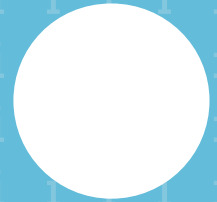




The Scottish
Government



Private Renting

INFORMATION FOR LANDLORDS



Private Renting - Information for Landlords

If you are a private landlord or thinking about becoming a landlord in Scotland, this leaflet gives you some information about your key responsibilities and things you must do before renting out your property.

These requirements apply whether or not you use a letting agent. In some cases your agent will take care of some of the requirements for you, but as you are still legally responsible as the landlord, you should check that your agent is following the correct procedures.

The requirements also apply to most types of private tenancy, such as short assured tenancies, assured tenancies, regulated tenancies and in most cases to tied accommodation (where an employer provides accommodation for their staff). However, in many cases they don't apply if you have a lodger living with you in your home. They also do *not* apply if you are letting your property as holiday accommodation.

If you are unsure, please seek legal advice on the requirements in your own particular circumstances.

More detailed information and advice can be found at the Better Renting website:
www.betterrentingscotland.com

**All private landlords
in Scotland are required
to register with the local
authority (or authorities)
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be, renting out property.**

Landlord Registration

Since 30 April 2006, all private landlords in Scotland are **required to register with the local authority** (or authorities) where they are or will be renting out property. It is a criminal offence to rent out your property without having submitted a valid application for registration.

Before approving your registration, the local authority will need to consider whether you are a 'fit and proper' person to act as a landlord. In the vast majority of cases, registrations will be approved. However, the local authority will consider any evidence that a landlord has acted unlawfully which might lead to significant concerns about a person's ability to be a landlord. This could include, for example, criminal convictions or persistent complaints from tenants about bad practice.

Your registration will be valid for three years from the date the local authority approves your application. After three years, you will be required to apply to renew your registration.

Your registration will be valid for three years from the date the local authority approves your application.

For more information about how to register, see the landlord registration website: **www.landlordregistrationscotland.gov.uk/** or contact your local authority's landlord registration team (you will find the authority's central switchboard number in the phone book).

HMO Licensing

In addition to being registered, if you are **planning to rent your property out to three or more people** who are not in the same family you will also need a Houses in Multiple Occupation (HMO) licence *before* you can rent out your property (for example, this often applies to properties rented to students, young professionals, migrant workers or tied accommodation).

To get an HMO licence, you need to apply to the local authority which covers the area where the HMO property is located. Before granting a licence, the local authority will inspect the property and ensure that it is safe and suitable for the proposed number of tenants and they will also make sure that you (or your agent, if you use one) follow appropriate management practices. The local authority also needs to take account of any complaints from local residents about the property being an HMO.

The Repairing Standard

Since 3 September 2007, a new Repairing Standard has come into force under the Housing (Scotland) Act 2006. This applies to most private rented sector tenancies and means that you must ensure that:

- ▶ **the property is wind and water tight and reasonably fit for human habitation;**
- ▶ **the structure and exterior of the house are in reasonable repair and proper working order;**
- ▶ **the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in reasonable repair and proper working order;**
- ▶ **any fixtures, fittings and appliances provided under the tenancy are in reasonable repair and proper working order;**
- ▶ **any furnishings provided under the tenancy are capable of being used safely for the purpose for which they are designed; and**
- ▶ **there is satisfactory provision for detecting and giving warning of fires.**

In most cases, rented properties should already meet these basic requirements. However, as a landlord you need to check before the start of a tenancy that the property meets the requirements. If it does not, you need to arrange for appropriate repairs to be carried out.

You also need to inform your tenants about the Repairing Standard at the start of each tenancy. If a tenant informs you of a problem with the property, or you become aware of this in some other way, then you should carry out the repairs required to meet the standard as soon as possible.

If your tenant has notified you about the need for repairs, but you have not carried out the necessary repairs within a reasonable time, they can choose to refer the matter to the Private Rented Housing Panel (PRHP).

If members of the PRHP think that you are not meeting your legal obligations, they have the power to issue a Repairing Standard Enforcement Order to make you do the work. It is a criminal offence to ignore an Order if you get one.

Further information about the Repairing Standard and copies of the Advice Pack for Landlords are available on the PRHP website at www.prhpscotland.gov.uk.

In addition to the Repairing Standard, you are also required under health and safety legislation to get a **gas safety certificate** once a year from a CORGI-registered gas engineer.

If your property is in a tenement, agreeing with neighbours to fund communal repairs may be an issue. For further information about this, please see the Scottish Consumer Council guide *Common Repairs, Common Sense*, available on the Communities Scotland website at:

www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/hmcs_006465.pdf

The Right to Adapt

Your tenant has a right to make changes to your property in two situations:

- ▶ Where the tenant wants to adapt the house to make it suitable for a disabled occupant.
- ▶ When the tenant is eligible for a government scheme to install central heating or energy efficiency measures.

The tenant must ask for your consent, but you must not refuse this unreasonably or attach unreasonable conditions. You do not have to organise or pay for the works unless you want to.

Other Requirements

You should make sure that you have adequate Buildings (and where appropriate also Contents) Insurance for your property.

In addition, you will need to pay income tax on your rental income. For further information about taxation issues for landlords please see **Her Majesty's Revenue and Customs** (HMRC) website at www.hmrc.gov.uk/ for information about what landlords can get tax relief for and how to complete your tax return.

Management Standards

For more information about good practice in managing a tenancy, see Communities Scotland's *Scottish National Core Standards and Good Practice Guidance for Private Landlords* or look at the Better Renting website.

Scottish National Core Standards -
www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/hmcs_017006.pdf

You can also join an accreditation scheme or a landlord organisation to get more advice on being a reputable landlord. In addition, local authorities can also offer advice. However, if in doubt, it is always best to seek legal advice.

Procedures at the Start of a Tenancy

Most tenants in the private rented sector have a short assured tenancy or an assured tenancy.

If you want the tenancy to be a **short assured tenancy**, you should let the tenant know before signing the tenancy agreement by giving them notice of this (called an AT5 form). The form is available at: www.scotland.gov.uk/housing/leaflets/at5-00.asp

For either of these tenancies, you are required under the Housing (Scotland) Act 1988 to provide the tenant with a written tenancy agreement setting out the terms of the let. The tenancy agreement should set out in clear, fair and lawful terms at least the following information:

- the name and address of the landlord and/or agent;
 - the rent level and how and when the rent should be paid. It should also set out information about the review period if you may plan to increase the rent in future;
 - a list of any bills the tenant will be responsible for paying e.g., Council Tax, gas, electricity, phone, etc.
- a statement of the landlord's and the tenant's respective responsibilities for repairs and maintenance of the property;
 - a statement about the standard of cleaning and the condition you expect the property to be kept in during the tenancy (you should allow for reasonable wear and tear);
 - a statement that the tenant must not engage in any antisocial behaviour and that any evidence of such behaviour will be considered as a breach of the agreement;
 - the duration of the tenancy (the statutory minimum period for a short assured tenancy is six months, but you can make the term of the tenancy longer if you wish). You should state how much notice the tenant should give you if they want to move out and also how much notice you will give the tenant if you want them to move out.

If you ask your tenant for a deposit at the start of the tenancy, you should also make clear in the tenancy agreement under what circumstances the tenant's deposit may be withheld at the end of the tenancy. In addition, an inventory should be prepared at the start of the tenancy. The tenant should be given time to check and agree the inventory.

To be properly executed, the landlord (or agent) and tenant must sign the tenancy agreement and it also needs to be witnessed by someone else and the witness should include their address. You are not permitted to charge tenants for the tenancy agreement or for reserving the accommodation in advance.

By law, you are required to follow certain procedures if you want your tenant to move out.

Procedures for Ending a Tenancy

By law, you are required to follow certain procedures if you want your tenant to move out. These procedures will vary according to the type of tenancy your tenant has so you should check the legal requirements. However, for a short assured or assured tenancy, the procedure is as follows:

- ▶ You need to give the tenant reasonable **Notice to Quit** in writing. For a **short assured tenancy**, you should also send a *Section 33 Notice* with your Notice to Quit. This is a notice that tells the tenant that possession is being sought (under section 33 of the Housing (Scotland) Act 1988) on the grounds that the tenancy is a short assured tenancy. The tenant must be given **at least two months' notice**.

If the tenant has been in the property for less than six months, you normally have to allow the tenant to stay in the property at least until they have been there for six months. However, if you believe you have grounds for seeking possession (e.g. the tenant is not paying their rent or they are causing antisocial behaviour) then you can still start to seek repossession before the six month minimum period is up.

- ▶ For an **assured tenancy**, the minimum *Notice to Quit* period is **at least four weeks' notice** if the tenant pays rent either weekly, fortnightly or monthly.
- ▶ For an **assured tenancy**, you also normally need to give your tenant a ***Notice of Proceedings*** to tell them that you plan to go to court to get a court order granting you possession of your property, although in some circumstances the Sheriff may still grant possession if you have not issued this *Notice of Proceedings* where he or she thinks this is reasonable.
- ▶ Under a **short assured tenancy**, it is also recommended that you issue a *Notice of Proceedings* if you think the tenant may be unwilling to leave.

Depending on the grounds for seeking possession, you will need to give the tenant either at least two weeks' or two months' notice before you apply to the court for a court order (see section 19(4) and Schedule V of the Housing (Scotland) Act 1988 to find out what time period applies to your circumstances). However, note that you can give the tenant the *Notice of Proceedings* at the same time as the *Notice to Quit* if you want to.

See the Housing (Scotland) Act 1988 for more information on assured and short assured tenancies:
www.opsi.gov.uk/acts/acts1988/ukpga_19880043_en_1

A copy of the *Notice of Proceedings* form (called an AT6 form) is available on the Scottish Government website at www.scotland.gov.uk/housing/leaflets/at6-oo.asp

See also the leaflet on Assured and Short Assured Tenancies for further information about the required notice periods and grounds for seeking a court order for possession:
www.scotland.gov.uk/housing/leaflets/atsy-oo.asp

You need to give the tenant reasonable Notice to Quit in writing. For a short assured tenancy, the tenant must be given at least two months' notice.

If the tenant refuses to leave the property, you will then need to apply to the court to get a court order from the Sheriff. You should seek legal advice about this.

If you do raise court proceedings, from early 2008 onwards, you will be required under section 11 of the Homelessness (Scotland) Act 2003 to **inform the appropriate local authority**. This is so that, if needed, the local authority can help your tenant to find somewhere else to live. Guidance will be issued on how to do this, but in the meantime please speak to your local authority for further information.

If you evict a tenant by forcing them to leave against their will without first getting a court order or harass them to try to make them leave, then you could be prosecuted for **illegally evicting** or **harassing** your tenant. This is a criminal offence and you could be fined, required to pay damages to your former tenant and even, in some extreme cases, sent to prison for up to six months. Therefore, it is important to seek legal advice or contact an advice agency or your local authority private rented sector team if you are unsure of your responsibilities to make sure you are acting lawfully.

Return of Deposits

When the tenant leaves, you should do an inventory check. The tenant should be invited to attend if they wish.

You should aim to return the tenant's deposit to them as soon as possible after the end of the tenancy. If you feel that money should be deducted from the deposit for e.g., damage caused or cleaning needed, then you should give the tenant a written statement detailing the deductions being made. You should allow for reasonable wear and tear and take account of depreciation in the value of damaged furniture (e.g., if a damaged sofa was already ten years old, then it is not fair to charge the tenant the full cost of a new one).

If the tenant does not agree with the deductions you have made, you should discuss this with the tenant to try to reach an agreement. If you are for example a member of an accreditation scheme, you may be able to access a mediation service, where someone will help you and your tenant to resolve the dispute. In addition, the Scottish Association of Landlords provides free advice to landlords who are worried about a deposit dispute on their deposit advice line - 0131 270 4774.

Suggested Contacts

See **www.betterrentingscotland.com** for a range of information about private renting.

Your **local council** may have a private rented sector officer who can help you (see the phone book or search online for your local authority's contact details).

You can find your nearest **Citizens Advice Bureau** in your telephone directory or online at: **www.cas.org.uk** – they can provide you with independent advice and assistance.

Alternatively you can call **Shelter's** free helpline on 0808 800 4444 or see their website **www.shelter.org.uk**. They provide advice to landlords as well as tenants.

You can find a suitable **solicitor** near you by contacting the Law Society of Scotland, online at **www.lawscot.org.uk/find**, from Yellow Pages at **www.yell.com**, or at the address below:

Law Society of Scotland
26 Drumsheugh Gardens
Edinburgh EH3 7JR
Tel: 0131 226 7411

In addition, **landlord associations**, such as the Scottish Association of Landlords (SAL), the Scottish Rural Property and Business Association (SRPBA) and the National Landlords Association can also offer advice and training to members.

Please note:

This leaflet cannot give an authoritative interpretation of the law; only the courts can do that. Nor can it cover every case. If you are in doubt about your obligations, you should seek advice from a solicitor, your local authority, a Citizens Advice Bureau or Shelter.

Further copies of this document are available, on request, in audio and large print formats and in community languages, please contact: 0131 244 5528

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