



SCOTLAND – FACT SHEET NO. 15

HOW CAN MY LANDLORD END MY ASSURED TENANCY?

DO I HAVE AN ASSURED OR SHORT ASSURED TENANCY?

If you rent your property from a private landlord then the rights you have to stay in your home will depend on the type of tenancy you have.

You will have an ‘**assured tenancy**’ if:

- your tenancy began on or after **2 January 1989**;
- you do not live with your landlord;
- you have all or part of the property for your own use only;
- you occupy the property as your only or principal home;
- the tenancy is not exempt.

You will have a ‘**short assured tenancy**’ if as well as the above:

- your landlord gave you a special form called ‘**FORM AT5**’ (a notice of a short assured tenancy) **before** the tenancy began telling you that the tenancy is a short assured tenancy; **and**
- the tenancy is for a minimum initial term of six months.

INFORMATION

If you were not given a tenancy agreement in writing, or the agreement specifically says so, you will have an assured tenancy.

If you started off with a short assured tenancy but your original fixed term has run out, the tenancy will continue – unless the landlord gives you a special form called a ‘**FORM AT7**’ telling

you that the continued tenancy is not to be a short assured tenancy. **Phone us for advice.**

If your landlord says you have a short assured tenancy but never gave you any documents, or only gave them to you after your tenancy started, contact a local housing aid centre or **phone us for advice.**

ADVICE

Although these terms may sound complicated, it is important that you know what sort of tenancy you have. The landlord will have different powers according to the type of tenancy you have. If you are not sure what type of tenancy you have, or if you moved into your property **before 2 January 1989**, **phone us for advice.**

WHAT GROUNDS CAN THE LANDLORD USE IN COURT?

If your landlord asks you to leave you should check what your rights are. Find out why they want you to leave. Your landlord may be able to go to court and ask for you to leave using one of the following reasons.

INFORMATION

There are 17 grounds for possession (ending your tenancy,) which can be used for both types of tenancy mentioned above.

Mandatory grounds

There are eight **mandatory grounds**. This means that if your landlord can prove that what he or she is saying is true then the court **has** to give possession to the landlord.

Although this will end your tenancy, you can ask the court to postpone the possession (for example to begin payment of arrears). The main grounds are:

- you are at least three months behind with your rent;
- your landlord wants to demolish or reconstruct the property.

ADVICE

Following a recent change in the law, if you can demonstrate to a court that the reason for your rent arrears is delay or failure by a local authority to pay your Housing Benefit, the sheriff court has discretion to refuse to grant an order for possession.

For the following mandatory grounds to be used you must have been given written notice **before** the tenancy began that this reason could be used to evict you:

- Your landlord used to live in the house and wants to move back in again to live there.
- Your landlord has a mortgage on the house and, following repossession, the lender wants to sell the property.

INFORMATION

These are the most usual grounds used. See the chart at the end of the fact sheet for a list of all the mandatory grounds the landlord can use to make you leave.

Discretionary grounds

There are nine **discretionary grounds** for possession. This means that the court will only end your tenancy if it seems **reasonable** to do so. You may be able to make an arrangement with the landlord or the court to get possession postponed or the order suspended.

The main discretionary grounds are:

- a ‘persistent delay’ in paying the rent; **or**
- you have rent arrears of less than three months.

ADVICE

If the reason for the rent arrears is the delay or failure of a local authority to pay Housing Benefit, this should be made clear to the court as this will be a factor which the sheriff will take into account.

INFORMATION

These are the most usual grounds used. See the chart at the end of this fact sheet for a list of all the discretionary grounds the landlord can use to try and make you leave.

PROCEDURES THE LANDLORD MUST FOLLOW

Your landlord has to serve you with the correct ‘notice to quit’ (or ‘notice to remove’) before taking any further action against you. This must state:

- your name;
- the address of the property you are renting;
- the date on which you were called upon to move (you must be given at least **28 days** notice); **and**
- information on your rights.

WARNING

No notice to remove is needed if one of the grounds for possession is rent arrears **and** your tenancy agreement says that the tenancy may be brought to an end for this reason.

Your landlord **must** in all cases serve you with a 'notice of intention to raise proceedings for possession', on a special form called '**FORM AT6**', before the court can consider granting a possession order. However, the court may not insist on this if it thinks that it is reasonable for the landlord not to have done so (unless the ground for possession is three months' rent arrears).

The notice must state:

- your name;
- the address of the property you are renting;
- the ground(s) the landlord is using to try and end your tenancy; **and**
- that proceedings will not begin until two weeks (or two months) after the date the notice is served.

SPECIAL RULES FOR SHORT ASSURED TENANCIES

If you have a short assured tenancy you will have been told at the start how long the tenancy lasts. This must be for at least six months.

REMEMBER

You must have been given a notice that you have a short assured tenancy before your tenancy began, or you will have an ordinary assured tenancy.

If the term of the tenancy has come to an end, the landlord does **not** need to prove any other ground for possession.

The landlord must give at least **two months'** notice that your tenancy is to be ended (or longer if this was agreed in the tenancy agreement). This does not have to be on a special form.

INFORMATION

The grounds, the notices and the amount of time the law requires your landlord to give you are all set out in the attached chart.

ADVICE

If you are not sure what grounds your landlord is using to go to court **phone us for advice**. For more details on the court procedures see our pack 'Dealing with your debts'.

ADVICE

For advice about your tenancy agreement and whether you can stop your landlord from ending your tenancy you can also contact a local housing aid centre or law centre. If you are not sure if there is an advice agency in your area phone Shelterline on **0808 800 4444** or **phone us for advice**.

WARNING

Your landlord may ask you to leave the property but cannot make you leave without going to court. It is illegal to harass you or threaten you to make you leave. If this is happening to you, contact a housing aid centre, ring Shelterline on **0808 800 4444** or **phone us for advice**.

MANDATORY GROUNDS FOR POSSESSION ON ASSURED TENANCIES

Grounds 1-8 Mandatory		Must ground be specified at start of tenancy?	How long after notice of proceedings before action can start?	Further information
1.	Landlord wants the property back to live in	YES (court can ignore this)	Two months	Landlord must have occupied the house as his or her only or principal home and now wants to occupy it again (or it is for their spouse).
2.	Mortgage default	YES (court can ignore this)	Two months	Where a mortgage existed before the tenancy started and the property is being repossessed following default by the landlord. If they didn't tell the lender you were renting it, then they may be in breach of the mortgage so the lender would then not have to recognise any of your rights. If this happens, phone us for advice .
3.	Off-season holiday property	YES	Two weeks	Where the property is rented for less than eight months and has been let as holiday accommodation in the last year. If you don't leave at the end of your tenancy, the landlord may be able to claim damages if they can show that they have lost money through not being able to re-let.
4.	Student accommodation tenancy	YES	Two weeks	Where the tenancy is for less than 12 months, the landlord is an educational institution and the property is normally let to students.
5.	Minister or lay missionary property	YES	Two months	Where the property is held for occupation by a minister or full-time missionary as a residence for performing their duties and is needed by them.
6.	Demolition or reconstruction work	NO	Two months	Where the landlord owned the property before the tenancy began, and the work cannot reasonably be carried out without the tenant giving up possession. The landlord should pay your removal costs.
7.	Tenancy inherited under a will or on intestacy (i.e. not under a will)	NO	Two months	Proceedings must be started within 12 months after the death of the former tenant and no new tenancy has been granted. The court may allow more time if the landlord was unaware of the situation.
8.	Three months' rent arrears	NO	Two weeks	Must be at least a full three months in arrears of rent both to date of service of notice of proceedings and at the date of the hearing. The correct notice must be served. Following a recent change in the law, if you demonstrate to a court that the reason for your rent arrears is delay or failure by a local authority to pay your Housing Benefit, the sheriff court has discretion to refuse to grant an order for possession.

DISCRETIONARY GROUNDS FOR POSSESSION ON ASSURED TENANCIES

Grounds 9-17 Discretionary		Must ground be specified at start of tenancy?	How long after notice of proceedings before action can start?	Further information
9.	Suitable alternative accommodation	NO	Two months	The landlord must provide proof that suitable alternative accommodation is available. For example, if a public authority (council, Scottish Homes etc.) will re-house you or if they provide the alternative accommodation. The tenancy should be the same or give you more rights. The landlord should pay your removal costs. Tell the court if you don't think the accommodation is suitable.
10.	Tenant withdraws a notice to quit	NO	Two weeks	Where you have been given notice to quit but remain in the property without a new tenancy, the landlord must begin proceedings within six months of your notice running out.
11.	Persistent delay in rent payments	NO	Two weeks	Argue that the delay in paying is not persistent and the delays were trivial and did not cause inconvenience or that you had good reason e.g. late Housing Benefit, mistakes by bank etc. Also mention any counterclaims such as outstanding repairs. If the reason for the rent arrears is the delay or failure of a local authority to pay Housing Benefit, this should be made clear to the court as this will be a factor which the sheriff will take into account.
12.	Rent is in arrears	NO	Two weeks	Rent must be unpaid both at the date when the notice of intention to raise proceedings is sent and at the date the summons is served. As above, if failure or delay to pay Housing Benefit is the cause of arrears this is a factor the sheriff will take into account.
13.	Breach of obligations of tenancy	NO (but must have a tenancy agreement with this term included)	Two weeks	This could be something like nuisance to neighbours or abuse of common areas such as hallways. The breach has to be material (i.e. not trivial).
14	Condition of house deteriorated	NO	Two weeks	Can include damage to common areas caused by specific tenants and failing to protect the property from damage (i.e. damp caused by not using heating properly).
15	Use of house for immoral or illegal purposes	NO	Two weeks	You can be held responsible for the behaviour of other people living with you or visiting you, where there has been a criminal conviction. It can be in the house or the locality.

16.	Damage to furniture	NO	Two weeks	The landlord must show that the damage has been caused by ill treatment rather than reasonable wear and tear.
17.	Tenant is an ex-employee	NO	Two months	Where you worked for the landlord and the tenancy was part of your terms of employment, the landlord needs to show why the property is needed, but this does not have to be for another employee.

REMEMBER

The court should always consider whether it is reasonable to grant possession on a discretionary ground. If you think this was not done, or you have further information that you want to put to the court, **phone us for advice.**

Remember: You can always contact us for advice about any difficulty you have in dealing with your debts.

Freephone 0808 808 4000 Website www.nationaldebtline.co.uk

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