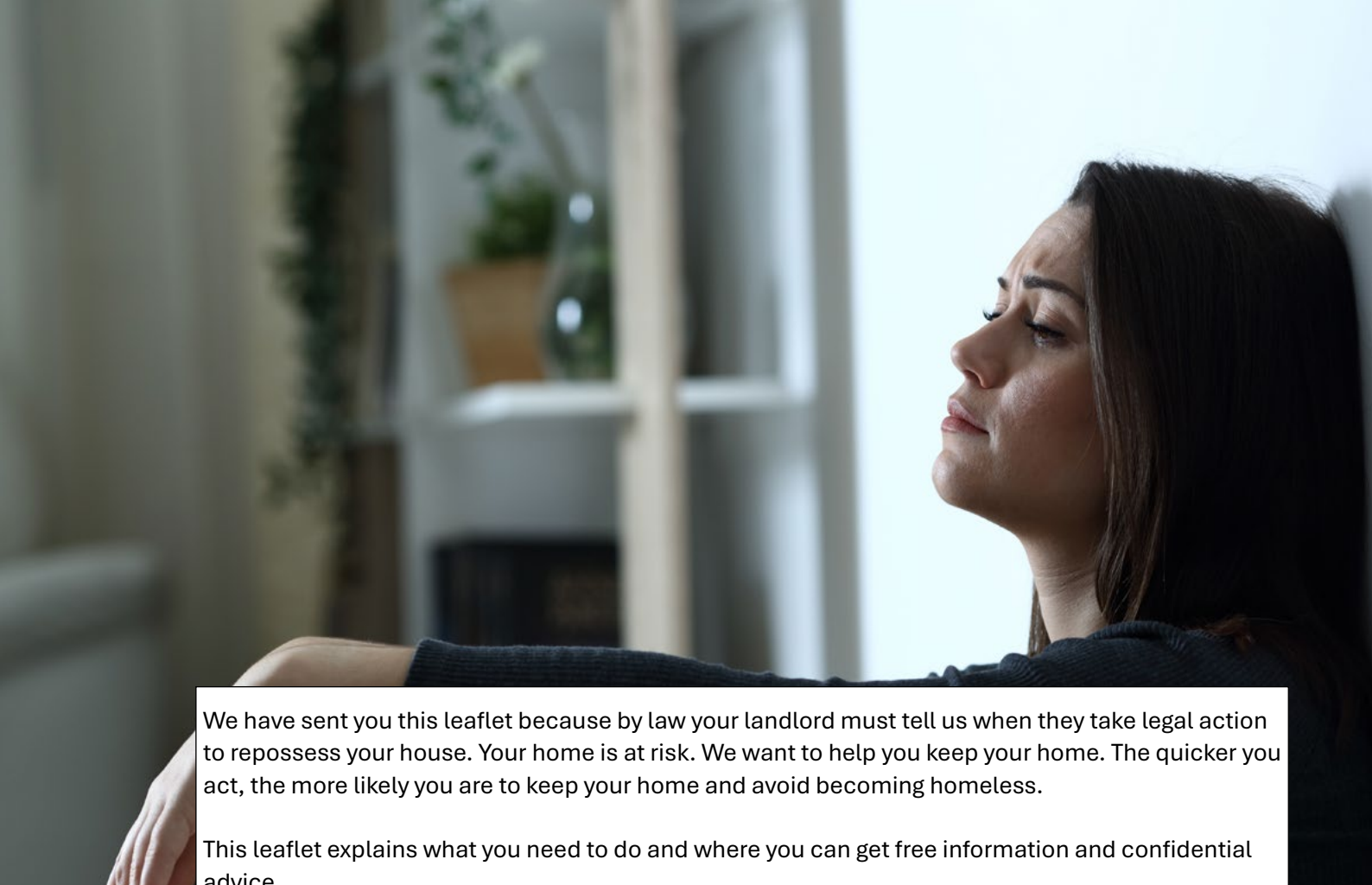
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We have sent you this leaflet because by law your landlord must tell us when they take legal action to repossess your house. Your home is at risk. We want to help you keep your home. The quicker you act, the more likely you are to keep your home and avoid becoming homeless.

This leaflet explains what you need to do and where you can get free information and confidential advice.

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



Act now

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. The procedure followed will depend on the type of tenancy you have.

Since 1 December 2017, most new private tenancies must be Private Residential Tenancies (PRT's). If you moved before this date, you may have one of the other types of private tenancy such as an Assured tenancy or a Short-Assured tenancy.

Assured tenancies

You will probably have an assured tenancy if:

- your tenancy started between 2 January 1989 and 1 December 2017; and
- you did not get an AT5 form telling you the tenancy is 'short assured' (see below) before you signed your tenancy agreement; and
- the place where you live is rented as a home; and it is your only or main home.

Short assured tenancies

You will probably have a short-assured tenancy if:

- your tenancy started between 2 January 1989 and 1 December 2017, and
- the place where you live is rented as a home, and
- it is your only or main home, and
- your landlord gave you a form called an AT5 form that tells you the tenancy is short assured and for a set term.

Private Residential Tenancies

You will have a PRT if your tenancy started on or after 1 December 2017. They were introduced to provide better security for tenants and, unlike other tenancies, do not have a fixed end date.

What is the eviction process

Landlords who want to evict tenants from Assured or Short Assured tenancies will have the case heard in the First Tier Tribunal for Scotland (Housing and Property Chamber). Short Assured Tenancies generally offer less security for the tenant than Assured Tenancies.

Whilst there are variations between tenancies, for **Assured** (AT) and **Short Assured Tenancies** (SAT), the landlord must:

- Issue you with a Notice to Quit (NTQ) which gives at least a 28 days' notice period (AT) or at least 2 months' notice period (SAT) and must align with the end date of the tenancy (called the ISH date) (AT and SAT)
- Send you an AT6 form which is the notice advising of legal action to evict you and repossess the property (AT)
- Send you a Section 33 notice providing you with at least two months' notice (SAT)
- Apply to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Tribunal) for your eviction (AT and SAT)

During this time, you do not have to move out of your house until the Tribunal finally approves the eviction.

Evictions from PRTs are heard by the First Tier Tribunal for Scotland (Housing and Property Chamber) (Tribunal). They have offices in Glasgow and Edinburgh, but they can travel to other areas in Scotland.

Your landlord or letting agent must send you a valid Notice to Leave if they want you to move out. They can only ask you to leave for specific reasons (grounds). You do not have to move out by the date on the Notice to Leave.

The Notice to Leave must include:

- the eviction ground(s) that your landlord is using
- the date when your notice period ends: this is when your landlord can apply to the tribunal

The notice period depends on how long you've lived there and which eviction ground(s) your landlord is using.

You should check the eviction ground(s) to see how much notice you should get. It will either be four weeks or 12 weeks. If your landlord is using more than one ground and they have different notice periods, the longer notice period applies.

If you have not moved out by the date on your notice, your landlord can apply for an eviction order from the Tribunal.

You will be told of the date your case will be considered by the Tribunal. You can ask them to stop or delay the eviction.

Even if you want to challenge the eviction, start looking for other places to live as soon as possible. This is in case the Tribunal grants an eviction order.

The Tribunal will also usually want to see evidence that you've tried to find a new home. Keep evidence of any housing applications you make or homes you tried to rent. If it's difficult to find a home that suits your needs, you can show this evidence to the tribunal. The Tribunal must consider whether it's reasonable to evict you. You have the right to stay in your home during the tribunal process.

How will I know if I am facing legal action by my landlord?

If your landlord is taking legal action to evict you and recover your home, the Tribunal will send you a copy of:

- the landlord's application for an eviction order;
- copy of the Notice to Leave that you will previously have received from your landlord;
- a case reference number; and
- notification of a case discussion or a formal hearing date and time, along with information on the hearing process.

You should also speak to your landlord. If the reason for your eviction is because you didn't pay your rent, speak to your landlord before they apply to the Tribunal and see if you can get a repayment agreement that is affordable for you, and stick to it.

What should I do if my landlord applies to the First Tier Tribunal for Scotland (Housing and Property Chamber)?

You need to try to keep your tenancy by defending the legal proceedings for eviction. You do not have to have a solicitor or a trained advisor (called a lay representative) to defend you, but you are strongly advised to get one. Advice agencies listed at the end of this leaflet will be able to help you access a solicitor or advisor.

Bring these documents with you when you get advice:

- all the legal papers you have been sent;
- proof of your income; and
- letters from your landlord or sheriff officer.

What should I do if the Tribunal writes to me?

Do not panic but do not ignore it! Contact our Housing Options Team if you haven't already done that and show them what you have received. If you don't do anything, you may be evicted.

What decisions can the Tribunal make?

The Tribunal can do any of the following:

Issue a Decree for Possession (Eviction Order)

The Tribunal will consider each case on its merits and decide based on law and reasonableness before issuing a Decree for Possession. Depending on the type of tenancy and the specific ground(s) applied, the Tribunal can also decide not to issue a Decree for Possession despite the landlord having one of the 18 Grounds for Possession in place.

Issue Payment Order

A Payment Order can be issued by the Tribunal if the landlord has proven that you have unpaid rent. The Tribunal will decide that you must pay the Order within a set time limit.

Consider Time to Pay Orders

If you have been issued with a Payment Order and you need extra time to pay, you can apply for a longer period of time to pay or ask for a repayment plan to be agreed which will allow you to pay by instalments.

Issue a financial award in limited circumstances

The Tribunal cannot order a landlord to pay a tenant nor a tenant to pay a landlord, as general compensation. It can order one party to pay the other expenses but only if they have acted unreasonably which has meant the other party had incurred additional costs.



How long do I have to move out of my home?

If the Tribunal gives your landlord an eviction order, you will get a written decision explaining why. It is usually issued around 21 days after the decision before it is issued. You can stay in your home for 30 days after the order is issued.

During those 30 days, you can ask the Tribunal for permission to appeal. You can only appeal if you believe the law was not applied correctly. You must explain what legal mistake was made and what outcome you want. If you don't appeal or get permission to appeal, you must leave within 30 days.

If you don't move out, your landlord can apply for a warrant for possession. Once that warrant is granted, Sheriff Officers can evict you after giving at least 14 days' notice.

What do I need to do if I want to appeal against the decision to evict?

You can do this yourself, but it can be complex, so you are strongly advised to have a solicitor or lay representative do this for you. They will likely take the following steps:

- identify the case and decision that you want to appeal
- identify the points of law that you want to appeal
- confirm the result of the appeal that you would like

Can I get help with legal costs?

A lay representative can't charge you for their help but if you have a solicitor and you have a low income or savings, you might get free or low-cost legal advice and help through legal aid. For more information about help in Moray contact the Civil Legal Advice Office (Highlands and Islands) at www.clao.org.uk.

What will happen if the Tribunal grants a Decree for Possession (or Eviction Order).

If the Tribunal gives your landlord an eviction order, they can legally make you leave. If you don't appeal, your tenancy will end on the date in the order. After that, you have no legal right to stay in the property and lose all the rights you had under your tenancy.

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 an eviction order has been granted it might still be possible to save your home prior to the locks being changed.

You could appeal the decision, but you need to get permission to appeal from the Tribunal.

If I am allowed to stay in my home, 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 Local Housing Allowance (LHA) and the amount of money you may 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 LHA but it doesn't cover all 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.

Importantly, it is up to you to make a claim for LHA. You can get free help to do so from one of the agencies 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 your partner get a part-time job? You might still be able to get benefits and substantially increase your income. Support might be available to help you re-train for work and develop new skills.
- If you have children 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 that you no longer need that 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 added 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 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 a struggle 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, landline phone, gas, electricity, internet or insurance?

It might be worth shopping around for better deals.

Do I have any other housing options?

Yes. There are other housing options that you can consider, for example, social housing. This includes housing managed by councils and housing associations, called registered social landlords (RSLs). Most providers allocate properties based on the law and a person's housing need. Maybe your current home is too big and expensive to heat. Would a smaller house be better for you?

For more information about housing options please refer to a Guide to Housing Options in Moray, available online at www.moray.gov.uk/housingoptions.

What if I lose my home?

If you become homeless, we have a duty to provide you with temporary or possibly permanent accommodation. Please contact us as soon as possible using the details provided at the end of this leaflet. You can also get independent advice on your legal rights from one of the advice agencies listed.

Advice agencies that can help you

Money Advice Service

Moray Council Offices, High Street,
Elgin, IV30 1BX

@ moneyadvice@moray.gov.uk

☎ 0300 123 4561

🌐 www.moray.gov.uk

Moray Council

Housing and Property, PO Box 6760,
Elgin, IV30 1BX

@ housing@moray.gov.uk

☎ 0300 123 4566

🌐 www.moray.gov.uk

Moray Citizens Advice Bureau

6 Moss Street, Elgin, IV30 1LU

@ bureau@moraycab.casonline.org.uk

☎ 01343 550088

🌐 www.moraycab.org.uk

Civil Legal Advice Office

2 Castle Wynd, Inverness, IV2 3EB

@ inverness@clao.org.uk

☎ 01463 641770

🌐 www.clao.org.uk

Legal Aid Helpline

☎ 0131 240 1960

SHELTER

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

☎ 0808 800 4444 (Free from landlines and
mobile)

🌐 www.shelter.org.uk

Scottish Legal Aid Board

Thistle House, 91 Haymarket Terrace,
Edinburgh, EH12 5HE

@ general@slab.org.uk

☎ 0131 226 7061


🌐 www.slab.org.uk

Your Notes

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

For more information about housing options in Moray:

 www.moray.gov.uk/HousingOptionsGuide

 0300 123 4566



We try to review our leaflets regularly to make sure you have the most up-to-date information; however, the contents of this leaflet are only correct at the time the leaflet is published.

For more information or advice contact us on 0300 123 4566 or visit our website at www.moray.gov.uk.