

TENANT INFORMATION PACK

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1 Your tenancy

Your rights in privately rented housing depend on the type of tenancy agreement you have with your landlord. The following information provides a broad set of rules for the most common tenancies – assured and short assured tenancies. If there is any doubt, you should get legal advice to be certain of the type of agreement you have signed or are being asked to sign.

1.1 Short assured tenancy

The most common type of agreement in the private sector is a short assured tenancy, which has been available since 2 January 1989. Your landlord must give you a special form (called an AT5 form) before you sign your tenancy agreement or move in. The form states it is a short assured tenancy. The initial let must be for at least six months otherwise it is not a short assured tenancy. After the initial let period your landlord has the right to reclaim possession of the property. However, short assured tenancies could be for longer, so you may want to discuss this with your landlord to see whether both parties would like a longer period of let.

You can see a sample AT5 form at:

www.scotland.gov.uk/tenant/info/forms

Joint tenancies

If you and your flatmates or housemates have a joint tenancy agreement, you will all have exactly the same rights and responsibilities. This means you are all equally responsible for paying the rent and keeping to the terms of your tenancy agreement. If you want to end the tenancy, you will need to get the other joint tenants' permission first, because this will end the tenancy for everyone. However, if the other tenants do not want to move out, they can try to negotiate a new agreement with the landlord.

1.2 Assured tenancy

If you rent your property from a private landlord or letting agent, you will probably have an assured tenancy if:

- your tenancy started after 2 January 1989, and
- before the tenancy started, you were not given 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.

An assured tenancy gives you greater security of tenure than a short assured tenancy. This means that it is more difficult for your landlord to require you to leave. If you would like further advice and assistance on assured tenancies, contact your local Citizens Advice Bureau or Shelter Scotland (see section 5 - further advice and support).

1.3 Tenancy agreement

The tenancy agreement must be a written document. Its terms should be agreed between you and the landlord or letting agent before you sign it.

You can see an example of a model tenancy agreement, created by the City of Edinburgh Council, at www.scotland.gov.uk/tenant/info/forms. Your landlord may, however, provide their own style of tenancy agreement, which may still be legally binding. Where there is any doubt you should seek legal advice.

In general, your tenancy agreement will include the following:

- The name and address of the landlord or agent (or both).
- The landlord's registration number.
- The length of the tenancy, with start and end dates.
- Rent: amount due, when it is due, how it should be paid and if it will increase during the tenancy.
- How much is the deposit and possibly which tenancy deposit scheme (see section 4.5) will hold the deposit.
- Who is responsible for internal decoration and internal and external repairs and maintenance.
- How many tenants may occupy the property.
- Any condition or restrictions on the use of the property, for example about pets, guests or smoking.

1.4 Ending your tenancy

If you have a short assured tenancy your tenancy agreement will state how long you will be renting the property. At the end of that time, your tenancy will automatically renew itself unless:

- your landlord gives you written notice that they want you to leave the property;
- you give your landlord written notice that you want to leave at the end of the fixed term; or
- your tenancy agreement states what will happen at the end of the initial fixed term.

If you have an assured tenancy your tenancy agreement may or may not state how long you will be renting the property. If a time period is stated, during this period it will be a "contractual assured tenancy" and your original tenancy agreement may set out how and why your landlord can require you to leave the property. If you continue to live in the property after your original tenancy agreement ends, and if you do not sign a new tenancy agreement with the landlord, your contractual tenancy will be converted into a "statutory assured tenancy" with no fixed end date.

If you want to leave

If you have a short assured tenancy it is important to consider the following:

Ending the tenancy at the end of the fixed term: if you want to leave when the fixed term ends, you should give your landlord written notice. Your tenancy agreement should state how much notice you need to give.

Ending the tenancy before the fixed term ends: your tenancy agreement should say whether or not you can end your tenancy before the fixed term ends, and how much notice you need to give. If your tenancy agreement does not mention this, you may find your landlord can still charge you rent until the fixed term ends, even if you need to move out before this.

If you have an assured tenancy your tenancy agreement should state how much notice you need to give if you wish to leave the property. You must provide your landlord with written notice if you wish to leave.

When your landlord wants you to leave

If you have a short assured tenancy your landlord can give you notice in writing at least two months before the end of the initial fixed term or at any time afterwards that they want possession of the property. They can serve notices during the tenancy to coincide with the agreed termination date. If you do not vacate the property at this time, your landlord can start legal action against you.

To gain possession at the end of a short assured tenancy, your landlord must serve you with a written Notice to Quit and either a Section 33 Notice or an AT6 Notice depending on why they want you to leave. These forms can be viewed at www.scotland.gov.uk/tenant/info/forms.

With an assured tenancy, however, you have greater security of tenure. As highlighted at the start of this section, your tenancy may have no fixed end date. In this situation your landlord must apply for a court order requiring you to leave on the grounds mentioned in section 1.5 below. You cannot be required to leave if none of those grounds apply.

Breach of tenancy

If you breach any terms of the tenancy, your landlord can seek possession using the grounds for regaining possession (see section 1.5).

If you receive a Notice to Quit or AT6 Notice, do not ignore it. If you would like further advice and assistance on this, contact your local Citizens Advice Bureau or your local council's housing office.

1.5 Grounds for landlords regaining possession of their property

There are 17 grounds a private landlord can use to evict an assured or short assured tenant. Grounds 1-8 are mandatory grounds: that is, if they are proved, a Sheriff must grant an order for possession. Grounds 9-17 are discretionary grounds: that is, even if they are proved, a Sheriff will grant a possession order only if they believe it is reasonable to do so. In summary, the grounds are:

Mandatory grounds

- (1) The landlord wants the property to be their own home or the property was previously their own home.
- (2) A lender has repossessed the landlord's property due to mortgage arrears and wants to sell it.
- (3) Off-season holiday let (i.e. the property is normally rented out as a holiday home).
- (4) Short leases (less than 12 months) between lets to students.
- (5) The property is needed by a minister or full-time lay missionary.
- (6) The landlord intends to carry out major work on the property.
- (7) The tenant has died and the landlord starts the eviction process within 12
- (8) months of the death.
- (9) The tenant has three months' rent arrears. This is a mandatory ground, however, Sheriffs may apply discretion where the rent arrears have been caused by a delay in paying housing benefit.

Discretionary grounds

- (9) Suitable alternative accommodation is available to the tenant.
- (10) The tenant was served a Notice to Quit but did not leave.
- (11) Persistent delay in paying rent.
- (12) Some rent is unpaid.
- (13) Breach of the tenancy agreement.
- (14) The tenant has allowed or caused damage to the property or the building's common parts.
- (15) The tenant has used the property for illegal purposes or has caused a nuisance or annoyance to neighbours.
- (16) Damage to the landlord's furniture.
- (17) The property was let to the tenant because of their job and they no longer have this job.

2 Information about your property

Your landlord must make sure the property is safe. The electricity supply, plumbing, water and heating systems should all be in good condition. If you have any concerns about the safety of any item in the property, you should speak with the landlord. It is important that you do not move into the property until the landlord has dealt properly with your concerns.

2.1 Gas safety

If your property has a gas supply, your landlord must arrange for an annual Landlord Gas Safety Record to be carried out by a Gas Safe registered engineer. You should receive a copy of this certificate. If your landlord does not provide you with a safety certificate you can contact the Health and Safety Executive for advice (see section 5 - further advice and support). If you know that your gas installations or pipework are defective, you must tell your landlord or letting agent. You must never use appliances that are condemned or unsafe.

2.2 Electrical safety

Your landlord, in accordance with the Repairing Standard for private rented properties (see section 2.6), must ensure that the electrical installation and appliances provided with the property are in a reasonable state of repair and in proper working order. The Electrical Safety Council suggest that the best way for landlords to comply with this is by having a registered electrician carry out an inspection and test of the electrical installation (known as an Electrical Installation Condition Report) and Portable Appliance Testing at suitable intervals. Speak with your landlord if you have any concerns about electrical safety as they should be able to provide you with information on the latest safety inspection. Alternatively, advice and guidance is available on the Health and Safety Executive website (see section 5 - further advice and support).

2.3 Energy Performance Certificate

An Energy Performance Certificate (EPC) shows a property's energy efficiency. It also highlights potential improvements that could save energy. On request, landlords must give prospective tenants (i.e. new tenants, not tenants who are simply renewing a lease) an EPC. However, if you rent only a single room in a larger property, your landlord need not provide an EPC. When advertising a property for rent, landlords must state its energy efficiency rating. You can download a sample EPC from the Scottish Government website:

www.scotland.gov.uk/tenant/info/forms

2.4 Council Tax

Your tenancy agreement will probably set out who is responsible to paying council tax. If you are unsure your local council should be able to tell you about your responsibilities for council tax and give you information on the current rates. If you have signed a tenancy agreement for a room and not the entire property, check with your landlord if you are responsible for paying council tax. If the property is occupied entirely by full-time students, you are exempt from council tax. You must apply to your local council's Revenues and Benefits department for your exemption.

2.5 Number of people who may live at the property

Only those allowed to live at a property by the tenancy agreement should occupy it. If too many people live there, meaning it is overcrowded, the council may take steps to prevent the overcrowding continuing.

Houses or flats occupied by three or more unrelated persons are called houses in multiple occupation (HMOs). Your local council will have told your landlord the maximum number of people allowed in an HMO.

How is 'overcrowding' defined?

The number of people who may live in a property depends on the number and size of the rooms, and the characteristics of the people. Living rooms and bedrooms are counted as rooms, but not the kitchen or bathroom. There is a room standard and a space standard.

Room standard

The room standard is broken when people of opposite sexes, who are not living together as a couple, have to sleep in the same room. This does not apply to children under 10.

The number of people of the same sex who can sleep in one room is limited by the size of the room.

Space standard

The space standard limits the number of people who can occupy a property, relative to both the number and the floor area of the rooms available as sleeping accommodation.

You can get more information on overcrowding from a Shelter Scotland advice centre, Citizens Advice or your local council.

2.6 Repairing Standard

Your landlord must carry out a pre-tenancy check of your property to identify work required to meet the Repairing Standard (described below) and notify you of any such work. Your landlord also has a duty to repair and maintain your property from the tenancy start date and throughout the tenancy. This includes a duty to make good any damage caused by doing this work. On becoming aware of a defect, your landlord must complete the work within a reasonable time. A privately rented property must meet the Repairing Standard as follows:

- The property must be wind and water tight and in all other respects reasonably fit for people to live in.
- The structure and exterior (including drains, gutters and external pipes) must be in a reasonable state of repair and in proper working order.
- Installations for supplying water, gas and electricity and for sanitation, space heating and heating water must be in a reasonable state of repair and in proper working order.
- Any fixtures, fittings and appliances that the landlord provides under the tenancy must be in a reasonable state of repair and in proper working order.
- Any furnishings that the landlord provides under the tenancy must be capable of being used safely for the purpose for which they are designed.
- The property must have a satisfactory way of detecting fires and for giving warning in the event of a fire or suspected fire.

If, after notification of any problem, the problem persists, has not been attended to satisfactorily or if there is disagreement about whether or not there is a problem, then you have the right to refer the matter to the Private Rented Housing Panel (*see section 5 - further advice and support*). The Private Rented Housing Panel has power to require your landlord to carry out work necessary to meet the Repairing Standard.

Repairs and maintenance - access

You must give your landlord reasonable access to the property to do repairs and maintenance. If you fail to agree a suitable time, your landlord must give you at least 24 hours' written notice that they intend to enter the property unless they need to do an emergency repair.

2.7 Inventories

An inventory is a list of everything in the property that you are renting (for example, furniture, carpets and curtains, kitchenware) and its condition.

An inventory can help avoid a dispute over your deposit when you move out because it proves what state the property was in when you moved in. In particular, it can help if a dispute is lodged with a tenancy deposit scheme (see section 4.5).

It is in your landlord's interest to provide an inventory because if you break or damage anything while you are living there, the inventory shows it was not broken before you moved in. On the other hand, if anything in the property is already damaged, the inventory proves you did not do it. Your landlord or letting agent should give you an inventory. If they have not done so by the time you move in, ask for one.

In summary, here are the key things you should do:

- **Check the inventory before you sign it** – make a note of anything damaged, broken or worn. Make sure everything in the property is listed on the inventory, and that it lists nothing you cannot find in the property.
- **Make sure you and your landlord sign the inventory** – once you are sure the inventory is correct, both you and your landlord or letting agent should sign it.
- **Take photos**, then you can prove the state of the property when you moved in.
- **Store the inventory and your photos in a place where you can find them** in case you need to rely on them to get your deposit back.

2.8 Fire safety

By law, your landlord must provide fire-detection equipment (e.g. a smoke alarm) for your property. You can find out more about fire safety requirements for privately rented properties on the Scottish Government website: www.scotland.gov.uk/tenant/info/forms

Your landlord also has a general duty to keep your property fit for you to live in and to ensure it does not endanger your health. This includes ensuring there are no fire or other hazards in your home, such as loose wiring or dangerous stairs.

If your landlord refuses to provide a fire-detection alarm or you feel there are fire risks in your property, you can take action to make sure they put things right. Either you can apply to the Private Rented Housing Panel (see section 5 - further advice and support) or contact your local council's environmental health department.

Landlords of HMOs (see section 3.2) must ensure there are adequate fire precautions and escape routes.

The Scottish Government has produced a leaflet on fire safety in the home which is available at: www.scotland.gov.uk/tenant/info/forms

3 Information about your landlord

3.1 Landlord registration

Most private landlords must register with their local council to ensure they are a 'fit and proper person' to let property. Details of any properties let by a landlord and any agent acting on a landlord's behalf must be notified to the council. For most landlords it is an offence to let a property without being registered, with a maximum fine of £50,000.

Your landlord's registration number should be included in your tenancy agreement (unless they have only recently applied to register). You can check online at www.landlordregistrationscotland.gov.uk to see if your landlord is registered or you can contact your local council. If your landlord is not registered, contact your local council.

You can find out more about landlord registration on the Scottish Government website: www.scotland.gov.uk/privaterenting

3.2 House in multiple occupation (HMO) licensing

An HMO (house in multiple occupation) is a property occupied by three or more tenants who are not members of the same family (or one or other of two families). HMO landlords must have a licence from the local council. This ensures that the property is managed properly and meets certain basic safety standards. You can find out more about HMOs on the Scottish Government website: www.scotland.gov.uk/privaterenting

To find out whether your property has an HMO licence, ask your landlord or contact your local council. Your council will have a list of all the licensed HMOs in their area.

It is a criminal offence for your landlord to operate an HMO without a licence, and they could be fined up to £50,000. If your local council thinks a property is being run as an unlicensed HMO, they can inspect it without giving any warning. If you think the HMO you are living in may be unlicensed, you should contact your local council.

4 Responsibilities of tenants and landlords

This section covers your responsibilities and those of your landlord. Other parts of the pack cover your rights.

4.1 Tenant's main responsibilities

You have certain responsibilities as a tenant. Please read your tenancy agreement for more specific information but the following list of responsibilities will apply to most tenancies.

- To occupy the property as your main home.
- To pay your rent in full and on time.
- To contact your landlord immediately if you are having difficulty paying the rent.
- Not to cause damage to the property, fixtures, fittings or furniture belonging to the landlord and not to allow members of your household or visitors to do so. To read and comply with your tenancy agreement as regards its policies on smoking in the property, keeping pets etc.
- Not to make alterations to the property without getting your landlord's written permission first.
- To report promptly the need for any repairs to the landlord.
- Not to cause disturbance, nuisance or annoyance to neighbours and not to allow your visitors to do so.
- To allow the landlord access to the property to inspect it or carry out repairs after giving sufficient notice.
- To give your landlord written notice when you wish to end the tenancy.
- To maintain any communal areas if the maintenance is not included in your rent.
- To put out bins and recycling boxes for collection.

4.2 Landlord's main responsibilities

- To give you their name and address.
- To give you a tenancy agreement.
- To respect your right to peace and quiet in the property.
- To give proper notice before entering the property.
- To meet gas, electricity and other safety requirements in the property.
- To maintain the property's structure and exterior.
- To follow the correct legal procedures if they want you to leave.
- To register with their local council.
- To have an Energy Performance Certificate for the property.
- To allow adaptations for disabled people, within reason. Your local council may be able to provide support through the 'scheme of assistance'.
- To ensure the property meets the Repairing Standard.
- To take action to address any antisocial behaviour by their tenants in and around the property.
- To register any deposit with an approved tenancy deposit scheme.
- To give you this Tenant Information Pack.

4.3 Role of letting agents

If a letting agent acts for your landlord, they may be responsible for arranging your tenancy's day-to-day maintenance and repairs, and taking your rent payments. However, your contract is with your landlord. This is why your landlord's name and address must appear on your tenancy agreement.

Any legal action arising from your tenancy (for example, over the return of your deposit) would be raised against your landlord, not the letting agent. Also, your landlord is legally responsible for ensuring that all safety regulations are met.

Tenancy fees

It is against the law for a landlord – or a letting agent acting on their behalf – to charge or receive any premium or require the making of any loan as a condition of granting, renewing or continuing your tenancy. The landlord or their letting agent may charge only rent and a refundable deposit of two months' rent at the most.

The meaning of 'premium' includes any fine or other sum and what the law calls any other 'pecuniary consideration' (e.g. money that has to be paid in the present or in the future). It includes a service or administration fee or charge. It excludes, however, charges connected to the UK Government's Green Deal that are attached to a privately rented property. More information on the Green Deal can be found at www.scotland.gov.uk/tenant/info/forms.

4.4 Harassment and unlawful eviction

If your landlord tries to physically remove you from the property without a court's permission, they are committing a criminal offence regardless of the circumstances. Your landlord must follow the formal legal process set out in section 1 of this pack to recover possession of their property. If you do not leave voluntarily, the landlord must obtain a Decree for Eviction from the Sheriff Court. If the landlord obtains such a decree, the actual eviction must be done by Sheriff Officers, not the landlord or their agents.

If your landlord has physically removed you from your rented home or threatened to do so, you should report the matter to the Police.

As a tenant of a privately rented property, the law protects you against harassment and unlawful eviction in two ways:

- by making harassment and unlawful eviction criminal offences, and
- by enabling you to claim damages through the courts.

The law against harassment applies to everyone living in residential property. This means the law protects you whether you have a full tenancy or some other right of occupation or occupancy agreement. It applies if your landlord personally harasses or evicts you unlawfully, or if somebody else does it for them. Related to this, your landlord has no right to use retained keys to enter the property without your permission, except in an emergency.

The Scottish Government booklet 'Protection against Harassment and Unlawful Evictions' (www.scotland.gov.uk/tenant/info/forms) provides full details of private tenants' rights on these matters.

4.5 Tenancy deposit schemes

A tenancy deposit scheme is an independent third-party scheme approved by the Scottish Government to hold and protect your deposit until the landlord needs to repay it at the end of the tenancy.

How do tenancy deposit schemes work?

All landlords who receive a deposit, and who must register in the local council's register of landlords, must comply with the tenancy deposit scheme regulations. Your landlord must give you information on the circumstances in which they may withhold your deposit and give you details of the scheme protecting it.

Once you pay the deposit to your landlord or letting agent, your landlord must give it to an approved deposit scheme to hold in a designated account. Your landlord must ensure the deposit remains with an approved scheme until it is due to be repaid after the end of the tenancy. You may apply to a Sheriff Court for sanctions against your landlord for failing to comply with the regulations. If the Sheriff decides your landlord has failed to comply, they can order the landlord to pay you up to three times the deposit amount. They may also order that your landlord sends the deposit to an approved scheme or provides the missing information.

How will I get my deposit back at the end of a tenancy?

Your landlord should apply to the scheme for repayment of the deposit after the end of the tenancy, giving details about how much of the deposit should be repaid to you. If this does not happen, you can also apply for repayment.

The scheme will write to you, asking you to say whether you agree with the landlord's application, or whether you wish to dispute the amount. If you agree with the landlord's application, the scheme will repay the deposit accordingly.

If you disagree with the amount of deposit your landlord has applied for, you can ask for the dispute to be referred to an independent adjudicator. Before this can happen, the scheme must be sure you have tried to resolve the dispute with your landlord. The adjudicator will decide how the deposit should be repaid, based on evidence from you and your landlord.

How long will it take to get my deposit back?

If you agree with the landlord's application, the deposit will be repaid in five working days. The return of deposits may take longer if the amount is disputed or if one of the parties cannot be contacted or does not cooperate.

You can read more about tenancy deposit schemes on the Scottish Government website: www.scotland.gov.uk/privaterenting

4.6 Antisocial behaviour – tenant and landlord obligations

Tenants

Everyone has the right to live safely and peacefully without worrying about being annoyed or harassed. Antisocial behaviour means behaviour that causes or is likely to cause fear, alarm or distress. If you act in a way that causes nuisance or annoyance and stops people enjoying the peaceful occupation of their home, this may be considered antisocial behaviour. These actions include, but are not limited to:

- persistent, excessive noise;
- verbal or physical abuse of neighbours;
- racial or sexual harassment;
- vandalism in the neighbourhood or damaging neighbours' property; or
- drug abuse or selling drugs.

You are also responsible for the behaviour of family or friends visiting your property. Your landlord may take action against you if you have broken a clause in the tenancy agreement, which refers to antisocial behaviour.

If you are affected by other people's antisocial behaviour, you should keep a written record of the incidents, with dates and times. Depending on the seriousness of the situation and how badly it affects you, you should contact the Police or your nearest Citizens Advice Bureau. Your local council's Antisocial Behaviour Team should also be able to give you more information on these issues.

Landlords

Landlords also have a responsibility to prevent their tenants behaving in an antisocial way in and around their homes. This means that if tenants are acting in a way that causes or is likely to cause alarm, distress, nuisance or annoyance to anyone living near their home, the landlord must take action. Steps landlords can take include:

- investigating complaints about their tenants' behaviour;
- writing to tenants to explain that their behaviour is causing concern and asking them to modify it;
- giving advice on noise reduction;
- asking the council to apply for an Antisocial Behaviour Order for the tenants;
- going to court to get an interdict to prevent the tenants behaving in a certain way; and
- threatening to evict the tenants.

If a landlord's attempts fail, they can ask the council for help to address the antisocial behaviour. However, if a landlord does not try to stop the antisocial behaviour, the local council can serve an Antisocial Behaviour Notice on the landlord ordering them to take specific action to deal with the problem. If the landlord does not do what the Antisocial Behaviour Notice says, the council can ask a court to stop rent payments to the landlord and give the council control of the property.

5 Further advice and support

General advice

Citizens Advice Scotland
Gives you details of your local Citizens Advice Bureau which can help with money, legal, consumer and other problems. Tel: 0808 800 9060 www.cas.org.uk

Energy Saving Trust

Gives independent help and advice on how to save energy in the home. Tel: 0800 512 012
www.energysavingtrust.org.uk/scotland

Office of the Gas and Electricity Markets (Ofgem)

Protects the interests of gas and electricity consumers.
Tel: 0141 331 2678 www.ofgem.gov.uk

Housing advice

Shelter Scotland

Offers advice, information and advocacy to tenants in privately rented housing.
Tel: 0808 800 4444 www.shelterscotland.org

Private Rented Housing Panel

Provides tenants with a way of enforcing the Repairing Standard and, for some tenancies, setting reasonable rents.
Tel: 0141 242 0142 www.prhpscotland.gov.uk

Safety advice

Gas Safe Register

Offers gas safety advice and can take action to ensure that gas appliances in your property are safe.
Tel: 0800 408 5500 www.gassaferegister.co.uk

Health and Safety Executive

Provides a range of health and safety advice.
www.hse.gov.uk/contact

Electrical Safety Council

UK charity that provides electricity safety advice for the home.
Tel: 0131 445 4690 www.esc.org.uk

Landlord and letting agent representatives

Scottish Association of Landlords

Represents the interests of landlords and letting agencies in Scotland.
Tel: 0131 564 0100
www.scottishlandlords.com

Scottish Land and Estates

Represents the interests of rural landlords in Scotland.
Tel: 0131 653 5400
www.scottishlandandestates.co.uk

Landlord Accreditation Scotland

Provides you with information on accommodation which is managed by an accredited landlord.
Tel: 0131 553 2211
www.landlordaccreditationscotland.com

National Landlords Association

An association for private landlords in the UK.
Tel: 020 7840 8900 www.landlords.org.uk

Association of Residential Letting Agents

An association for registered letting agents.
Tel: 0844 387 0555 www.arla.co.uk

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