

## ASSURED TENANCIES

## HOUSING (SCOTLAND) ACT 1988

### NOTES FOR LANDLORDS TO BE READ WITH NOTICE AT6. THESE NOTES ARE FOR GUIDANCE ONLY AND ARE NOT A DEFINITIVE INTERPRETATION OF THE LAW.

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#### WHEN TO USE THIS NOTICE

1. You should use this notice only when you wish to inform your tenant that you intend to raise proceedings to take possession of the house which is or was the subject of an assured tenancy agreement between you and the tenant.

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#### GAINING POSSESSION – THE THREE MUSTS

2. Before you may gain possession of your tenants' house, you must do three things:-
  - a. serve on the tenant a Notice to Quit (this may have been served at an earlier stage when you terminated the contractual tenancy and a statutory assured tenancy arose. If a Notice to Quit was served earlier you need not serve another);
  - b. serve on the tenant a notice (AT6) indicating that you intend to raise proceedings to gain possession; and
  - c. obtain an Order for possession from the courts.

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#### THE GROUNDS FOR POSSESSION

3. The Sheriff will only grant you possession if you can establish:-
  - a. that one of the grounds for possession as set out in Schedule 5 to the Housing (Scotland) Act 1988 applies, or;
  - b. that the tenancy in question is a short assured tenancy and the tenancy period has expired.
4. The grounds for possession fall into two groups;
  - 4.1 those which are mandatory; that is to say if they are established the Sheriff must grant you an order for possession; and
  - 4.2 those which are discretionary; that is to say even if they are established the Sheriff will grant you an order for possession only if he judges it reasonable to do so.

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#### MANDATORY GROUNDS

5. The mandatory grounds are as follows:-
  - 5.1 **GROUND 1** is that you need the property for yourself or your wife or husband for use as your principal home. You will also have to satisfy the Sheriff that either the house was your only or principal home before you granted the tenancy or that you became the landlord after the beginning of the tenancy but not through buying the house in question or acquiring it in exchange for anything of value. This ground will apply only if you gave the tenant notice in writing before the beginning of the tenancy that possession might be recovered on this ground, unless the Sheriff judges it to be reasonable to waive the requirement.
  - 5.2 **GROUND 2** is that the house is subject to a heritable security (a mortgage) and the lender, for example a bank or building society, is entitled to sell the house because of your failure to keep to the conditions of the loan. This ground will apply only if you gave the tenant notice in writing before the beginning of the tenancy that possession might be recovered on this ground, unless the Sheriff judges it to be reasonable to waive this requirement.

- 5.3 **GROUND 3** is that the house was let for a specified period 8 months or less, having been occupied as a holiday home during the previous 12 months. This ground will apply only if you gave the tenant notice in writing before the beginning of the tenancy that possession might be recovered on this ground.
- 5.4 **GROUND 4** is that the house was let for a specified period of 12 months or less, having been let to students by a specified educational institution during the previous 12 months. The Educational Institutions concerned are specified by the Secretary of State. This ground will apply only if you gave the tenant notice in writing before the beginning of the tenancy that possession might be recovered on this ground.
- 5.5 **GROUND 5** is that the house is let to a minister or full time lay missionary in connection with his work and is required for that purpose. This ground will apply only if you gave the tenant notice in writing before the beginning of the tenancy that possession might be recovered on this ground.
- 5.6 **GROUND 6** is that you require possession in order to demolish or substantially reconstruct the house, or to carry out substantial improvement works on the house, and that the work can be carried out only if the tenant gives up possession, or (if the work could have been carried out if the tenant agreed either to a change in the terms of his tenancy or to accept a tenancy of only part of the house) the tenant has refused the alternative. This ground will not apply if you became the landlord after the beginning of the tenancy through buying the house in question or acquiring it in exchange for anything of value. If possession is granted on this ground you must pay the tenant reasonable expenses of removing.
- 5.7 **GROUND 7** is that the tenancy has been succeeded to by the new tenant under the will or intestacy (disposal of property where no valid will was left) of the original tenant. If possession is sought under this ground proceedings must take place within 12 months of the death of the original tenant or of the date on which you learned of this death. The acceptance of rent from a new tenant will not affect your right to repossess unless you agree in writing to a new rent or to a rent change in the tenancy agreement. **Note Carefully** that this ground does not apply if someone is left the tenancy under the will or intestacy of their husband or wife who was the original tenant (that is the husband or wife did not themselves succeed to the tenancy).
- 5.8 **GROUND 8** is that at least 3 months rent is in arrears both on the date on which the notice of intention to seek possession of the house was served and at the date of the court hearing.

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## DISCRETIONARY GROUNDS

6. The discretionary grounds are as follows:-

- 6.1 **GROUND 9** is that suitable alternative accommodation is available or will be available for the tenant when repossession was made.

**Note carefully** that what qualifies as suitable alternative accommodation is set out in the Housing (Scotland) Act 1988 (Schedule 5 Part III).

If you are granted possession on this ground you must pay the tenant reasonable expenses of removing.

- 6.2 **GROUND 10** is that the tenant has given Notice to Quit which has expired but he has not moved out. An order for possession on this ground must be sought by you not later than 6 months after the expiry of the Notice to Quit which was served by the tenant.

- 6.3 **GROUND 11** is that the tenant has persistently delayed paying rent.

- 6.4 **GROUND 12** is that some rent is unpaid at the start of court proceedings and at the time of serving of the notice of intention to take possession proceedings.

- 6.5 **GROUND 13** is that any obligation of the tenancy (other than payment of rent) has been broken or not performed by the tenant.
- 6.6 **GROUND 14** is that the tenant or anyone living with him has allowed or caused damage to the house or common parts of the building in which the house is situated.
- 6.7 **GROUND 15.** The tenant, a person residing or lodging in the house with the tenant or a person visiting the house has-
  - (a) been convicted of-
    - (i) using or allowing the house to be used for immoral or illegal purposes; or
    - (ii) an offence punishable by imprisonment committed in, or in the locality of, the house; or
  - (b) acted in an anti-social manner in relation to a person residing, visiting or otherwise engaging in lawful activity in the locality; or
  - (c) pursued a course of anti-social conduct in relation to such a person as is mentioned in head (b) above.

In this Ground "anti-social", in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance, "conduct" includes speech and a course of conduct must involve conduct on at least two occasions and "tenant" includes any one of joint tenants."

- 6.8 **GROUND 16** is that the tenant or anyone living with him has damaged the furniture or allowed it to become damaged
- 6.9 **GROUND 17** is that the house was let to the tenant because he was employed by you the landlord, and the tenant is no longer employed to you.

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## **REPOSSESSION OF THE EXPIRY OF A SHORT ASSURED TENANCY**

7. If you seek possession of a house let on a short assured tenancy you must satisfy the Sheriff that the tenancy has been terminated at its expiry date. This can only be done by serving a valid Notice to Quit. You must also show that you have given the tenants at least 2 months notice of your intention to repossess. If you establish these points, the sheriff must grant you an order for possession. **Note carefully** a short assured tenancy can also be repossessed using any of the grounds 1-17.

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## **NOTICE TO BE GIVEN TO THE TENANT**

8. The amount of notice which you must give between the serving of Notice AT6 and the raising of proceedings in court depends on the ground or grounds on which you are seeking possession. If any of grounds 1, 2, 5, 6, 7, 9 and 17 apply, whether with or without other grounds, you must give 2 months notice. You must also give 2 months notice if you are seeking repossession of a short assured tenancy under Section 33 of the Housing (Scotland) Act 1988. If only other grounds apply, you need give only 2 weeks notice.

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## **EVICTION MUST BE CARRIED OUT LEGALLY**

9. It is a criminal offence for anyone to evict a tenant without a court order or to try to make him leave by intimidation, violence, withholding services such as gas or electricity or any other sort of interference. It is not a defence for a landlord to say he did not intend his actions to harass the tenant or force him to leave. An offence will still have occurred if he should reasonably have known that his actions would be taken to be harassment by the tenant. A landlord found guilty of illegal eviction may be liable to pay damages to the evicted tenant; and the level of the damages awarded will be based on the financial benefit to the landlord from having a house with a vacant possession instead of a sitting tenant.

## **LIFESPAN OF NOTICE AT6**

**10.** Notice AT6 ceases to have affect 6 months from the earliest date on which the proceedings for possession to which it relates could have been raised. This means that Notice AT6 cannot be relied upon 6 months and 2 weeks or 8 months from the date of its serving, depending on the grounds involved.

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## **HOW TO SERVE THIS NOTICE**

**11.** After you sign and date Notice AT6 you must take steps to ensure your tenant receives it as soon as possible thereafter and you should make sure your tenant knows whether subsequent correspondence should be sent to you or to an agent who deals with your affairs.

A Notice can be served validly on a tenant only in the following ways:-

- a. by delivering it to him; or
  - b. by leaving it at his last known address; or
  - c. by sending it by recorded delivery letter to him at that address.
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## **FURTHER GUIDANCE**

**12.** If you are uncertain about the terms of this Notice or its validity or how it should be completed or uncertain about how to apply for a court order, you should consult a solicitor or any organisation which gives advice on housing matters.

**13.** Further guidance on assured tenancies is contained in the booklet “Assured Tenancies in Scotland – Your Rights and Responsibilities, A Guide for Landlords and Tenants” which is available from any office of the Rent Assessment Panel, Citizens Advice Bureau, Housing Advisory Centre or from any office of the Rent Registration Service.

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