



Scottish Secure Tenants Rights Leaflet

This leaflet summarises your rights as a Scottish secure tenant. The Scottish secure tenancy agreement was developed in consultation with our tenants. It is intended only as a plain language summary of your legal rights; it is not a precise statement of the law.

The Council is generally referred to as “we” throughout this leaflet. Tenants are normally referred to as “you”.

Tenancy Agreement

You have the right to a written tenancy agreement. This agreement is a legal contract between Orkney Islands Council and their tenants. The terms of the Agreement cannot be changed unless:

- We both agree changes.
- Or the changes are made by court order.

This does not apply to rent charges, however, as we can change rents provided we first give you four weeks written notice. We must also consult with you before making any changes and take account of your views.

Legal Rights

You have a wide range of legal rights. Below is a summary and if you wish any more information please contact Housing Services.

Information

We have to provide you with certain information before your tenancy starts.

We have to provide you with:

- Information about our complaints system.
- And, if you ask us, information on our major policies such as allocation, repairs and rent setting.

If you want to become a joint tenant

You can apply for a joint tenancy with another person(s) either living with you, or planning to live with you provided this will be their only or principal home. The

proposed joint tenant must have been living in the property as their only or principal home for 12 months prior to making the application. In addition we require to have been aware of their occupation for at least that 12 month period.

We will only refuse your request if we think it is reasonable to do so. If you disagree with our decision, you can appeal using our own internal appeals system. Also you can seek independent advice to consider other options.

You should contact Housing Services if you want to apply for a joint tenancy. A summary of the advantages and disadvantages of having a joint tenancy is provided in the separate leaflet "Applying for a Joint Tenancy?".

To sublet your house, or take in lodgers or assign (pass on) your tenancy

You can sublet your house, take in lodgers, or assign your tenancy only when you receive our written permission. You have to apply to us in writing. Forms are available in our office to help you do this.

You must tell us:

- The name of the subtenant (or lodger), the rent and any other payments you are planning to charge; this would include any deposit.
- The name of the person you wish to assign the tenancy to. You can only assign the tenancy to someone where your house has been their only or principal home for the last 6 months.

We will only refuse permission when we think it is reasonable to do so. Some of the reasons for refusing could include:

- When we have started taking action for eviction by serving you with a notice.
- When we have got an eviction order against you.
- If the rent, or deposit, that you are going to charge is not reasonable.
- Where the house is legally overcrowded.
- Where we are planning to carry out work to your house that would affect your request.

The property must have been your only or principal home for 12 months prior to applying to assign or sublet the property to someone else.

If we don't get back to you with our decision within one month, then your request is granted automatically.

If we refuse you permission, then we must write to you giving our reasons. You can appeal to the sheriff court if you do not agree with our decision. You can seek independent advice from some of the agencies listed at the end of this leaflet.

If you want to exchange your house (mutual exchange)

You can exchange your house with other Scottish secure tenants, including council and housing association tenants such as tenants of Orkney Housing Association. You can also exchange homes with tenants of a water or sewerage authority. Before you can exchange, we will have to give our written permission. The other tenant's landlord also has to agree.

Our policy also allows for exchanges between our tenants and tenants who are not Scottish secure tenants, for example, council and housing association tenants living in England.

We will only refuse your request to exchange if it is reasonable to do so. Some of the reasons for refusing could include:

- When we have begun action for eviction by serving you with a notice.
- When we have an eviction order against you.
- Where the house would be legally overcrowded.
- Where we let your house to you because of your employment with us.
- Where your house has been adapted/designed for someone who has particular needs and, following the exchange, there would not be a person living in the house who needed these adaptations or designs.
- If the other house is much larger than your household needs, or it is not suitable for you.

If we don't get back to you with our decision within one month, then your request is granted automatically.

If we refuse you permission, then we must write to you giving our reasons. You can appeal to the sheriff court if you do not agree with our decision. You can seek independent advice from some of the agencies listed at the end of this leaflet.

Succeeding to the tenancy on the tenant's death

When a tenant dies, a person living in the house may be able to succeed to the tenancy as long it was their only or principal home. The law sets out who can qualify to succeed to the tenancy and who has priority to succeed.

First Priority

- The tenant's husband or wife.
- The tenant's partner; this includes same sex partners. In this instance the couple must have lived together for 12 months before the tenant's death and we must have been notified that the person was resident at least 12 months prior to the tenant's death).
- The surviving joint tenant.

Second Priority

If no one qualifies under the first category, then a member of the tenant's family can succeed if she or he is at least 16 years old and the house was their only or principal

home at the time of the tenant's death. It requires to have been their only or principal home for at least 12 months prior to the tenant's death and we must have been notified that the person was resident at least 12 months prior to the death of the tenant.

Family members include children, stepchildren and grandchildren. The full list of possible family members is detailed in your tenancy agreement.

Third Priority

If there are no family members who qualify, then a carer who has cared for either the tenant or a member of their family can succeed provided:

- She or he is at least 16 years old.
- The house was their only or principal at the time of the tenant's death.
- And she or he gave up their other only or principal home to live in the house to care for the tenant or family member.

It requires to have been their only or principal home for at least 12 months prior to the tenant's death and we must have been notified that the person was resident at least 12 months prior to the death of the tenant.

The law allows for two successions.

Special Rule: Adapted Houses

If the house is designed or substantially adapted for use by a person who has particular needs, only the husband/wife, partner or joint tenant can succeed to that house without such needs; this only applies, however, at the first succession.

If the person entitled to succeed is a family member or carer, then they will not succeed to the house unless they have similar particular needs. We will, however, make other suitable alternative accommodation available.

Where more than one person qualifies

If more than one person qualifies, they have 4 weeks to decide who should succeed to the tenancy; this could include them deciding to become joint tenants. By the end of the 4 weeks, they should tell us in writing of their decision. If they cannot agree, then we will decide who will become the tenant.

Declining a Tenancy

If the person who qualifies does not want the tenancy, she or he should let us know in writing, within 4 weeks. She or he will have to leave the house within 3 months and is responsible for paying the rent during that period.

Other Issues

Tenancies are not ended on the death of a joint tenant if the remaining tenant(s) continue to live in the house.

A person who would have succeeded to the tenancy, but cannot because there have been two successions, can stay in the house for 6 months. In these situations they do not have a Scottish secure tenancy.

Repairs

We are legally required to carry out certain repairs and to maintain your house to certain standards. These responsibilities are set out in the separate leaflet on repairs. Further information on repairs is also in your tenancy agreement.

Right to Repair

If you have reported certain repairs to us and we have not started the work within set time scales, then you have the right to call in an approved contractor to carry out the repairs. These repairs are known as “qualifying repairs”. You also have the right to compensation if we do not complete these repairs on time. Full details on this right are contained in the separate leaflet on repairs.

Carrying out improvements or making alterations

You can carry out home improvements and make alterations to your house as long as we have given permission in writing. We will only refuse your request to carry out improvements if it is reasonable to do so. If we give you permission, it may include conditions on the standard of work. It is important to remember that you will be responsible for getting all the consents that are necessary such as planning permission and building control warrants.

If we are going to refuse permission, then we will write to you giving our reasons.

You can appeal to the sheriff court if you do not agree with our decision. You can seek independent advice from some of the agencies listed at the end of this leaflet.

You may also qualify for compensation for improvements when you end your tenancy. Full details on these rights are contained in the separate leaflet on repairs.

Security of Tenure

Your Scottish secure tenancy can only be ended:

- On the death of the tenant and there is no legal successor, or the successor declines the tenancy.
- By joint written agreement.
- By you giving us four weeks notice in writing.
- By us using abandonment procedures where the house is empty and you are not going to live in it as your main home.
- By us getting a court order for eviction.
- Or by us converting it to a short Scottish secure tenancy.

Court Action

Before we can take court action to evict we must serve a notice on you. The notice is called a Notice of Proceedings.

A copy of this notice must also be served on any “qualifying occupiers”. A “qualifying occupier” is someone who lives with you and who is:

- A family member who is at least 16.
- A subtenant, lodger, or person to whom the tenancy has been assigned, that is, to whom the tenancy has been passed over.

Grounds for Eviction

There are 15 possible grounds for eviction. These grounds are often referred to as “conduct” grounds and “management” grounds (though not stated as such in law).

Examples of “conduct” grounds are:

- Non-payment of rent lawfully due, that is, rent arrears.
- Behaviour that is a nuisance or annoyance to neighbours.

Before an eviction order is granted, the sheriff must be satisfied that a ground exists and that it is reasonable for the eviction to go ahead.

Examples of “management” grounds are:

- Conduct that is a nuisance or annoyance to neighbours; this includes behaviour that amounts to harassment.
- Where the house is overcrowded.

Before an eviction order is granted, the sheriff must be satisfied that a ground exists and that suitable alternative accommodation is available for the tenant when the eviction takes place. The full list of grounds is contained in your tenancy agreement.

What is a short Scottish secure tenancy?

These are short versions of Scottish secure tenancies can only be granted in certain situations. Such tenants don’t have the same rights as full Scottish secure tenants.

If you have a short Scottish secure tenancy:

- There is no right to succeed to the tenancy when the tenant dies.
- There is only limited security of tenure and the court has to grant possession provided we follow the correct legal procedures for ending the tenancy. For example, we must provide a minimum period of two months notice that we want to recover possession of the house.

Tenants will have most of the other rights associated with the Scottish secure tenancy such as the right to be consulted, right to repair and right to sublet.

A short Scottish secure tenancy has to be for a minimum of 6 months and we have to serve a notice before the tenancy begins stating it is a short Scottish secure tenancy.

The circumstances when a short Scottish secure tenancy can be used are:

- Temporary accommodation for people requiring housing support services.
- Temporary accommodation for homeless applicants.
- Temporary lets awaiting development of the principal home.
- Temporary lets to people moving into an area to take up work.
- Where the accommodation is not owned by us and the terms of the lease stop the accommodation being let as a Scottish secure tenancy.
- Tenants who have been evicted for anti-social behaviour in the last three years (housing support services have to be provided).
- Where an anti-social behaviour order has been granted against the prospective tenant or any person who would live with them (housing support services have to be provided).

If a Scottish secure tenant, or a member of his/her household, has had an anti-social behaviour order granted against them, we can serve a notice on the tenant; this converts the tenancy to a short Scottish secure tenancy (housing support services have to be provided).

When a short Scottish secure tenancy was granted because of anti-social behaviour the tenancy will normally convert automatically to a full tenancy after one year unless we have started taking action to evict the tenant.

The tenancy will only convert back to a full tenancy if:

- The notice expires.
- The notice is withdrawn.
- We were unsuccessful in the court action.

You have the right of appeal to the sheriff court if:

- The Scottish secure tenancy has been converted to a short tenancy.
- You consider that you should have a Scottish secure tenancy and have been offered a short Scottish secure tenancy instead.

Contacts

Housing Services

- Orkney Islands Council, School Place, Kirkwall.
- Telephone: 01856873535.
- Email: housing@orkney.gov.uk
- Emergency out of hours repairs service: 01856873430.
- Emergency out of hours homelessness officer: 07921582962.

Legal Services

- Orkney Islands Council, School Place, Kirkwall.
- Telephone: 01856873535.
- Email: legal.services@orkney.gov.uk

Citizen's Advice Bureau

- Anchor Buildings, Bridge Street, Kirkwall.
- Telephone: 01856875266.

Orkney Housing Association Ltd.

- 39a Victoria Street, Kirkwall.
- Telephone: 01856875253.
- Email: enquiries@ohal.org.uk

Last updated: April 2021.

