



# The private residential tenancy

Private residential tenancies replaced assured and short assured tenancies on 1 December 2017 for all new tenancies, so any tenancy that started on or after 1 December 2017 will be a private residential tenancy.

These new tenancies brought changes and improvements to the private rented sector, including:

- ◆ No more fixed terms - private residential tenancies are open ended meaning your landlord can't ask you to leave just because you've been in the property for a given amount of time.
- ◆ Rent increases - can only occur once every 12 months (with 3 months notice) and are confined to certain limits – see heading rent increases.
- ◆ Longer notice period - if you've lived in a property for longer than 6 months your landlord will have to give you at least 84 days notice to leave (unless you've broken a term in the tenancy). Notice is 28 days if less than 6 months in the property.
- ◆ Simpler notices - the notice to quit process has been scrapped and replaced by a simpler notice to leave process.
- ◆ Model tenancy agreement - the Scottish Government have published a model private residential tenancy that can be used by landlords to set up a tenancy.

## Assured/short assured tenants

If you were already renting and were an assured or short assured tenant on 1 December 2017, your tenancy continues as normal (i.e. automatically renews itself at end of stated period) until you or your landlord ends it, following the correct procedure. Any further tenancy offered by your landlord must be a private residential tenancy.

You can also come to an agreement with your landlord to change the tenancy from an assured/short assured tenancy to a private residential tenancy at any time.

## What is a private residential tenancy?

A private residential tenancy is one that meets the following conditions:

- ◆ the tenancy started on or after 1 December 2017
- ◆ the property is let to you as a separate dwelling (home)
- ◆ you must be an individual, meaning not a company
- ◆ it's your main or only home
- ◆ you must have a lease (although a written agreement is not needed for a lease to exist)
- ◆ it is not an exempt tenancy as listed below.



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## Tenancy agreements

All new private residential tenancies have the right to a tenancy agreement from the day the tenancy starts.

If your tenancy has been converted to a private residential tenancy then you should be given an agreement within 28 days of the start of the tenancy.

The Scottish Government has published a model tenancy\* that your landlord can use to set up a tenancy. This tenancy agreement contains certain statutory (legally binding) terms that outline both parties rights and obligations. These include

- The tenant's and landlord/letting agent's contact details
- The address and details of the rented property
- The start date of the tenancy
- How much the rent is and how it can be increased
- How much the deposit (no more than two month's rent) is and information about how it will be registered and protected
- Who is responsible for insuring the property.
- The tenant has to inform the landlord when they are going to be absent from the property for more than 14 days
- The tenant will take reasonable care of the property
- The condition that the landlord must make sure the property is in, including the repairing standard.
- That the tenant must inform the landlord the need of any repairs.
- That the tenant will give reasonable access to the property, when the landlord has given at least 48 hours notice
- The process that the tenancy can be brought to an end
- The tenant should inform the landlord if new occupiers over 16 come to stay long term.

\*If your landlord uses the Scottish Government's' model tenancy they should also give you the 'Easy Read Notes' which will explain the tenancy terms in plain English.

If your landlord does not use the model tenancy they must give you a copy of the Private Residential Tenancy Statutory Terms: Supporting Notes, with your lease agreement.



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## Length of tenancy

Private residential tenancies are open ended and have no set length such as 6 or 12 months.

## Rent Increases

The rent can only be increased once every 12 months and the landlord need to give you 3 months' notice, using a rent increase notice.

If a tenant challenges a rent increase, a rent officer or tribunal will determine the permitted rent increase for the tenancy.

The maximum possible increase is either 6% or 12%, but in many cases, it will be lower than this. While the regulations are in force, the rent officer or tribunal cannot set the rent higher than the landlord's proposed increase.

The permitted increase depends on the percentage gap between:

- The current rent
- The open market rent

If the gap is 6% or less, the rent can be increased up to the open market rent.

If the gap is more than 6%, the increase will be calculated using a formula that keeps the rent under the open market rent. This can be up to a maximum of 12%.

## Challenging a rent increase

To challenge the proposed rent increase, a tenant can refer it to a rent officer by applying to Rent Service Scotland.

This must be done within 21 days of the receipt of the Rent-increase Notice.

The rent officer must determine the rent payable as the lowest of:

- The landlord's proposed rent
- The open market rent
- The permitted rent according to the rent adjudication formula



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The rent officer must then issue a provisional order stating the rent which the rent officer proposes, including any sum attributable to services.

Both landlord and tenant have 14 days from the date this is issued to request a reconsideration. If this is requested, the rent officer must reconsider before making the final order.

The rent officer will then issue an order stating the rent payable from the effective date.

The effective date is either:

Where there is 14 or more days until the date the original increase was due, then the original date still applies.

Where there is less than 14 days until the date the original increase was due, then the effective date is next rent date falling 14 days after the rent officer's decision.

The rent officer may, within 14 days of the final order, remake it for the purposes of correcting any errors.

## Ending the tenancy

A private residential tenancy can be ended by 1 of 3 ways:

- by a tenant giving notice and leaving (see below) or,
- the tenant and landlord reach an agreement to leave,
- or your landlord wants possession of the property and obtains an eviction order from the First-tier Tribunal for Scotland Housing and Property Chamber.

### I want to end my tenancy

If you want to end the tenancy, then you will have to give the landlord 28 days written notice. The notice has to state the day on which the tenancy is to end, normally the day after notice period has expired.

You can agree a different notice period, after the start of the tenancy, with your landlord as long it is in writing. However, if there is no agreed change then 28 days notice will be the minimum required.

### The landlord ends the tenancy

If your landlord wants to end the tenancy it must be done using one of the grounds for eviction. When your landlord gives you notice to leave, they must tell you what eviction ground(s) they are using and may provide evidence to support this. They must use a specific notice called a 'Notice to Leave' to do this.



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The notice period will be 28 days if you have lived in the property for less than six months or 84 days if more than 6 months.

## Grounds for eviction

Your Landlord intends to sell the Let Property

- The Let Property is to be sold by the mortgage lender
- Your Landlord intends to refurbish the Let Property
- Your Landlord intends to use the Let Property for a non-residential purpose
- The Let Property is required for a religious purpose
- You cease to be - or fail to become - an employee of the Landlord
- You no longer need supported accommodation
- You have breached a term(s) of your tenancy agreement
- You are in rent arrears over three consecutive months
- An Overcrowding Statutory Notice has been served on your Landlord

• Your Landlord intends to live in the Let Property

• Your Landlord's family member intends to live in the Let Property

• Your Landlord has had their registration refused or revoked

• Your Landlord's HMO licence has been revoked or renewal has been refused

• You have a relevant criminal conviction

• You have engaged in relevant antisocial behaviour

• You have associated in the Let Property with someone who has a relevant criminal conviction or has engaged in relevant antisocial behaviour

• You are no longer occupying the Let Property



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## Landlord access

You have to allow reasonable access to your landlord to carry out repairs, inspections, or valuations when:

- your landlord has given at least 48 hours' written notice, or
- access is required urgently for the landlord to view or carry out works in relation to the repairing standard

If you refuse access your landlord can make an application to the First Tier Tribunal Housing and Property Chamber who may make an order allowing them access.

### Getting repairs carried out

Your landlord has to keep the property in a condition that is safe to live in. The landlord is also responsible for making sure that the property repairing standard meets the level required by law. Your landlord must give you information on the repairing standard and what you can do if the property does not meet it.

If you want to carry out work on your home, such as redecorating or installing a second phone line, you will need to seek permission from your landlord. Some tenancy agreements will include a clause telling you whether you can carry out this kind of work. However, you should always consult your landlord first.

## Can I sublet or pass my tenancy on to someone else?

You cannot sublet, take in a lodger or pass your tenancy on to someone else before first getting written agreement from your landlord.

## My landlord has died or changed

If this occurs the new landlord will have to honour the terms of your tenancy agreement. A change of landlord does not create a new tenancy, the original contract stays in place This means that the length of time you have lived in the property must be taken into consideration with regards to length of notices given to you



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## The tenant has died

When a tenant dies the tenancy comes to an end, unless somebody living in the property can inherit the tenancy e.g. another named person on a joint tenancy.

Tenancies that are not private residential

Exemptions to private residential tenancies include the following:

- Tenancies at a low rent
- Tenancies of shops
- Licensed premises
- Tenancies of agricultural land
- Lettings to students (meaning purpose built student accommodation)
- Holiday lettings
- Resident landlords
- Police Housing
- Military Housing
- Social Housing
- Sublet, assigned etc. social housing
- Homeless persons
- Persons on probation or released from prison etc.
- Accommodation for asylum seekers
- Displaced persons
- Shared ownership
- Tenancies under previous legislation
- Assured or short assured tenancies
- Charity providing accommodation for veterans
- Charity providing temporary accommodation for care leavers.

Where can I find out more?

The Scottish Government has published a guide called "Private residential tenancies – information for tenants" which is available online.