

Rent arrears

This section is for people who have missed rent payments. It explains more about arrears, what you can do to repay them, and what your landlord can do.

Rent arrears are very important because you could lose your home if you do not pay them off.

There are several different types of tenancy. Each type gives different rights. Your right to stay in your home depends on the type of tenancy. So it's important for you to find out what type of tenancy you have.

There are two sections on rent arrears – Rent arrears 1 and Rent arrears 2.

Go to Rent arrears 1 on page 54 if:

- you are a housing-association tenant;
- you are a council tenant;
- you rent from a private landlord and you started renting your home before 2 January 1989.

Go to Rent arrears 2 on page 58 if:

- you rent from a private landlord and you started renting your home on or after 2 January 1989.

If you are not sure which kind of tenancy you have, read the first parts of Rent arrears 1 and 2 or contact Shelter (see page 68), your local citizens advice bureau, or contact us for advice.

Remember

No eviction without a court order

- You cannot be evicted for rent arrears without a court order.
- If you have a licence, you do not have the same rights as a tenant.
- If you are a squatter, you have no rights.



More information

The Debt Arrangement Scheme and rent arrears

A DAS debt-payment programme will only provide protection from bankruptcy and diligence. This means that a landlord could still take repossession action if you are behind with your rent. **But**, having them included in a DAS may make repossession less likely. Some DAS payments distributors will pay your ongoing rent payments for you. This is called a 'continuing liability'. There will be a fee for this service, but it will not be more than 10% of your payment. If you have included your rent in a DAS debt-payment programme and your landlord still starts the procedure to repossess your home, you can ask the court to take your debt-payment programme into account when deciding what to do. To find out more about DAS including how to apply, see the section on the [Debt Arrangement Scheme](#) on page 27.

Rent arrears I

The following advice is for:

- all council tenants;
- all housing-association tenants; and
- private tenants who started renting their home before 2 January 1989.

It covers topics including:

- Housing Benefit (rent rebate);
- how to pay off rent arrears;
- whether your landlord is refusing to agree to your offer;
- if your landlord takes court action; and
- eviction – what you can do.

Housing Benefit (rent rebate)

Rent arrears often build up when you don't claim all the benefits you can. Claiming Housing Benefit can reduce the rent you pay.

- To make a claim, ask your council's Housing Benefit office for a form.
- When you make a claim, keep a copy of your claim form and any letters you send or receive.
- Pay as much as you can towards your rent until your benefit comes through. The Housing Benefit office or a local advice centre should be able to tell you how much you need to pay.

Contact us for advice if you are having problems with Housing Benefit.

Paying Housing Benefit

If you are a council tenant, your Housing Benefit will be paid direct to the rent office of your council's housing department. It is usually known as a 'rent rebate'.

If you are a housing-association or private tenant, Housing Benefit will be paid direct to you. But you can arrange to have it paid direct to your landlord if you want. Doing this may make them more willing to come to an arrangement over your arrears, because they will be sure of receiving a regular payment.

Arrange this with your landlord and ask the Housing Benefit office to start making payments to the landlord. In some circumstances your landlord and the Housing Benefit department can agree for Housing Benefit to go directly to the landlord without your agreement.

Is your rent registered as a fair rent?

If you pay rent to a private landlord (not a council or housing association), and feel your rent is very high, it may be worth having a fair rent registered on your home. A rent officer from the Rent Registration Service will decide what a fair rent for your home is and fix it at that. Your landlord cannot then increase the rent unless the rent officer agrees. For details of the Rent Registration Service go to the website at www.scotland.gov.uk.



Warning

Check local rent levels

Before you apply to the rent officer, check how much rent other people are paying in your area for similar flats or houses to see if your rent is above average. The rent officer can **increase** the rent on your home as well as reduce it.

How can I pay off my rent arrears?

It is never too early or too late to come to an arrangement to pay off your arrears.

You may not be in arrears yet, or your landlord may have started court action. Whatever the situation, **do not delay** – contact your landlord as soon as possible.

If you are a private or housing-association tenant and:

- you are waiting for a Housing Benefit claim to be sorted out;
- 14 days have gone by; and
- this is making your rent arrears worse;

explain this to the Housing Benefit office. Ask for an interim payment of Housing Benefit. **Contact us for advice.**

Have the rent arrears been worked out properly?

Get a breakdown of your rent account from your landlord. Check that all the payments you have made have been added to your account. Ask for regular statements. Keep your receipts.

In particular, check whether you have been overpaid any Housing Benefit (rent rebate). Sometimes Housing Benefit that has been claimed back by the council is included as rent arrears on your rent account. If you are a council tenant, **the council cannot treat Housing Benefit overpayments as rent arrears** and they should keep them in a separate account. **You cannot be evicted from your home for receiving too much Housing Benefit.**

If you are not sure if your rent arrears includes Housing Benefit overpayments, or the council refuses to separate the two, **contact us for advice.**

If you are not a council tenant, the rules are complicated as to whether or not a Housing Benefit overpayment is treated as rent arrears. **Contact us for advice** if this applies to you.

Extra weekly payments

- Use your personal budget to work out how much to pay off the arrears each week.
- Don't be afraid to offer only a small amount if that is all you can afford.
- If you get Housing Benefit, offer to have it paid direct to your landlord. This might make them more willing to agree to your offer.
- Start paying the amount you are offering immediately to the landlord or agent.

If you can't afford to pay anything, **contact us for advice.**

Direct payment of rent arrears

If you get Income Support, Pension Credit, Employment and Support Allowance or Jobseeker's Allowance, you can have a standard amount taken out of your benefit each week and paid direct to your landlord for rent arrears. This way you can point out to your landlord that you will pay the arrears even though it may take a long time.

Is your landlord refusing to agree to your offer?

Just because your landlord refuses your offer of payment, does not mean you will automatically lose your home. If your landlord refuses to accept your offer:

- start paying your rent immediately plus the amount you have offered off the arrears;
- contact your landlord and use your personal budget to show that the amount you have offered is all you can afford;

- keep a record of all payments and letters to and from your landlord; and
- keep paying your rent and arrears payments.

If your landlord still takes action against you, **contact us for advice.**

Your landlord might make it difficult for you to pay, for example by not calling for the rent. If this is happening, **contact us for advice.**



Warning

No eviction without a court order

You cannot be evicted without a court order. If your landlord threatens to throw you out without going to court or harasses you to make you leave, they may be acting illegally. If this is happening to you, contact your local council. Ask for the person who deals with tenants who are being harassed.

What if my landlord takes court action?

Before court action

These are the usual stages leading to court action. The landlord will normally send you a letter asking you to pay off the arrears. If you have not already contacted your landlord to try to reach an agreement, do it now. Keep paying the rent and what you have offered off the arrears.

If you haven't made an arrangement to pay off the arrears, some landlords may send a second letter or may get their solicitor to write to you. Before landlords can take court action, they must send you a formal letter which is called a 'notice of proceedings for recovery of possession' (if you are a council or housing-association tenant) or a 'notice to quit' (if you have a private landlord). These must be served on a tenant before court proceedings can be started. **They do not mean you have to leave your home.** Contact your landlord straight away and try to reach an agreement. Keep paying your rent and what you have offered off the arrears.

Court action

If you have not been able to make an arrangement with your landlord and the time limit on the notice has run out (normally 28 days after you receive it), your landlord can ask the court to send you a 'summons'. This will give you a date and time for a hearing in the court.

Even if you are taken to the sheriff court, this does not mean you will automatically lose your home. Even if the court decides you cannot afford to stay there, you will not be evicted from your home on the date of the hearing.

Keep paying your rent and the amount you have offered off the arrears. This will show the court that you are now able to pay.

The court will send you a summons with a form called a 'statement of claim' which sets out your landlord's case for taking possession of your home. **You will also get a reply form which you should fill in and return to the court within 14 days.**

Rent arrears I

Filling in the reply form

Read through the 'statement of claim'. It should give:

- the amount of rent arrears;
- details of any arrangements that you have made with your landlord to repay the arrears; and
- information about your circumstances that your landlord is aware of, such as whether you receive Housing Benefit.

If you do not agree with any of the details, say so on the first page of the form.

You are asked whether you can pay anything towards the arrears. Put down the amount which you have worked out that you can pay using your personal budget. You should do this even if your landlord has already refused to accept this amount. It is better to put down an amount which you can realistically afford to pay rather than offer repayments that you won't be able to keep to.

If you cannot afford to pay anything off the arrears, **contact us for advice**.

Fill in the financial details. This will allow the court to see how you have worked out how much you can afford to pay towards the arrears. Use the spare boxes for items which are not on the form but which appear on your personal budget.

You are also asked for details about your bank account. If you have money in your account to pay household bills, do not include this in the credit balance on the form.

At the bottom of the form there is a space for giving your side of the case. Explain why you got into the arrears. Ask here if you want the court to give you more time to find somewhere else to live.

Remember

Keep paying your rent

Remember to keep paying your rent. If you have arrears, it is important to start paying the amount you have offered. You can still come to an agreement with your landlord or their solicitor. If you can reach an agreement, the hearing date can be put off ('adjourned') to give the agreement a chance to work.

If your landlord says they can evict you without a court order or is threatening you, **contact us for advice**.

The hearing

Remember, you will not be evicted from your home on the day of the hearing.

You must go to a court hearing even if you have already made an agreement with your landlord.

If you will not be able to go to the hearing because of illness or disability, write to the court to explain your circumstances and ask if a relative or friend can represent you. **Don't forget to include the case number in the letter.**

The purpose of the hearing is not to find anyone guilty or innocent but to come to a fair decision for both sides. At the hearing you, your landlord or their representative and the sheriff will be present. The sheriff is the person who decides your case. Call the sheriff 'Milord' or 'Milady'.

When you go to court

- Make short notes about what you want to say at the hearing. Take these in with you and refer to them if you need to.
- If your circumstances have changed since you filled in the court form, work out a new personal budget sheet. Take three copies of your personal budget with you (one for you, one for the sheriff and one for the landlord's representative).
- If English is not your first language, you could take an interpreter with you.
- Don't be afraid to approach the landlord's representative before the hearing to see if you could come to an agreement to present to the sheriff. But don't be pressed into offering more than you can afford. The sheriff may agree with you and allow you to pay less than the landlord's representative wants.
- Answer questions clearly, calmly and fully. This will help the sheriff make his or her decision. Remember you have as much right to put your case as the landlord.

Orders the sheriff might make

At the hearing the sheriff can make one of the following orders.

- Dismiss your landlord's action, for example, if you have paid off all the arrears before the hearing date.
- Continue ('adjourn') the case to give you more time. This could be to provide extra information to support your case, or to pay off your arrears in full, for example, by sorting out your Housing Benefit claim. This is called a 'continuation'.
- Continue the case by agreement to allow you to repay what you owe. This means that if you keep the court's order (normally that you pay the rent plus a set amount off the arrears each week or month), the court will not allow your landlord to take your home. It may be that a 'time to pay' direction order will be made.
- 'Sist' the case (that is, put it on hold), to allow repayments as above or to allow you to send in a legal-aid application, if you want to defend the case.
- Fix a date for a 'proof' (a full hearing of the case) if you have a defence.
- Make an order for outright possession of the property. This means that at the end of a set period (usually 28 days), your landlord can take the next step towards repossessing your home. (See **Eviction – what can I do?** on page 57.)

What you should ask for

- If you can show the court that it would be unreasonable to make a 'decree of ejection' (that is, a court order authorising the lender to make you leave your home, enforceable by sheriff officers), you should ask the sheriff to dismiss the landlord's action. To do this you will have to give reasons for a defence.

This might be because you have been paying the rent plus a regular amount off the arrears for several months, or your arrears are due to a delay in your Housing Benefit claim. If you think this may apply to you, **contact us for advice** before you go to court.

- If you can pay all the arrears in a short time, for instance by sorting out your Housing Benefit claim, ask for a 'continuation'.
- If you can't pay off the arrears in a short time and the amount of arrears is correct, you should make an offer of repayment that you can afford.
- If you are on Income Support, Pension Credit, Employment and Support Allowance, Jobseeker's Allowance or a low income, do not be afraid to offer a very small amount if that is all you can afford. Use the Department for Work and Pensions (DWP) standard amount for direct payments as a guide. This amount changes each April. **Contact us for advice.**
- If the sheriff thinks your offer is fair, they are likely to 'continue' or 'sist' the case (see above) if you agree to pay the normal rent plus the amount offered each week or month off the arrears. As long as you can keep to what is ordered, your landlord can take no further action.
- If the court will not accept any of these arrangements, the sheriff can make an outright decree. This would normally allow you at least 28 days before your landlord could take further action.

Remember

What if I can't pay the order?

If at any time you find you cannot pay the amount which the court has ordered, you must go back to the court and ask for the order to be changed (that is, a variation of the 'time to pay' direction). Unfortunately this, on its own, will not stop the landlord from being able to ask for an order for eviction. You should also contact your landlord to try to make a new arrangement.

Eviction – what can I do?

The court will not take action to evict you unless your landlord asks it to. Contact your landlord immediately if:

- you have not kept up the payments and the case has been 'continued' or 'sisted'; or
- the time given on a 'decree of possession' has come. Try to make an arrangement with them.



Warning

Warrant of ejection

If you cannot reach an agreement, your landlord can apply to the court for a 'warrant of ejection'. This is a letter from the sheriff officers giving you a date and time when they will come to evict you. **You may be able to stop this, but you must act quickly.**

If you have not previously defended the action, or appeared in court for anything other than a continuation, you may be able to apply for a 'recall of decree' and ask for a hearing. If the decree is recalled, the court can order a sist or continuation instead of a new decree. **Contact us for advice.**

Try and move out before the eviction date because the sheriff officers can force their way into your home if they have to. They might remove your possessions from your home.

After you are evicted your landlord may:

- ask you to pay the rent you still owe (see the section on **How to deal with credit debts** on page 26, to find out how to deal with this); or
- ask you to pay for repairing any damage done to your home while you were renting it.

Getting rehoused

For information on how to make an application for rehousing see **Getting rehoused** on page 64.

The Debt Arrangement Scheme

For information on whether the Debt Arrangement Scheme can help you with your rent arrears, see **The Debt Arrangement Scheme and rent arrears** on page 53.