

## Rent arrears 2

The following advice is for private tenants who started renting their homes on or after 2 January 1989.

If you are a tenant of a local authority, a housing association (or of a water authority or other public organisation), this information does not apply to you. Go to [Rent arrears 1](#) on page 54.

If you are a private tenant and started renting your home before 2 January 1989, this information does not apply to you. Go to [Rent arrears 1](#) on page 54.

This section covers topics including:

- what type of tenancy you have;
- **Housing Benefit (rent rebate);**
- your landlord increases your rent;
- how you can pay off your rent arrears;
- whether your landlord refuses to agree to your offer;
- renewing your short assured tenancy;
- if your landlord takes court action; and
- eviction – what you can do.

### What type of tenancy do I have?

#### Short assured tenancies

Short assured tenancies last for a fixed time of at least six months. Private landlords often use this type of tenancy. Your landlord must give you a written notice that you have a short assured tenancy before the tenancy begins.

#### Assured tenancies

Assured tenancies usually have no time limits although some may last for a fixed time. From October 2002, only private landlords can offer this form of tenancy. All council and housing-association tenancies are now Scottish secure tenancies.

If you are not sure of what tenancy you have, **contact us for advice.**

### 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.

### Housing Benefit rent-restriction rules

From 2 January 1996, if you have an ongoing claim for Housing Benefit you may not have had your rent covered in full. These rules could affect you if:

- you rent from a private landlord;
- your tenancy began on or after **15 January 1989**; and
- you have not been moved on to the new Local Housing Allowance from **April 2008** (see below).

These rules do not apply to housing-action-trust tenancies, council tenants or certain hostel accommodation. If you rent from a housing association, the council can only refuse to cover the full rent if they decide your accommodation is 'unreasonably' large or expensive.

Housing Benefit may only be covering a 'single-room rent' if you are single and aged under 25 and in a private tenancy. If this applies to you, **contact us for advice**.

### How has my benefit been worked out?

The council will have asked the Rent Officer Service to assess your rent. They will have decided if your rent is reasonable, taking your needs and the size of the property into account. They will also work out the average rent charged in your area for similar homes.

If your rent is higher than the average for the area, the council may have decided the rent you are being charged is too high and set a maximum rent that is being paid for out of Housing Benefit. **Contact us for advice**.

### Local Housing Allowance rules for private tenants

Since 7 April 2008, new rules, known as the Local Housing Allowance rules, have applied to private tenants claiming help with their rent. The new rules do not apply to private tenants whose tenancies started before 15 January 1989, or to housing-association or council tenants.

If you were claiming Housing Benefit before 7 April 2008, the new rules will only affect you if you move, make a new claim, or become a private tenant on or after 7 April 2008.

- The amount of benefit you get will be the Local Housing allowance rate set in the area you live in for the size of your household.
- If your rent is less than the Local Housing Allowance rate, you can keep the difference of up to £15 a week without it affecting your other benefits.
- If your rent is higher, you will have to pay the extra amount from your income.
- Under the Local Housing Allowance rules, your benefit will normally be paid direct to you or into your bank account. However, it can be paid direct to your landlord if you may have problems managing your money (for example, because you have a learning disability, have language problems, are ill, are in a lot of debt or are addicted to drugs, alcohol or gambling). If you want to find out more, ask your local council or **contact us for advice**.



### Extra help

#### Check the LHA Direct website

<https://lha-direct.therentservice.gov.uk/Secure/Default.aspx>  
This helps you work out how much benefit you might get under the Local Housing Allowance rules in your area.

### What can I do if the council does not pay all my rent?

- You may be able to ask the landlord to charge less rent.
- Pay the extra rent yourself out of your income.
- Take in a lodger but get advice to see how this would affect your tenancy and benefits first.
- Ask the council to review their decision. You can appeal against the decision to an independent tribunal within a month of the review decision, but only if you think a mistake has been made.
- You could ask friends, relatives or a charity to help. Any payments they make will not affect your benefits.
- You could apply to your council to pay all your rent out of a limited fund called a 'discretionary housing payment'. They will only help if you can show you will be struggling because of exceptional circumstances. If the fund has no money left in it, they can refuse to pay. You can ask the council to review their decision, but if they don't change the decision, you cannot appeal against it.
- Write to the Housing Benefit department and ask them to top up your rent. Explain your circumstances fully.



### Got a question?

#### What if all your rent is not covered?

If the council will not pay all your rent after you have claimed Housing Benefit, contact a local advice centre or **contact us for advice**.

### Paying Housing Benefit

It can sometimes take several weeks for a Housing Benefit claim to be sorted out.

If you are either an assured or a short assured tenant, it is very important that your Housing Benefit is paid quickly because if you have more than three months' rent arrears and your landlord takes you to court, the court cannot allow you to stay in your home.

The council should start paying your Housing Benefit within 14 days. So, if your claim has been delayed, ask for an interim payment. You should get a 'payment on account' unless you haven't given all the information asked for to deal with your claim. **Contact us for advice**.

You will normally receive your Housing Benefit by cheque. It is paid every four weeks for the four weeks just passed. You may be able to arrange to have it paid direct to your landlord, if your local authority agrees you are having difficulty managing your money. 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.

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Arrange this with your landlord and ask the Housing Benefit office to start making payments to the landlord.

## What if my landlord increases my rent?

With assured and short assured tenancies there is no fixed limit on the rent. If your landlord increases it, you may be able to challenge the increase by appealing to a private-rented housing committee.

If your landlord wants to increase your rent and you think it is too much you can do the following.

- Write to your landlord and tell them you do not agree to the increase, (keep a copy of the letter).
- Appeal to the private-rented housing committee. Contact the Rent Registration Service on **0141 572 1170** or go to the website at [www.scotland.gov.uk](http://www.scotland.gov.uk).
- Keep paying your old rent. But put money aside to pay the increase in case the private rented housing committee decides the new rent is correct.
- Contact your Housing Benefit office immediately. Tell them that your landlord had increased your rent but you have appealed to the private rented housing committee. Don't wait until the committee decides your appeal, or you may lose benefit. If you are not already claiming Housing Benefit the increase in rent may mean that you will now qualify.

Appealing to a private-rented housing committee is complicated. Contact a local housing advice centre or **contact us for advice**.

## How can I pay off my rent arrears?

It is never too early or too late to come to an arrangement to repay your arrears. You may not be in arrears yet, or your landlord may have started court action. Whatever the situation, don't delay, contact your landlord as soon as possible.

Explain to the Housing Benefit office if you are waiting for a Housing Benefit claim to be sorted out and this is making your rent arrears worse. Ask for an interim payment if you have been waiting more than 14 days. **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.

If Housing Benefit is paid direct to your landlord and there has been an overpayment, the rules on whether or not a Housing Benefit overpayment should be treated as rent arrears are complicated. **Contact us for advice** if this applies to you.

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

## Extra weekly payments

Use your personal budget to work out how much you can afford to pay each week off the arrears. Don't be afraid to offer only a small amount if that is all you can afford.

If you get Housing Benefit, ask if you can have it paid direct to your landlord. This might make them more willing to agree to your offer. The council must pay your Housing Benefit directly to your landlord if you have eight weeks' rent arrears or more.

Start paying the amount you are offering immediately. If you cannot afford to pay anything, **contact us for advice**.

## Paying rent arrears direct

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 along with your Housing Benefit. This way you can point out to your landlord that they are sure of getting their money back 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, this 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, (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 payment.

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 happens, **contact us for advice**.



### Remember

#### 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.

## Renewing short assured tenancies

If you have a short assured tenancy, your landlord does not have to renew your tenancy when it runs out. They are not likely to let you stay if you are behind with your rent.

You must try to come to an arrangement with your landlord and pay the amount you have offered off your arrears. If you pay regularly, your landlord may be willing to renew your tenancy.



### Warning

#### If your landlord starts court action

If you are a short assured tenant and your landlord starts court action because your tenancy has come to an end, then the court cannot allow you to stay in your home. However, your landlord may miss a time limit or make another technical mistake. If this applies to you, contact a local advice centre or **contact us for advice**.

For a fact sheet on

### How can my landlord end my assured tenancy?

call National Debtline on 0808 808 4000.



## What if my landlord takes court action?

Your landlord can take court action if:

- you have any rent arrears;
- you have rent arrears of more than three months; or
- you have 'persistently delayed' in paying your rent. You do not have to be in arrears when your landlord starts court action for this reason (for example, if your Housing Benefit always arrives after the date the rent is due); or
- you have a short assured tenancy that has run out, (see **Renewing short assured tenancies** above).

### Before court action

These are the usual stages leading to sheriff-court action.

- The landlord will normally send a letter asking you to pay off the arrears. If you have not already contacted your landlord, do so now and try to reach an agreement. Keep paying your rent and the amount 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 solicitors to write to you.
- Before landlords can take court action, they must send you a formal letter which is called a 'notice of intention to raise proceedings for possession'. This must be served on you before court proceedings can start. **It does not mean you have to leave your home. They must also send you a 'notice to quit'.**

Contact your landlord straight away and try to reach an agreement. Keep paying your rent and the amount you have offered off the arrears.

### If you have three months' arrears

If you have three months' rent arrears when you receive your 'notice of possession' you must start paying your rent and something off the arrears now.



### Warning

#### If you still have three months' arrears

If your landlord goes to court, and you still have three months' rent arrears at the date of the hearing, the court cannot allow you to make an arrangement to pay the arrears. The only protection the court can give you is to allow 14 days, or up to six weeks in very rare circumstances, to find somewhere else to live.

If you have three months' rent arrears, **start paying your rent and something off the arrears immediately**. The amount you pay must reduce your arrears to less than three months by the date of the court hearing.

If you are in arrears because you're waiting for Housing Benefit to be paid, contact your Housing Benefit office. Explain why your claim is urgent and ask for an interim payment.

If you can't start paying immediately or if you can't reduce your arrears quickly enough, **contact us for advice**.

### 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, your landlord can ask the court to send you a 'summons'. This will give you the date and the time for a hearing in the sheriff court.

- Your landlord can start court action even if you have no rent arrears, but have had arrears in the past.
- Even if your landlord takes you to the sheriff court, **you will not lose your home on the date of the court hearing**.
- Keep paying your rent and the amount you have offered off the arrears. This shows the court you are now able to pay.
- Even if you have managed to clear your arrears by the date of the court hearing, the landlord can still go ahead with the court action. **So you must fill in the court papers and go to any court hearing.**

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

### Filling in the reply form

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

- the amount of the rent arrears;

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- 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. Use your personal budget to work out what you can afford to pay. If your landlord is asking for possession because you have three months' rent arrears, remember it could be very important to reduce them to less than this by the date of the hearing.
- 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 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. If you are not in rent arrears now, but have been in the past, explain why you got into rent arrears and why you can now afford to pay your rent. If you are going to find it difficult to find somewhere else to live, ask the court if you can be given some extra time.

## Remember

### 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 ('continued') 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

### No eviction at the hearing

You will not be evicted from your home on the day of the hearing.

**You must go to the court hearing even if you have no rent arrears or 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. As long

as your arrears are under three months, the court should consider any offer of payment you make on your rent arrears.

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 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 can come to an agreement to present to the court. 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 all the arrears have been cleared before the hearing date.
- Continue (adjourn) the case to give you 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.
- Continue (adjourn) the case by agreement to allow repayment. This means that if you keep to 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 (put it on hold) to allow repayments or to allow you to send in a legal-aid application, if you want to defend the case.
- Fix a date for a 'proof' (that is, a full hearing of the case) if you have a defence.
- 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 63).

### What you should ask for

If you are not in arrears, ask the court to continue (adjourn) the hearing because you can now afford to pay your rent regularly.

If at any time in the future you have problems paying your rent, you must contact your landlord to make an arrangement.

If you are in arrears, ask the sheriff to continue (adjourn) the hearing if you can pay all the arrears in a short space of time, for example, by sorting out your Housing Benefit claim. The court may not be prepared to do this unless you can show you have 'exceptional circumstances'.

#### Remember

##### If you have three months' arrears

If you have three months' rent arrears at the date of the hearing, the sheriff may not be able to give you time to pay.

- If you can't pay the arrears in a short time, and you agree that the amount of the 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 or Jobseeker's Allowance or on a low income, don't 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 grant a 'continuation' or 'sist' unless your arrears are more than three months. This means that as long as you keep paying the normal rent plus the amount ordered each week or month off the arrears, the landlord can take no further action.
- If the court will not accept any of these, the sheriff can make an outright 'order for ejection'.

#### Remember

##### What if I can't pay the order?

If you are in arrears and at any time you find you cannot afford the amount which the court ordered, you must go back to the court and ask for the order to be changed. You should also contact your landlord 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 under an agreement; or
- the time given on an outright decree for possession and ejection has run out.

Also 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. The court can order a 'sist' or 'continuation' instead of a 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 the house.

After you are evicted your landlord may:

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

For a fact sheet on

#### How can my landlord end my assured tenancy?,

call National Debtline on 0808 808 4000.



### 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 with rent arrears, see **The Debt Arrangement Scheme and rent arrears** on page 27.

# Getting rehoused

If you think you may lose your home, you should contact your local council or housing association for help as a homeless person. The council only has to offer you permanent rehousing as homeless under certain circumstances. Otherwise they may only offer advice or temporary accommodation. The council has to look at whether you:

- are homeless and eligible for help;
- are in a priority-need group;
- deliberately did something that made you lose your home (this is called 'intentional homelessness'); or
- have a local connection with the area in which you have applied for help.

If the council has to offer you another home, you may not have any choice about where it is in your local area, as long as it is 'suitable' under the rules. If you think you may eventually lose your home, it is very important to get advice beforehand, particularly if you are considering selling your home or handing in the keys.

We can advise you on how to approach your local housing department for rehousing and whether you are likely to be permanently rehoused.

The council must follow certain procedures to deal with homelessness applications. If you do not think they have dealt with your application properly or taken all your circumstances into account, contact a local housing aid centre or **contact us for advice**.

You should also contact housing associations in your area. They may have different rehousing policies from the council and may be able to offer you somewhere to live. See [www.scottishhousingregulator.gov.uk](http://www.scottishhousingregulator.gov.uk) for a list of registered social landlords or housing associations.

You could go on the ordinary waiting list for council rehousing. This is not the same as applying for help as a homeless person. Make sure you do both.

Your local citizens advice bureau, law centre or housing aid centre (such as Shelter) may be able to help you. They will not be able to give you a home but they can offer advice on getting rehoused and information on private landlords.

Shelter Scotland publishes a housing rights guide called **Homeless? Read This**. For a copy of the booklet, contact Shelter's free housing advice helpline on 0808 800 4444. They will also be able to tell you the address of your nearest housing aid centre. For details of Shelter Scotland, see page 68.

For a fact sheet on **Homelessness**, Call National Debtline on 0808 808 4000.



## Remember

### Mortgage and rent arrears

For detailed advice on **mortgage arrears** turn to page 42.

For advice on **rent arrears** turn to page 53.