

Private residential tenancies: information for landlords

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Guidance for private sector landlords on the Private Housing (Tenancies) (Scotland) Act 2016. This information is about the private residential tenancy that will apply to any new tenancy created from December 2017.

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

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Renting out property without being registered with the council is a criminal offence and you can be served with a Rent Penalty Notice (which prevents you from charging your tenant rent) or fined up to £50,000 if found guilty. You are registered if you are entered into the [Scottish Landlord Register](#) prepared and maintained by the local council for the purposes of Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004.

Overview

The [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#), which will take effect from 1 December 2017, will introduce the 'private residential tenancy'. Its purpose is to improve security for tenants and provide safeguards for landlords, lenders and investors.

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

Improvements for landlords include:

- no more confusing pre-tenancy notices, such as the [AT5](#)
- where a tenant is in rent arrears, a landlord can refer a case for repossession more quickly
- a Scottish Government recommended 'model tenancy agreement', which will include standardised tenancy terms
- a digital version of the Scottish Government 'model tenancy agreement', which will include discretionary terms that can be edited, allowing landlords to easily put together and send out a tenancy agreement suitable for their specific property
- one simple notice when regaining possession of a property called a 'notice to leave' – this will replace the current 'notice to quit' and 'notice of proceedings'
- eighteen modernised grounds for repossession, which include new grounds where the property has been abandoned or the landlord intends to sell

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

Private residential tenancies

After the 2016 Act comes into force, any new tenancy you grant will be a private residential tenancy as long as:

- the property is let to a person 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
- the tenant lives in it as their only or main home
- the tenancy isn't excluded under [schedule 1 of the 2016 Act](#)

Your tenant will have the protections of a private residential tenancy, even if you give them a tenancy agreement for any other type of tenancy.

If you issue a tenancy agreement for any other type of tenancy, parts of it may not be enforceable.

You must provide your tenant with written terms and conditions

You must give your tenant a written copy of all the terms of their tenancy. This may be in the form of an electronic document.

If it's a new tenant, you have to give them this document before the end of the day on which the tenancy starts.

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

If the terms of the tenancy change after it's started, you must give your tenant 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 the tenancy state that pets are not permitted in the let property and you subsequently agree that your tenant can keep a dog, this would be a change to a term of the tenancy and you would be required to provide your tenant with a document outlining this change.

You can't charge your tenant for providing written tenancy terms or any other information which you have a statutory duty to provide.

We're currently finalising a digital Model Private Residential Tenancy Agreement which you can use to provide your tenant with the written terms of their tenancy. The model agreement will contain mandatory and discretionary tenancy terms and easy-to-read notes which outline the tenancy terms in plain language. It's a simple, convenient, online tool which will help you meet your legal obligation to provide your tenant with all the written terms of their tenancy. It will ensure that you and your tenant's rights and responsibilities are properly covered and will save you time and money.

The digital Model Private Residential Tenancy Agreement will be available shortly. In the meantime, you can view the [mandatory and discretionary terms](#).

Because the new tenancy is not subject to the Requirements of Writing (Scotland) Act 1995, you and your tenant can agree to 'sign' the tenancy agreement simply by typing your names in the electronic document and sending it by email. You and your tenant can still sign a paper copy of the tenancy agreement if you prefer to do this instead.

Communication

You and your tenant can agree to communicate by email on all matters relating to the tenancy. This would include important notices, such as notices to tell the tenant that you are putting their rent up, or that you are evicting them.

It is important that you and your tenant both consider whether email is the most suitable way to communicate this information. If a tenant does not use email regularly, they might not see important notices when you send them. If a tenant doesn't want to receive notices and other communications from you by email, they do not have to agree to this.

You must provide your tenant with specified information relating to their tenancy terms

You must provide your tenant with specified information relating to their tenancy terms, which will help them to understand their rights and responsibilities during the tenancy. This information is set out in regulations.

If you use the Scottish Government's online Model Private Residential Tenancy Agreement, [the notes you must give to your tenant will be automatically provided](#). They explain in plain language all the standard clauses in the tenancy agreement.

If you do not use the Model Private Residential Tenancy Agreement, you must give your tenant a copy of the '[Private Residential Tenancy Statutory Terms Supporting Notes](#)'. This will give them information in plain language about the nine tenancy terms which the law requires you to include in any private residential tenancy agreement you use. This document will be available on the Scottish Government website.

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

Your tenant can make an application to the [First-tier Tribunal](#) if you don't give them:

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

Before your tenant can apply to the Tribunal, they have to give you 28 days' notice. If you provide your tenant with all of the missing information before the 28-day notice period expires, your tenant will be unable to make an application to the Tribunal for the missing information.

The notice period begins on the later of:

- the day you receive the notice from your tenant
- the day after the deadline by which you should have given your tenant the information

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

- three months' rent if you haven't provided tenancy terms or haven't provided the specified information relating to their tenancy terms
- six months' rent if you haven't provided either

If you aren't a registered landlord

If the First-tier Tribunal discovers that you're unregistered, they have to report it to the local council for the area the property is located in. You are registered if you are entered into the [Scottish Landlord Register](#) prepared and maintained by the local council for the purposes of Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004.

The Tribunal will have to pass your name, your 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 you can be served with a Rent Penalty Notice (which prevents you from charging your tenant rent) or fined up to £50,000 if found guilty.

Your tenant's responsibilities

Under the 2016 Act, your tenant has new responsibilities around access for repairs and people living with them.

Access for repairs

If you need to access the property you should always give your tenant at least 48 hours' notice.

You don't have to give 48 hours' notice if you need access to the let property urgently to carry out work or assess what work you are obliged or entitled to carry out. You should not enter the property without the tenant's consent, except in an emergency.

Your tenant must give you reasonable access to the property. This includes letting you:

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

Residents living in the property

Unless you agree it in writing, your tenant must not:

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

Your tenant may have other people living with them in the property – like a partner, family member or carer.

They have to tell you in writing about any person who is:

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

The tenant must tell you their name and what their relationship is to the tenant. They also have to let you know if that person moves out.

Rent and other charges

The 2016 Act tells you how you can increase the rent and what other charges you can make.

If your tenant makes any rent payments in cash, you have to give them a written receipt saying how much was paid and how much they still owe you.

Increasing the rent

If you want to increase the amount of rent your tenant pays you, you have to give at least three months' written notice before you can do it. You must use the correct form to give your tenant notice of a rent increase – it's called a 'landlord's rent-increase notice to tenant(s)'.

The notice period begins on the date the tenant gets 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 you send the rent increase notice to your tenant by post or email, you must allow the tenant 48 hours to receive it. This delivery time should be factored into the amount of notice you give your tenant.

Example 1

If you send your tenant a rent increase notice by recorded delivery post on 23 January, they 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.

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

If your tenant disagrees

If your tenant thinks the rent increase is too high, they are allowed to contact a rent officer within 21 days of getting your notice.

They must tell you if they are doing this.

The rent officer has the power to decide what the rent for the property should be and can vary the rent up or down.

If you or your tenant 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 or be higher or lower. If you want to appeal to the Tribunal, you must do this within 14 days of the rent officer's decision.

Illegal charges

Other than the rent, you can ask your tenant to pay a refundable deposit.

This deposit can be no more than two months' rent.

It's an offence to make your tenant pay any other:

- administration fees
- premiums

- further deposits
- additional charges, whether they're refundable or not

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.

Applying for additional rent to reflect improvements

If your property is in a rent pressure zone, you can apply to a rent officer for an additional amount of rent to reflect any improvements you 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 the tenant

After you apply to the rent officer, they will send a copy of the application to your tenant. They will have 14 days to respond.

Before the rent officer decides on the amount you can add to the rent, they will send you and the tenant a draft of the proposed decision.

If you want to respond to this, you have 14 days. Your tenant will then get a copy of your response, and 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 either you or the tenant wishes to end the tenancy.

If your tenant wants to end the tenancy

Your tenant has to give you at least 28 days' notice in writing if they want to end the tenancy (unless they ask for shorter notice and you agree in writing).

The notice period will begin on the day you get the notice from your tenant, and ends 28 days after that date.

Your tenant can only give you notice to leave once he or she has started to live in the let property. Your tenant's notice has to be given 'freely and without coercion'. This means you must not have pressured or persuaded your tenant into leaving.

If your tenant gives you notice but then changes their mind before it ends, they can ask you to continue the tenancy instead. It's up to you 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 you want to end the tenancy

You can only end the tenancy by using one of the [18 grounds for eviction](#). If you decide you want to end the tenancy, you must serve your tenant a notice to leave document, which will tell them how long they have to move out.

When you give your tenant notice to leave, you must tell them what eviction ground you are using. You can also provide any evidence you have to support the ground.

To end a joint tenancy, you must serve notice to leave on all of the joint tenants.

Notice needed

The amount of notice you have to give your tenant will depend on how long they've lived in the property and the grounds you're using to evict them.

You must give at least 28 days' notice if they have lived in the property for six months or less, regardless of what eviction ground you are using.

Regardless of how long the tenant has lived in the property, you must give at least 28 days' notice if you 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 you apply to the Tribunal for an eviction order
- tenant has a relevant criminal conviction
- tenant has engaged in relevant antisocial behaviour
- tenant associates with a person who has a relevant conviction or has engaged in relevant antisocial behaviour

You must give at least 84 days' notice if they have lived in the property for more than six months, and you aren't relying solely on any of the grounds listed above.

Sending notice by recorded delivery, post or email

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

Example case

If you're required to give your tenant 28 days' notice and you send the notice to leave by recorded delivery post on 23 January, your tenant 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.

If your tenant chooses not to leave the let property as soon as his or her notice period has expired, the earliest date that you can submit an application to the Tribunal for an eviction order is 22 February.

Getting an eviction order

If you give your tenant a notice to leave and they don't move out as soon as the notice period ends, you can apply to the [First-tier Tribunal](#) for an eviction order.

When you apply for an eviction order you must give the First-tier Tribunal a copy of the 'notice to leave' you gave the tenant, stating which of the grounds for eviction you gave them.

You can only make an application for an eviction order if it's been no more than six months since the notice you gave your tenant expired.

If you want to apply to the First-tier Tribunal to evict your tenant, you also have to tell the local council responsible for where the property is located — in case your tenant becomes homeless. There is a [specific form \(PDF\)](#) which you must use for this.

Sub-tenants

If your tenant has a sub-tenant, the sub-tenant will be protected from eviction unless the tenant is evicted [using certain grounds](#).

A sub-tenant is someone who is legally renting your property from your tenant.

If you want to bring a sub-tenancy to an end, you have to give the sub-tenant a 'sub-tenancy notice to leave', which includes a copy of the 'notice to leave' you gave your tenant.

You must give the sub-tenant at least 28 days' notice if they've lived in the property for six months or less, or 84 days' notice if they've lived there for more than six months.

Grounds for eviction

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

If your tenant refuses to leave you 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, the tenant must leave the property.

1. Landlord intends to sell the let property

This ground applies if you plan on putting the let property up for sale within three months of the tenant moving out.

You'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 mortgage lender wants to repossess the property and sell it.

3. Landlord intends to refurbish the let property

This ground applies if you want to carry out major works to the let property that are so disruptive that the tenant wouldn't be able to live there at the same time.

Example of evidence could include planning permission, or a contract between you and an architect or a builder for the work to be carried out.

4. Landlord intends to live in let property

This ground applies if you want your tenant to move out of the property so that you or your joint landlord 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 you are going to do.

5. Landlord intends to use the let property for non-residential purpose

This ground applies if you want the tenant to move out so you can use the property for something other than a home.

Evidence could include planning permission that will let you 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 your tenant is convicted of an offence punishable by imprisonment that involved them either:

- using the property for illegal reasons
- letting someone use the property for illegal reasons
- committing a crime within or near the property

You have to apply to the Tribunal within a year of your tenant getting the conviction, unless you 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 the main or only home of your tenant or a legal sub-tenant.

This doesn't count if you've failed your duty to keep the property in good repair and the tenant has had to move out for their 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 will issue an eviction order.

9. Landlord's family member intends to live in the let property

This ground applies if a member of your family plans to move into the property as their only or main home for at least three months.

Members of your family who qualify for this are:

- someone you're married to
- someone you're in a civil partnership with
- someone living with you as though they were married to you
- 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 spouse, civil partner or person living with you as though you were married
- the spouse or civil partner of any family members listed above, or someone living with them as though they were married

You need evidence for this ground. This could include an affidavit stating that this is what your family member intends to do.

10. Tenant no longer needs supported accommodation

This ground applies if the tenant moved in because they had a need for community care and they've since been assessed as no longer having that need.

11. Tenant has breached a term of the tenancy agreement

This ground applies if the tenant hasn't complied with one or more of the terms of tenancy.

This doesn't apply to cases where the tenant hasn't paid their rent (known as 'rent arrears') – there's a separate ground for this.

12. The tenant has engaged in relevant antisocial behaviour

This ground applies if the tenant has 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, you have to apply to the Tribunal within a year of the conviction or behaviour taking place, unless you 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 your tenant allows someone into their 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
- a lodger of the tenant
- someone the tenant lets into the property on more than one occasion

To use this ground, you have to apply to the Tribunal within a year of the conviction or behaviour taking place, unless you have a reasonable excuse.

14. Landlord has had their registration refused or revoked

This ground applies if you aren'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 you in the register
- removed you 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 you 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 the tenant has been in 'rent arrears' (has owed rent payments) for three or more months in a row.

If the tenant still owes 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 the tenant owes less than a month's rent (or is 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 the tenant 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 you let the tenant move in because they were an employee of yours or were expected to become one, and now they aren't.

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

- you apply within 12 months of the tenant no longer being an employee
- the tenant never became an employee and you apply within 12 months of the tenancy starting

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

- you apply on or after the date 12 months after the tenant stopped being an employee
- the tenant never became an employee but you apply on or after the date 12 months after the tenancy started

Wrongful termination orders

If your tenant has left the property and they think they have been misled into leaving the property, they can apply to the First-tier Tribunal for a 'wrongful termination order'.

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

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

If you get a wrongful termination order, you'll be told to pay the tenant who applied a payment of no more than six months' rent.

If you're a joint landlord with other people, the Tribunal may make the order against all, some or only one of you. If the Tribunal makes a wrongful termination order, they must also send a copy to any local council where you are registered as a landlord.

Existing tenancies

On the date the new tenancy comes in to force, any existing short assured or assured tenancy will continue until either the tenant or you bring it to an end by serving notice to quit the let property. If your tenant's short assured tenancy is renewing on a contractual basis, this can continue to renew under the Housing (Scotland) Act 1988 until either you or the tenant bring it to an end by serving notice to quit the let property. For information about other types of tenancy, see ['Being a Landlord in Scotland'](#) on the mygov.scot site.

Sources of advice and support

If you are unsure of your rights and responsibilities as a landlord 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.

If you've not already done so, you may wish to consider joining a membership organisation that offers support and advice to landlords, such as the [Scottish Association of Landlords](#).

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