



## Private Sector Tenancies Security of Tenure

If you rent your home from a private landlord this leaflet outlines the type of tenancy that you may have and what your landlord must do before you have to leave. It is intended only as a plain language summary of your legal rights, it is not a precise statement of the law. If your landlord asks you to leave your home, you should always take independent advice before acting.

### What is private residential tenancy?

If you rent part, or all of, a property from a private landlord and you pay them rent in exchange for living there and you have done so from 01 December 2017 then you will have a private residential tenancy. This tenancy has no end date and will last until a tenant wishes to leave the property or a landlord uses one (or more of 18 grounds of eviction).

### What is an assured tenancy?

If you rented part, or all of, a property from a private landlord, prior to 01 December 2017, and you pay them rent in exchange for living there then you will have an assured tenancy – unless the tenancy falls into one of the excluded categories. Some of the excluded categories are:

- Tenancy started before 02 January 1989.
- Tenancy with a weekly rent of less than £6 per week.
- Agricultural tenancy.
- Letting by an educational establishment for a student.
- Holiday let.
- Resident landlord.

There are two types of assured tenancies – Assured and Short Assured. Before you can know your rights, you must find out what type of tenancy you have.

### What type of tenancy do I have?

If your tenancy was created after 01 December 2017 then you have a private residential tenancy.

If your tenancy was prior to 01 December 2017, is for a minimum of 6 months **and** your landlord served you with an AT5 notice **before** you took on the tenancy then you will have a short assured tenancy. An AT5 is a special notice and you should

read it carefully before signing it as it outlines your rights as a short assured tenant. The AT5 is not valid if your landlord gives it to you after you have signed your lease or moved into the property.

If no AT5 has been served then you will be an assured tenant, even if no written tenancy agreement is in place.

## **What happens when my tenancy runs out?**

### **Private Residential Tenancy**

The private residential tenancy is open-ended and will last until a you wish to leave the property, or your landlord uses one (or more) of 18 grounds for eviction.

## **What grounds can be used to evict me?**

### **Mandatory Grounds**

#### **Ground 1- Landlord intends to sell the let property**

This ground applies if your landlord plans on putting the let property up for sale within three months of the you moving out.

Your landlord will need evidence to prove it – this could include a letter from a solicitor or an estate agent, or a recent home report for the property.

#### **Ground 2 - Let property to be sold by lender**

This ground applies if your mortgage lender wants to repossess the property and sell it.

#### **Ground 3 - Landlord intends to refurbish the let property**

This ground applies if you want to carry out major works to the let property that are so disruptive that the tenant wouldn't be able to live there at the same time.

Example of evidence could include planning permission, or a contract between you and an architect or a builder for the work to be carried out.

#### **Ground 4 - Landlord intends to live in let property**

This ground applies if you want your tenant to move out of the property so that you or your joint landlord can move in.

Evidence could include an affidavit (a written statement, signed under oath in the presence of a Notary Public or a Justice of the Peace, that can be used as evidence at the Tribunal) saying this is what you are going to do.

#### **Ground 5 - Landlord intends to use the let property for non-residential purpose**

This ground applies if you want the tenant to move out so you can use the property for something other than a home.

Evidence could include planning permission that will let you use the property for a different purpose.

### **Ground 6 - Let property required for religious worker**

This ground applies if the property is held to be available for someone who has a religious job (like a priest, nun, monk, imam, lay missionary, minister, rabbi or something similar).

The ground only works if the property has been used for this purpose before.

### **Ground 7 - Tenant has a relevant criminal conviction**

This ground applies if your tenant is convicted of an offence punishable by imprisonment that involved them either:

- Using the property for illegal reasons.
- Letting someone use the property for illegal reasons.
- Committing a crime within or near the property.

You have to apply to the Tribunal within a year of your tenant getting the conviction, unless you have a reasonable excuse for not applying before then.

### **Ground 8 - Tenant is no longer occupying the let property**

This ground applies if the property isn't being used as the main or only home of your tenant or a legal sub-tenant.

This doesn't count if you've failed your duty to keep the property in good repair and the tenant has had to move out for their own safety.

## **Discretionary Grounds**

### **Ground 9 - Landlord's family member intends to live in the let property**

This ground applies if a member of your family plans to move into the property as their only or main home for at least three months.

Members of your family who qualify for this are:

- Someone you're married to.
- Someone you're in a civil partnership with.
- Someone living with you as though they were married to you.
- A parent or grandparent.
- A child or grandchild.
- A brother or sister.
- Step or half relatives (like a stepson or half-sister).
- A person being treated as someone's child even if they aren't related biologically or legally.

- Any family member (as listed above) of your spouse, civil partner or person living with you as though you were married.
- The spouse or civil partner of any family members listed above, or someone living with them as though they were married.

You need evidence for this ground. This could include an affidavit stating that this is what your family member intends to do.

### **Ground 10 - Tenant no longer needs supported accommodation**

This ground applies if the tenant moved in because they had a need for community care and they've since been assessed as no longer having that need.

### **Ground 11 - Tenant has breached a term of the tenancy agreement**

This ground applies if the tenant hasn't complied with one or more of the terms of tenancy.

This doesn't apply to cases where the tenant hasn't paid their rent (known as 'rent arrears') – there's a separate ground for this.

### **Ground 12 - The tenant has engaged in relevant antisocial behaviour**

This ground applies if the tenant has behaved in an antisocial way to another person, by doing something which either:

- Causes them alarm or distress.
- Is a nuisance or annoyance.
- Is considered harassment.

The First-tier Tribunal will consider the behaviour, who it involved and where it occurred to decide whether to issue an eviction order.

To use this ground, you have to apply to the Tribunal within a year of the conviction or behaviour taking place, unless you have a reasonable excuse.

### **Ground 13 - Tenant has associated in the let property with someone who has a criminal conviction or is antisocial**

This ground applies if your tenant allows someone into their property and they behave in an antisocial way that would have them evicted if they were the tenant.

This person could be:

- A sub-tenant.
- A lodger of the tenant.
- Someone the tenant lets into the property on more than one occasion.

To use this ground, you have to apply to the Tribunal within a year of the conviction or behaviour taking place, unless you have a reasonable excuse.

### **Ground 14 - Landlord has had their registration refused or revoked**

This ground applies if you aren't registered as a landlord in the local council area where the property is located.

This could be because the local council has either:

- Refused to enter you in the register.
- Removed you from the register.

### **Ground 15 - Landlord's HMO licence has been revoked**

This ground applies if the HMO (House of Multiple Occupancy) licence for the property has been removed and keeping all the tenants in the property would no longer be legal.

### **Ground 16 - An overcrowding statutory notice has been served on the landlord**

This ground applies if an 'overcrowding statutory notice' has been served on you because the property is overcrowded to the extent that it may affect the health of the people living there.

### **Grounds which could be mandatory or discretionary?**

The final two grounds can be either mandatory or discretionary, depending on the circumstances of the case.

### **Ground 17 - Tenant is in rent arrears over three consecutive months**

This ground applies if the tenant has been in 'rent arrears' (has owed rent payments of any amount) for three or more months in a row.

If the tenant still owes at least a month's rent by the first day of the Tribunal hearing, the ground is mandatory, and the Tribunal must issue an eviction order. The Tribunal must also be satisfied that the arrears were not due to a delay or failure in the payment of a relevant benefit.

If the tenant owes less than a month's rent (or is no longer in arrears) by the first day of the Tribunal hearing, the ground is discretionary, and the Tribunal will decide whether it is reasonable to issue an eviction order. In deciding whether it is reasonable to evict, the Tribunal will consider whether the tenant being in arrears is due to a delay or failure in the payment of a relevant benefit.

### **Ground 18 - Tenant has stopped being — or has failed to become — an employee**

This ground applies if you let the tenant move in because they were an employee of yours or were expected to become one, and now they aren't.

The First-tier Tribunal will have to give an eviction order if either:

- You apply within 12 months of the tenant no longer being an employee.

- The tenant never became an employee and you apply within 12 months of the tenancy starting.

The Tribunal will be able to decide whether to give an eviction order if:

- You apply on or after the date 12 months after the tenant stopped being an employee.
- The tenant never became an employee, but you apply on or after the date 12 months after the tenancy started.

## Short Assured Tenancy

If your landlord wants you to leave the property he must serve the correct legal notices. If you are a short assured tenant then the following notices must be served:

- Notice to Quit (the length of this varies according to your tenancy agreement and the length of your tenancy – however it can never be for less than 28 days).
- Section 33 Notice (this must give two months' notice).
- Notice seeking recovery of possession (often an AT6 Notice is used for this – again the notice period must be at least two months).

No grounds are necessary if these notices are served before your tenancy ends.

If your landlord does not serve any notices and you do not leave the property then the tenancy simply continues for the same period as the initial tenancy or for one year, whichever is shorter, unless the tenancy agreement states otherwise. The terms and conditions of the tenancy remain the same.

## Assured Tenancy

If you are an assured tenant, then your landlord cannot simply end your tenancy when the initial agreed period runs out. Your landlord can serve a notice to quit and bring the contracted tenancy to an end, but this does not mean you have to leave the property. Your landlord can then either seek vacant possession or propose new terms for the tenancy, such as a change in the rent.

If your landlord is seeking vacant possession, then s/he will have to serve the following notices:

- Notice to Quit (the length of this varies according to your tenancy agreement and the length of your tenancy – however it can never be for less than 28 days).
- AT6 Notice stating the ground under which possession is sought (the length of notice varies according to the ground used – either 2 weeks or 2 months).

**An eviction order must be granted before you have to leave the property. If your landlord forces you to leave without an eviction order s/he is committing a criminal offence.**

## **What grounds can be used to evict me?**

There are only certain grounds that can be used to end an assured tenancy. These grounds are set down by the Housing (Scotland) Act 1988 and are summarised below. Please note that this is not an exact statement of the law. The grounds are split into two main categories – mandatory grounds and discretionary grounds. If a mandatory ground is proved the Tribunal must grant possession but if a discretionary ground is used it is up to the Tribunal to decide whether it is reasonable to grant possession.

### **Mandatory Grounds**

#### **Ground 1**

Where prior to the tenancy being granted it was the landlord's principal home or when the landlord requires the house as his/her principal home. The landlord should have notified the tenant that this ground might be used prior to the beginning of the tenancy.

#### **Ground 2**

Where the landlord has a mortgage on the house and as a result of default the landlord is seeking repossession. The landlord should have notified the tenant that this ground might be used prior to the beginning of the tenancy.

#### **Ground 3**

Where the house is let as an off-season holiday let of not more than 8 months. The property must have been used as a holiday let in the previous 12 months. The landlord must have notified the tenant of this prior to the beginning of the tenancy.

#### **Ground 4**

Prior to the let the house was let as a student let by a specified educational institution, such as a university, and it is let for no more than 12 months. Again, the landlord should have notified the tenant of this.

#### **Ground 5**

The house is required for occupation by a minister or full-time lay missionary.

#### **Ground 6**

Where the house is going to be demolished or substantial reconstruction carried out and this work can only be carried out if the tenant gives up possession. The landlord must pay the tenant reasonable expenses for removing if possession is granted on this ground.

#### **Ground 7**

Where the former tenant has died, and the current tenant has inherited the property. This does not apply if a spouse has inherited the property from the original tenant.

The landlord must start proceedings for possession within 12 months of the former tenant's death.

### **Ground 8**

The tenant is at least 3 months in rent arrears both at the time of serving notice and at the date of the court hearing.

## **Discretionary Grounds**

### **Ground 9**

Where the landlord has offered suitable alternative accommodation. The landlord must pay reasonable moving expenses if possession is granted on this ground.

### **Ground 10**

Where the tenant has given notice to quit and where s/he remains in the property. The landlord must start proceedings no later than 6 months after the notice to quit expired.

### **Ground 11**

Where the tenant persistently delays in paying rent. The tenant does not have to be in arrears at the start of court proceedings.

### **Ground 12**

Where there are rent arrears and the tenant is in arrears on the date when the notice was served and on the date of starting proceedings.

### **Ground 13**

Where there is a breach of the tenancy agreement, other than the obligation to pay rent.

### **Ground 14**

Where there is deterioration in the condition of the house or common parts due to the tenant or a lodger or sub-tenant.

### **Ground 15**

The tenant, or anyone living with him/her, has caused a nuisance or annoyance to neighbours or has been convicted by a court of immoral or illegal use of the premises.

### **Ground 16**

Where there is deterioration in the condition of the furniture owing to ill treatment by the tenant or someone living with him/her.

## **Ground 17**

Where the tenancy was let because of the tenant's employment and the tenant is no longer in that employment.

If Grounds 1, 2, 5, 6, 7, 9 or 17 are being used then two months' notice is required.

For any other ground two weeks' notice is required.

## **Contact Details**

If you would like to talk about any of the issues in this leaflet or you need further advice, please contact Housing Services by calling 01856873535.

Alternatively, you can call personally to our office at Orkney Islands Council, Council Offices, School Place, Kirkwall, Orkney, KW15 1NY.

If you need to contact our Homelessness Section in an emergency and it is outwith office hours we can be contacted on 07921582962.

We can also help you contact a range of other agencies that may be able to assist you.

This leaflet can be made available in a range of other languages and formats as required.

