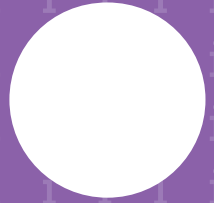




The Scottish
Government



Protection Against Illegal Eviction and Harassment

FOR PRIVATE RENTED SECTOR TENANTS



A Guide for Private Rented Sector Tenants

As a tenant with a private landlord, the law protects you against harassment and illegal eviction. Under the **Rent (Scotland) Act 1984**, it is a criminal offence for a landlord or agent or anyone else, such as a neighbour, to evict a tenant unlawfully without a court order, or to use harassment (such as threatening behaviour or turning off the water or electricity supply) to try to make them leave. This booklet describes your rights and sets out what you can do if you feel that you are being harassed or threatened with eviction.

The law on illegal eviction and harassment applies to almost all people living in private rented housing. This means that you are protected by the law whether or not you have a written tenancy agreement.

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Illegal Eviction

What is illegal eviction?

Illegal (or sometimes referred to as 'unlawful') eviction takes place when a landlord tries to remove a tenant from their property without following the proper court process when the tenant does not want to leave. Normally a landlord who wants the tenant to move out of his or her property must serve a **notice to quit** on the tenant giving them a certain length of time to leave. The notice to quit is a formal notice from your landlord stating that they would like you to vacate the property. The law sets the minimum length of time that must be given in a notice to quit. In most cases, tenants leave voluntarily without any need to go to court.

However, even when that period of notice expires, if a tenant does not want to leave, then they cannot normally be evicted until the landlord has obtained a **court order** from the Sheriff. A court order is a document which gives the landlord the legal right to take back possession of their property. Before getting the court order, the landlord must also in most cases (depending on the circumstances) give the tenant a **notice of proceedings**. This is a formal letter

which gives the tenant notice that the landlord will be applying to the Sheriff Court for a court order and sets out the landlord's reasons for wanting to evict the tenant.

For more information, see the Scottish Government's booklet *Assured Tenancies in Scotland - Your Rights and Responsibilities*. Alternatively, if your tenancy started before 1989, see *Regulated Tenancies in Scotland: Your Rents, Rights and Responsibilities*. These leaflets are available on our website at www.scotland.gov.uk/Topics/Housing/Housing or by calling 0131 244 5528.

If the landlord has not followed the required procedures, you should contact the police and/or your local authority for help. Many police forces and local authorities have special arrangements for sharing relevant information so they may in some cases pass on information about any complaint you make about your landlord. They will normally tell you if they plan to inform another authority. However, you can request that the information you give is not passed on.

Does your landlord need a court order to evict you?

The landlord does not need a court order if you are willing to move out. However, if you do not want to leave, in most cases a landlord **must obtain a court order** before evicting a tenant or anyone living in the property under an occupancy arrangement. This requirement covers you if you have a short assured tenancy (the most common type of tenancy), an assured tenancy or a regulated (pre-1989) tenancy.

Even if you are a lodger, where the landlord lives in the house or flat with you, even though you have no formal rights to stay in the property longer than the landlord agrees, they still need to give you reasonable notice and normally need a court order to evict you (unless you share a room with the landlord).

Your landlord will normally *not* need a court order to evict you if you are living in the property on a temporary basis, for example if you live in certain hostels for homeless people. The landlord also will not normally need a court order if you are living in accommodation provided as part of your job.

Although it is not necessary to get a court order to evict someone who falls into these excluded categories, the landlord must still give you reasonable notice that they want you to leave. A right of occupation may be a tenancy even if the agreement states that it is not, so it is always worth taking advice from the Citizens Advice Bureau, Shelter, your local authority or a solicitor if you are threatened with eviction.

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Harassment

The Rent (Scotland) Act 1984 also makes it an offence for your landlord to:

- do things which are likely to interfere with your peace or comfort, or the peace or comfort of anyone living with you;
- withdraw or withhold services which are reasonably required for you to use the property as a home.

It is a **criminal offence** for your landlord to act in these ways to try and get you to leave your home, or stop you from exercising your legal rights. Anyone found guilty of this offence may be fined up to £5,000 or imprisoned for 6 months, or both.

What is harassment?

Harassment is a very broad term, used loosely to cover a wide range of activities. This booklet deals only with harassment when somebody is trying to drive you out of your home.

Harassment can take many forms, including physical violence. However, it may not always be obvious to other people that your landlord is acting in a way which is intended to drive you out of the property, or stop you from doing something.

Your landlord might do things which you find distressing and these things may or may not be considered by the court to be harassment. Certain things which your landlord does not do could also count as harassment. For example, the following might be considered as harassment, depending on the circumstances:

- if the landlord intentionally does not do essential repairs;
- if the landlord cuts off the power or water supply;
- if the landlord will only give you one key for several tenants or if he or she changes the locks so you can't get access to your home;
- if the landlord or their friends behave antisocially e.g. by making too much noise late at night in a neighbouring house or flat.

There may however also be cases where a landlord has a good reason for doing what he or she is doing. If so, a landlord accused of harassment may be able to argue that he or she needed to act in a particular way.

Depending on the particular situation, you can act in certain ways. You can go directly to the police or first seek advice from your local authority or from an advice agency, such as your local Citizens Advice Bureau or Shelter (see the end of this leaflet for contact details). Even if you do not want the police to take action against your landlord, it is still worth speaking to them as they will record it and can use this in case you or anyone else complains to them about the same landlord in future. You may also want to seek formal legal advice.

Can you be compensated if you move out as a result of harassment, or if you are illegally evicted?

Yes. Under the Housing (Scotland) Act 1988, if you are illegally evicted or harassed to the extent that you leave your home, the court may award you compensation. The amount of compensation would normally be based on the level of any financial benefit the landlord could make from selling the property without a tenant compared to selling it with a 'sitting' tenant.

However, if the landlord is able to put forward reasonable grounds in explanation of his or her actions, they may not have to pay compensation.

If you are able to return to your home before court proceedings are complete or, at your request, the Sheriff orders the landlord to allow you back, you will not receive compensation under the 1988 Act. The Sheriff may also reduce the compensation if he or she decides that the landlord offered to let you back into your home before the court proceedings began, and it was unreasonable of you to refuse that offer.

What if you don't want to go to court?

Where you feel you are being harassed or illegally threatened with eviction, it may not always be necessary to take the matter to court. There may be cases where the landlord is willing to stop their actions if he or she receives a letter from the local authority or from your solicitor. Local authority private rented sector and/or landlord registration officers often try to resolve disputes between landlords and tenants. Any housing advice centre or Citizens Advice Bureau should also be able to offer advice on landlord and tenant issues.

However, you may find that you will need to go to the police and then to court to enforce your rights - this is not necessarily as difficult or worrying as you might imagine. Local solicitors with experience in landlord and tenant matters will be able to advise you on whether or not you are eligible for legal aid to pay for the cost of getting legal advice and someone to represent you in court.

Your landlord might do things which you find distressing and these things may or may not be considered by the court to be harassment.

Private Landlord Registration

Private landlords of residential property in Scotland must be registered with each local authority in which they let property. To be registered, landlords must be approved by the local authority as a 'fit and proper' person. In deciding whether a landlord is 'fit and proper', local authorities take into consideration a range of information, including any evidence that the landlord has broken the law relating to housing.

Where there is strong evidence that a landlord has harassed or illegally evicted a tenant, this should be taken into consideration in deciding on that landlord's application for registration. If the landlord is already registered, their registration may be reviewed and the landlord could ultimately be deregistered.

A landlord cannot legally rent out property if an application for registration is rejected or if they have not applied to be registered.

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Useful Contacts

There are a number of places where you can go for advice. You should also decide whether or not you wish to report your landlord to the police; the agencies listed below can help you decide this.

Your **local council** may have a private rented sector officer who can help you. Their homelessness team should also be able to help you if you do not have anywhere permanent to live as a result of the illegal eviction. You can find the contact details for your local authority in the Phone Book; their central switchboard will help put you through to the appropriate person.

Alternatively, you can get advice from a solicitor, a law centre, a housing aid centre, or a Citizens Advice Bureau.

You can find your nearest **Citizens Advice Bureau** in your telephone directory or online at: **www.cas.org.uk** – they can provide you with independent advice and assistance.

There are **Shelter Housing Aid Centres (SHAC)** in Edinburgh, Glasgow and Dundee which provide free, independent advice and assistance. Details and opening times can be found in your telephone directory or online at: **<http://scotland.shelter.org.uk/home/nearyou.cfm>**. Alternatively you can call Shelter's free helpline on 0808 800 4444.

Your local council may have a private rented sector officer who can help you.

***Edinburgh Shelter Housing
Aid Centre***

Ground Floor, Unit 2
Kittle Yards, Causewayside
Edinburgh EH9 1PJ
Tel: 0844 515 2400

***Dundee Shelter Housing
Aid Centre***

1 Courthouse Square
Dundee DD1 1NH
Tel: 0844 515 2528

***Glasgow Shelter Housing
Aid Centre***

First Floor Suite 2
Breckenridge House
274 Sauchiehall Street
Glasgow G2 3EH
Tel: 0844 893 5560

You can find a suitable **solicitor** near you by contacting the Law Society of Scotland, online at **www.lawscot.org.uk/find**, from Yellow Pages at **www.yell.com**, or at the address below:
Law Society of Scotland
26 Drumsheugh Gardens
Edinburgh EH3 7JR
Tel: 0131 226 7411

Please note:

This booklet cannot give an authoritative interpretation of the law; only the courts can do that. Nor can it cover every case. If you are in doubt about your rights or obligations you should seek advice from a Citizens Advice Bureau, Shelter or a solicitor. Help with all or part of the cost of legal advice may be available through legal aid. Some solicitors also provide a free first interview to discuss your problem.

Further copies of this document are available, on request, in audio and large print formats and in community languages, please contact: 0131 244 5528

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此文件有更多備份，如果需要，語音版本和大字體版
本及少數種族語言版本也可提供，請聯絡: 0131 244 5528

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ونسخ بلغات أخرى، يرجى الإتصال على: 0131 244 5528

Aby otrzymać niniejszy dokument w innej wersji językowej, na kasiecie
lub w wersji z powiększonym drukiem, prosimy o kontakt: 0131 244 5528

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