

# Keeping your home and where to get advice

## Information for private tenants



the **moray** council

Updated July 2012

We try to review our leaflets regularly to make sure you have the most up-to-date information. However the content of this leaflet is only correct at the time it is published.

For more information and 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 keep your home and avoid becoming homeless.

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 information and confidential advice.

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

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## **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.

#### **Assured tenancies**

You will probably have an assured tenancy if:

- your tenancy started after 2 January 1989, and
- before the tenancy commenced, you were not given a notice (an AT5 form) stating that it was to be a short assured tenancy, and
- the place where you live is rented as a home, and

- it is your only or main home.

## **What is the eviction process for assured tenancies?**

In most cases your landlord will need to follow the steps below in order to evict you. However, in a few cases, a landlord might be able to skip serving you a notice to quit. If you have any doubts you should get advice as soon as possible. The process is as follows:

- you will be served with a notice to quit;
- you will be served with a notice of proceedings;
- you will be sent a summons telling you when your case will be heard in court;
- your case will come to court;
- if the sheriff agrees that it is reasonable to evict you, they will grant the decree; and
- sheriff officers will be sent to remove you from your property.

## **Short assured tenancies**

You will probably have a short assured tenancy if:

- your tenancy started after 2 January 1989, and
- the place where you live is rented as a home, and
- it is your only or main home, and
- you received a special notice (an AT5 form) before the tenancy started telling you that it is a short assured tenancy, and

- your tenancy is for at least six months.

## **What is the eviction process for short assured tenancies?**

If your landlord wants you to leave before the end of your tenancy they must:

- give you a notice to quit (there are exceptions to this);
- give you a notice of proceedings; and
- tell the sheriff court that they want to evict you.

Then:

- you will be sent a summons telling you when your case will be heard at court;
- your case will come to court;
- if the sheriff agrees that it is reasonable to evict you, they will grant the decree; and
- sheriff officers will be sent to remove you from the property.

If you have a short assured tenancy your landlord may be able to seek a mandatory eviction order. Your landlord can only do this if they have brought your tenancy to an end (by a valid 'notice to quit') and have given prior written notice that they will need the property back once the tenancy has come to an end. If the landlord does this correctly the court may have no option but to grant an order for eviction. Your solicitor or advisor can check



this, as well as checking whether you really do have a short assured tenancy. Sometimes landlords create assured tenancies by error – these give tenants more rights.

### **What is a mandatory ground for eviction?**

You should be very careful not to owe more than three months rent to your landlord. If your case calls in court and you owe more than three months rent your landlord can ask for a mandatory eviction order – known as ‘Ground 8’ – and the court may have no option but to grant this. However, if you are over three months in arrears because of a delay or failure in the housing benefit system, or other exceptional circumstances your solicitor or advisor can use this to defend the case.

### **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.

### **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.

### **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.

### **How will I know if I am facing court action by my landlord?**

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 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

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).

<b>The claim</b>	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).
<b>Return date</b>	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.
<b>Calling date</b>	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 Local Housing Allowance 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. Your tenancy will end on the date on the decree. 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 tenancy.

### **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 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.

Importantly, the onus is on 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 any partner get a part-time job? If you work for 16 hours or more per week you may be eligible for benefits 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 mobilephone, 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. There are other housing options that you can consider, for example, social housing. This includes housing managed by councils and housing associations (registered social landlords or RSLs). Most providers allocate properties based on the law and a person's housing need.

For more information about housing options please refer to a Guide to Housing Options in Moray, available online at [www.moray.gov.uk](http://www.moray.gov.uk) or contact us using the details provided at the end of this leaflet.

### **What if I lose my home?**

If you have no prospect of saving your home or you become homeless, we may have a duty to provide you with temporary or 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**

### **The Moray Council**

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



0300 123 4566



emergency out of hours 08457 565656



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**

Trading Standards, 232 High Street, Elgin, IV30 1BA



01343 554623



money.advice@moray.gov.uk



www.moray.gov.uk

## **Moray Citizens Advice Bureau**

30 - 32 Batchen Street, Elgin, IV30 1BH



01343 550088



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 landlord 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