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PRIVATE RESIDENTIAL TENANCY LANDLORD'S GUIDE

LARN : 1901402

There is a lot for you to consider in renting a property and many different bits of legislation can affect you. The penalties for failing to meet your legal requirements can be high. In this guide we cover some general issues, the property, financial issues and the Private Residential Tenancy. We have prepared this guide to give you general information about some of the points that may arise. If it does not cover any questions you may have please do not hesitate to ask.

The Private Housing (Tenancies) (Scotland) Act 2016 comes into force on 1st December 2017. From that date any new tenancy granted will be a Private Residential Tenancy (PRT). The Scottish Government's stated aim is to improve security for Tenants and provide safeguards for Landlords, lenders and investors. All disputes about a PRT or the Landlord or Tenant's obligations and rights will now be dealt with by The First Tier Tribunal for Scotland (Housing and Property Chamber) (The Tribunal).

General

Registration: All residential landlords must be registered with the Local Authority in which the rented property is situated. The council will check that you are a fit and proper person to be a landlord.

The registration form is available from the council offices or online www.landlordregistrationscotland.gov.uk, there is a charge for registering. You need to inform the council of all the properties you rent out within their area. N.B. Failure to register is a criminal offence that carries a maximum fine of £50,000 and the Council can serve a Rent Penalty Notice which prevents you from charging rent.

Anti-Social Behaviour: It is a legal requirement that a Landlord takes lawful action to resolve any issues regarding anti-social behaviour of the tenants and visitors to the let property.

The Property

A privately rented property must meet the **Repairing Standard** as set by the Scottish Government 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 – a smoke alarm.
- The property must have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

If, after a landlord has been notified of any problem, it is not attended to satisfactorily or if there is disagreement about whether or not there is a problem, then tenants have the right to refer the matter to the First-tier Tribunal. The First-tier Tribunal has power to require a landlord to carry out work necessary to meet the Repairing Standard.

Your property will be easier to let if it is in good condition, and you are likely to have a better relationship with your tenants if you respond promptly to any problems. As mentioned above the property must meet the Repairing Standard. Maintenance of other things, including internal decoration, fittings and furnishings, should be agreed between you and your tenants.

Tenants have a duty under common law to use the house in a proper manner, not to damage it, and to repair any damage they or their family or guests cause. The tenant also has a duty to notify you of any repairs needed to meet the Repairing Standard.

You are entitled to enter the property to inspect any repairs required or to carry out repairs on giving notice. Your tenant is required to give you reasonable access to do this. You should normally arrange a suitable time with the tenant, but you can enter the property, at a reasonable time of day, provided you have given the tenant 48 hours notice in writing. (If an emergency repair is required, you can claim immediate access.)

The following points are suggested as good practice for dealing with repairs that you, as the landlord, are responsible for.

- Make sure the property, fittings and furnishings are inspected before a new tenancy begins, and repairs are carried out if necessary.
- Carry out regular inspections of the property to identify any maintenance required.
- Let your tenants know how to contact you (or your agent) for emergency and non-urgent repair requests, and what counts as an emergency.
- Make sure tenants know what to do in an emergency, including how to turn off the water, electricity and gas.
- If there are shared maintenance responsibilities with other properties, it is helpful to give the neighbours your contact details, so that you can be included in any discussions about works that may be required. Make clear to your tenants that they should send to you any notices or letters about common repairs that they receive.
- Agree what tenants should do if they damage something in the property – should they arrange for it to be repaired or replaced themselves, or inform you and pay for the repair or replacement?

Gas Safety

Anyone letting property must comply with the Gas Safety (Installation and Use) Regulations 1998. These apply to any type of gas installation, including Liquid Propane Gas. The principal requirements are:

- all gas installations and appliances must be checked annually by a GAS SAFE registered contractor, to obtain a gas safety certificate
- a copy of the gas safety certificate must be provided to each tenant
- records of safety checks must be kept for at least 2 years
- all servicing, repairs or replacement of gas appliances or installations must be carried out by GAS SAFE registered contractors.

Electrical Safety

As part of the requirement that the property meets the Repairing Standard all installation for the supply of electricity, electrical fixtures and fittings and any appliances provided by the Landlord are in a reasonable state of repair and proper working order.

An inspection of the electrical installation and all fixed equipment e.g. electrical shower, storage heaters, must be carried out every five years by a competent person (an Electrician who is a member of an accredited registration scheme) and a report provided (EICR). All appliances must be individually tested and marked – PAT testing again by a “competent person”. The EICR and PAT report must be copied to the tenant and kept by the Landlord for six years.

It can be useful to leave instruction booklets for all appliances in the property, for tenants to refer to.

Carbon Monoxide monitors.

Landlords must ensure that the property has a detection system for detecting and warning of the presence of carbon monoxide gas in levels hazardous to the occupants. Such a system is required where the property has any fixed combustion appliances either in the house or in any interconnected space e.g. an integral garage. Examples of a fixed combustion appliance are gas central heating boilers, open fires, solid fuel stoves etc. There should be a detector in every space containing a fixed combustion appliance and in any bedroom or principal room that a flue passes through. The detector can be battery operated but the battery must last the life of the detector, usually 5-7 years. There are a number of very specific rules about how and where a detector is to be fitted and these should be checked before fitting. Further information is available at www.scottishlandlords.com

Furnishings

Anyone letting property must comply with the Furniture and Furnishings (Fire Safety) Regulations. In this context, when a landlord lets furnished accommodation, they are acting as a supplier of domestic furnishings, and have to meet the same requirements as someone selling furniture.

The aim of the legislation is to make sure that furniture is reasonably fire resistant. You have to make sure when you are providing furnishings for the property that they meet the regulations. You should leave attached the labels showing that the furnishings meet the regulations. You may need to replace older furniture.

Fire safety

The regulations provide that you must provide your tenants with appropriate fire safety measures. Every home must have functioning smoke alarms to give early warning of a fire and give the occupants a good opportunity to escape before the fire develops, all such alarms must be mains-wired smoke alarms and a battery operated alarm is not sufficient. At the very least, a functioning smoke alarm is required in the room used for general daytime living and in every circulation space such as a hallway or landing. A heat alarm is required in every kitchen and the alarms must be interlinked. Depending on the number of alarms required a building warrant might be needed. You should check the position with the local Building Standards Department before fitting any alarms.

Energy Report (EPC)

An Energy Report is to be made available to all prospective tenants of residential property and displayed in the property. The aim of the report is to provide tenants with an energy efficiency rating of the property and details of CO2 emissions and will give advice on how to improve these. The report is a one page document which has to be displayed in the property – the suggested position is in or near the gas or electricity meter cupboard. N.B. Failure to have a valid report is an offence that carries a fine of £200. The report will last for 10 years and does not need to be renewed within that period. Obviously, if steps are taken to improve the energy efficiency of the property then you might want to consider updating the report. Most Chartered Surveyors are qualified to inspect your property and provide you with the report.

Security

You need to take account of any security requirements on your insurance policy, bearing in mind the need for rapid escape if there is a fire.

All entrance doors to the property should be fitted with good quality locks. You should do your best to make sure all keys are returned when tenants move out. If you believe that not all keys have been returned, you should change the locks and deduct the cost from that tenant's deposit.

Inventory

One key item in avoiding disputes over repairs and return of the deposit is the inventory. This is a list of all the furnishings and equipment you provide for your tenants to use as part of the let as well as a record of the condition of the property and can include a photographic record. You should agree the inventory with the tenants when they move in and update it when there are any changes, then you can check it when they leave and there should be no disagreements about anything being missing or damaged.

To get the best out of your inventory:

- Make sure it has enough detail, for example "set of 4 ladder-back chairs with upholstered seats", rather than "4 chairs".
- Include a note of any damage or faults to any fixtures, furnishings, equipment or the property.
- Give the tenant a copy of the inventory when they move in and ask them to check it. It is sensible to allow up to a week for them to confirm they agree the list, or come back with any queries.
- Keep the inventory up to date with any new or replacement items and any reported damage, and always give the tenant a copy of the revised list.
- Check the inventory at the end of the tenancy. It is best practice to give the tenant the opportunity to be there and check it with you, if they want.

Financial Issues

Tax

When you receive income from letting this has to be declared for income tax purposes, however, you can claim some letting expenses against tax. We do not give taxation advice so you should speak to an accountant for advice on how best to deal with any taxation issues.

Mortgages

If you want to let a property which is mortgaged, you must inform your mortgage lender and obtain their consent in writing. Most mortgages are intended for owner-occupied property and letting may affect the terms and conditions of the loan, as well as any insurance attached to the mortgage.

Insurance

You should make sure you have sufficient insurance for the building and the contents you provide for tenants' use. You need to take out a policy specially designed for let property. We strongly recommend that you also have cover for third party liability, to cover any injury or loss to tenants and their guests, and for legal expenses which may be incurred if there is a dispute with a tenant. Insurance is also available to guarantee your rent if the tenant fails to pay. The tenant is responsible for insuring their own belongings in the property.

Charging the Tenant

The Tenant can only be charged rent and a deposit. You cannot charge the Tenant to have their name put on a list for accommodation, for credit checks, inventories etc. The Tenant cannot be charged for drawing up or copying the tenancy agreement or for providing them with any other information you have a statutory duty to provide.

If a deposit is required, it must be no more than the equivalent of two months' rent.

Rent

In most cases the amount of rent is for you and your tenant to agree. You will want to take into account the general levels of rent in the area, the size, location and condition of the property and the services that are covered by the rent. You should also agree with the tenant how often the rent should be paid (e.g. weekly, monthly etc.) and by what method (e.g. cash, cheque, standing order etc.). If the rent is

paid in cash you must give the Tenant a written receipt, stating the date of payment, the sum paid if there is any more rent due or not. If paid weekly you must use a rent book.

Rent Increases.

If you want to increase the rent you have to give at least 3 months written notice. There is a form to use called "Landlord's Rent Increase Notice to Tenant(s)" and this must be used. The Notice begins on the date the Tenant gets the Notice and ends 3 months after that date. You should allow some extra time to be sure the Tenant has received the Notice. The rent can only be increased once in each 12 month period so once increased you have to wait 9 months before you can serve notice and 12 months before it can be increased again.

If your Tenant disagrees with the increase they can contact a rent officer within 21 days of receiving the Notice. The rent officer has the power to decide what the rent should be and can vary the rent up or down. If either you or your Tenant do not agree with the Rent Officer you can ask them to reconsider or appeal to the Tribunal who will make the final decision. If you want to appeal to the Tribunal you must do this within 14 days of the rent officer's decision.

Deposits

We would recommend that you ask for a deposit to cover any damage to the property or its contents, or any unpaid bills or rent at the end of the tenancy. The deposit must not exceed two months' rent. All deposits taken by Landlords must be deposited with a Government recognised Tenancy Deposit Scheme. The scheme will hold the deposit until the end of the tenancy and at the end of the tenancy both Landlord and tenant have to confirm that everything is in order before any money will be released. If the parties are in agreement, the money will be released without difficulty, if there are any disputes then the scheme will assist with a settlement and if necessary decide who should get the deposit funds. It is therefore very important that a property is checked thoroughly before a tenant goes in and then again when the tenant leaves. If you have to spend money as a Landlord to put the property back in good and tenable order you will need receipts for all monies spent. At the start of a tenancy, once you have decided which scheme you wish to use, the tenant must be notified of that scheme and of the reference number so that they can contact the scheme at the end of the tenancy. **N.B.** It is an offence to fail to put the deposit in a recognised Scheme. Your Tenant can apply to Court for a payment up to three times the deposit if you do not meet your obligations.

Housing Benefit

Tenants of private housing can get help to pay their rent through housing benefit. The policy and legislation relating to housing benefit, who is eligible and how much they receive, are dealt with by the Department for Work and Pensions (DWP), but the benefit is administered locally by local authorities. The Local Authority prefer that the payment is made to the Tenant, however, if the Tenant gets into difficulty with paying rent while receiving Housing Benefit the tenant can sign a mandate to have the payment made directly to the Landlord. If the tenant plans to claim Housing Benefit to help them pay the rent, they may ask for a "Pre tenancy Determination" before taking on the tenancy. This will tell them whether Housing Benefit can cover the whole amount of the rent.

Bills

In most lettings, where you are letting the whole property to one household, it is usual for the tenant to have responsibility for arranging the supply/service of utilities in their own name and paying for them. You should obtain proof that all final bills have been paid before returning the deposit.

In some circumstances, you may want to set an inclusive rent at a level that will cover all charges. You would continue to have the utilities in your name and pay the bills out of the rent you receive.

The tenancy agreement should make clear how utility and service charges will be handled. Whatever the arrangements, agree the meter readings with the tenant at the beginning of the let and again at the end, to avoid any disputes.

Council Tax

Council Tax is usually payable by the occupier of a property, i.e. the tenant. This may not apply in some special cases and bills may be reduced because of the personal circumstances of the people resident in the house. For detailed advice on your situation you will need to contact the local authority's council tax department.

A PRT has no fixed term and will last until the Tenant brings it to an end or the Landlord recovers possession under one of the statutory grounds. This is explained further later in the Guide.

The Private Residential Tenancy Agreement

There are certain statutory requirements for a PRT, some fall on you as Landlord and some are the Tenant's responsibility. Disputes or Orders in relation to residential tenancies will now be dealt with by the First Tier Tribunal for Scotland (Housing and Property Chamber) rather than the Sheriff Court. The Tribunal is based in Glasgow but will sit in different places around Scotland.

Term of the Tenancy

A PRT is for no fixed term. It has to have a start date but no finish date. How the Tenancy is brought to an end is explained below.

Written Agreement

You must give your Tenant a written copy of all the terms of the tenancy before the tenancy starts. This can be done by email. You must also give the Tenant the Government's PRT Statutory Terms Supporting Notes. You must also give the Tenant written confirmation of any changes to any of the terms of the tenancy within 28 days of the change.

Communication

You and your Tenant should agree how you will communicate over the terms of the tenancy. In particular for the serving of any Notices required to ensure they receive them. This can be by hard copy post, by email or other electronic means.

Sub-Tenants

Your Tenant has to get your permission to have anyone else living with them in the property, like a partner, family member or carer. They have to tell you in writing if any person, who is aged 16 or over, is not a joint Tenant and is living with them in the main property as their only or main home. The Tenant is not permitted to sub-let the property, take in a lodger or give their tenancy to someone else without your permission. If you have agreed to a sub-tenant then the sub-tenant may be protected from eviction in certain circumstances. To bring the sub-tenancy to an end you also have to serve the sub-tenant with a Sub-Tenancy Notice to leave on the same notice condition as for your Tenant.

Ending the Tenancy:

Notice to Leave

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, although you can agree a shorter period of notice if you wish. The notice period begins on the day you get the notice from your tenant. The tenant can only give notice once they have started to live in the let property and the notice must be given freely and without coercion. Once the notice has been given, if the Tenant changes their mind they can ask you for the tenancy to continue but it is up to you to decide whether to agree.

The Tenant can give notice at any time once the tenancy has started.

If you want to end the tenancy

As a Landlord you can only end the tenancy by using one of the 18 grounds for eviction and must serve the Tenant with a "Notice to Leave" setting out how long they have to move out. In that Notice you have to state which eviction ground you are using and you can, if you wish, provide any evidence

you have to support that ground. If you have more than one Tenant you must serve a Notice to Leave on all of the joint Tenants.

The amount of notice you have to give will depend on how long they have lived in the property and the ground that you are 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 which eviction ground you are using.

You must also give at least 28 days notice if you are using any of the following eviction grounds:

- The Tenant is no longer occupying the property
- The Tenant has breached any of the terms of the Tenancy Agreement.
- The Tenant is in rent arrears over three consecutive months on the date you apply to the Tribunal for an Eviction Order.
- The Tenant has a relevant criminal conviction.
- The Tenant has engaged in relevant anti-social behaviour.
- The Tenant associates with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.

In **all other cases** you must give at least 84 days notice if they have lived in the property for more than 6 months.

The Notice has to be sent by the agreed method, i.e. post or email and 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.

If you give your Tenant a Notice to Leave and they do not move out once the notice period expires you have to apply to the First Tier Tribunal for an Eviction Order. When you apply for an Eviction Order you have to produce a copy of the Notice to Leave so you must always retain a copy of the Notice and any other documentation you give your Tenant.

When you are making your application for an Eviction Order you also have to notify the Council using a specific form in case the Tenant becomes homeless.

There is a time limit and you cannot apply for an Eviction Order if it is more than six months since the Notice you gave your Tenant has expired.

Grounds for Eviction

There are 18 different grounds for eviction and at least one has to apply before you can recover possession of the property.

The first 8 grounds for eviction are mandatory, which means that if the Tribunal agrees that the ground exists you will get your Eviction Order and the Tenant must leave the property. These grounds are:-

- You intend to sell the let property.
- This ground applies if you intend to put the property up for sale within three months of the Tenant moving out and you will need evidence to prove it, for example, your contract with an Estate Agent or Solicitor or a copy of the Home Report for the property.
- The let property is being sold by the lender. This ground applies if your mortgage lender has repossessed the property and intends to sell it.
- You intend to refurbish the let property. This ground applies if you want to carry out major works to the property and those works are such that the Tenant will not be able to live there at the same time. Again, evidence of this will have to be produced, e.g. Planning Permission, Building Warrant, contracts with a builder and clear details of the work to be carried out.
- You intend to live in the let property yourself. Again, you have to produce “evidence” of this. It is not entirely clear what this might be at this stage. The Scottish Government suggest an

Affidavit, i.e. a written statement, signed under oath in the presence of a Notary Public, could be used as evidence, however the Tribunal may require more.

- You intend to use the let property for a non-residential purpose. Again, you will need to produce evidence of this, e.g. Planning Permission to show you were going to change the use of the property.
- The let property is required for a religious worker. This is to cover things like an existing manse being let out under a PRT that is now needed for a Minister. This ground only applies if the property has been used for this purpose before.
- The Tenant has a relevant criminal conviction. A relevant criminal conviction is an offence, punishable by imprisonment that involved them either using the property for an illegal reason, letting someone else do so or committing a crime within or near the property. You have to apply to the Tribunal within a year of your Tenant getting the conviction.
- The Tenant is no longer occupying the let property. This ground will apply if the Tenant has abandoned the property or if the Tenant is not using the property as its main or only home. If you have failed to keep the property in good repair and the Tenant has had to move out for their own safety then this ground will not apply.

The next 8 grounds for eviction are discretionary which means that even if the Tribunal agrees that the ground exists it still has to decide whether it is reasonable to grant an eviction order. These grounds are:-

- A member of your family intends to live in the let property. Members of your family including your spouse, civil partner or someone living with you as though they were married to you, parents, grandparents, children, grandchildren, brothers or sisters, step-relatives, someone being treated as someone's child even if they are not legally related, any family member (as listed above) of your spouse, civil partner, or person living with you as though you are married and the spouse or civil partner of any family members listed above. Again, you need evidence for this ground and again it is not clear what will be satisfactory in these circumstances.
- The Tenant no longer needs supported accommodation. This ground applies where the Tenant has moved in because they had a need for community care and they have since been assessed that that is no longer required.
- The Tenant has breached a term of the Tenancy Agreement. This ground applies if the Tenant has not complied with one or more of the terms of the tenancy, this does not cover unpaid rent as there is a separate ground for this and it would need to be something that the Tenant has been given an opportunity to rectify and failed to do so.
- The Tenant has engaged in relevant anti-social behaviour. This is anti-social behaviour which causes alarm or distress to other people, is a nuisance or annoyance or is considered to be harassment. To use this ground you have to apply to the Tribunal within a year of the conviction or behaviour taking place.
- The Tenant has associated in the property with someone who has a criminal conviction or anti-social behaviour. This is essentially the Tenant allowing someone else to behave in an anti-social way that has affected others in or around the property.
- You have had your Landlord registration refused or revoked.
- If you have an HMO Licence that licence has been revoked.

- An Overcrowding Statutory Notice has been served on the Landlord.

Grounds which can be mandatory or discretionary

The final two grounds can be either mandatory or discretionary depending on the circumstances.

- The Tenant is in rent arrears of over three consecutive months. This ground applies if the Tenant has been in rent arrears for 3 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 are not due to a delay or failure in the payment of any 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. Again, they have to consider whether it is to do with delays in payments of benefits.
- The 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 they are not. You have to apply within 12 months of the Tenant ceasing to be an employee or of the tenancy starting if the Tenant never became an employee.

Wrongful Termination Orders

If a Tenant has left a 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. This can be granted if the Tribunal think that you misled the Tribunal into issuing an Eviction Order it shouldn't have, or you wrongly made the Tenant leave the property. The penalty for doing so is that you pay the Tenant a payment of anything up to 6 month's rent and the Tribunal will notify the Council and this may affect your Landlord's registration.

We appreciate that we have covered a lot of points in this guide but we have tried to cover the points and most important issues that usually come up. Do not hesitate to contact us if you have any questions

Useful Websites

<https://beta.gov.scot/policies/private-renting/>

<https://rentingscotland.org>

www.shelter.org.uk

www.landlordregistrationscotland.gov.uk

www.landlordaccreditationscotland.com

www.scottishlandlords.com

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