

Private Sector Residential Tenancies

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Legislative Background

- **Rent (Scotland) Act 1984**
- **Housing (Scotland) Act 1988**
- **Antisocial Behaviour etc. (Scotland) Act 2004**
- **Housing (Scotland) Act 2006**
- **Private Rented Housing (Scotland) Act 2011**
- **Tenancy Deposit Schemes (Scotland) Regulations 2011**
- **Housing (Scotland) Act 2014**
- **Private Housing (Tenancies)(Scotland) Act 2016**

Previous Tenancies

Private landlords in Scotland before
1 December 2017 will generally have had
one of two types of tenancy:

- Assured Tenancy
- Short Assured Tenancy

s.12 and s.32 of Housing (Scotland) Act 1988

Private Housing (Tenancies) (Scotland) Act 2016

- Created new “Private Residential Tenancy (PRT)”
- In force from 1 December 2017
- Statutory tenancy conditions imposed
- Rent controls re-introduced
- Increased security of tenure
- New rules on termination
- First-tier Tribunal (Housing and Property Chamber) (FTT-HPC) will determine evictions
- Claims for “wrongful termination”
- Increased rights of succession on tenant's death

Miscellaneous Legal Requirements

- **Tenancy Deposit Schemes**
- **Fire Safety**
- **Electrical Safety**
- **Gas Safety Certificate**
- **Carbon Monoxide Safety**
- **Energy Performance Certificate**

Repairing Standard

Duty to comply with the Repairing Standard under Section 13 of the Housing (Scotland) 2006 Act includes:

- **Wind and water tight... reasonably fit for human habitation**
- **Structure and exterior of the house... in a reasonable state of repair and in proper working order**
- **Installations for the supply of water, gas and electricity... sanitation, space heating and heating water... are in a reasonable state of repair and proper working order**

Repairing Standard

Duty to comply with the Repairing Standard under Section 13 of the Housing (Scotland) 2006 Act includes:

- **Any fixtures, fittings and appliances...in a reasonable state of repair and in proper working order**
- **Any furnishings...capable of being used safely for the purpose for which they are designed**
- **Satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire**

Failure to Comply With Repairing Standard

- Referral to FTT-HPC
- Repairing Standard Enforcement Order
- Rent Relief Order
- Effect on “fit and proper person” status for landlord registration

Landlord Registration

- **Antisocial Behaviour etc. (Scotland) Act 2004**
- **Duty to register with Local Authority**
- **Fee to register**
- **Public register**
- **“Fit and Proper” test**
- **Registration lasts 3 years**
- **Must declare if using an agent**
- **Landlord registration number must be included on adverts for let**
- **Letting whilst unregistered is a criminal offence**

Private Residential Tenancy

- Lets to individuals of separate dwellings
- Offer protection only in one home i.e. for the “tenant’s only or principal home”
- List of defined tenancies which are excepted (Schedule 1)

Schedule 1

Tenancies Which Cannot be P.R.T.s

1. Low rent – less than £6 per week
2. Shop - covered by Tenancy of Shops (Scotland) Act 1949
3. Agricultural land
4. Student let – by approved landlords (colleges, universities etc.)
5. Holiday let
6. Resident landlord
7. Police housing
8. Military housing

Schedule 1

Tenancies Which Cannot be P.R.T.s

9. Social housing

10. Sublet, assigned etc. *social housing*

11. Homeless persons temporary accommodation

12. Persons released from prison or on probation
etc.

13. Asylum seekers

14. Displaced persons

15. Shared ownership

16. Tenancies under previous legislation

Tenancy Terms

- **First time in the private sector that Government has sought to prescribe the terms of the tenancy other than repair obligations**
- **The basic terms are laid down in Schedule 2 – subject to revisal**
- **Provision for regulations to be made but these may not affect rights to shared accommodation already agreed to**

Statutory Terms

- **Rent receipts for rent paid in cash**
- **Rent increases – only as allowed by Act**
- **Notification by tenant to landlord about other residents**
- **Subletting, lodgers assignees need written agreement of the landlord**
- **Reasonable access for repairs to be allowed by tenant**

Tenancy Agreement

- The landlord must provide a written tenancy agreement on the day the tenancy commences
- Where existing tenancy becomes a PRT period of 28 days allowed for such a written agreement to be provided
- There must be no charge for this document

Duty to Provide Specified Information

Private Residential Tenancies (Information for Tenants) (Scotland) Regulations 2017 require landlord to provide either:

- **“Easy Read Notes”** or
- **“Statutory Terms Supporting Notes”**

There must be no charge for providing this information

First-tier Tribunal Powers

- Tenant may apply to FTT- HPC to draw up the terms of the tenancy where the landlord has failed to provide a tenancy document
- Either party may apply to have a document drawn up where they consider the tenancy terms purport to displace the required statutory terms

- **The FTT can draw up a document reflecting the terms or confirm the existing document and may order the landlord to provide missing information**
- **If the landlord has failed to comply with duty then possible money sanction**
- **3 months rent where the landlord fails in one of the duties (providing agreement; providing information)**
- **6 months rent where there is a failure on both fronts**

Rent Restrictions

- **Can only increase as allowed by Act**
- **Can only increase once every 12 months**
- **To increase landlord:**
 - **Must give notice to tenant**
 - **Must give a minimum of 3 months notice of proposed increase**

Rent Restrictions

- Tenant can refer the proposed increase to Rent Officer
- Rent Officer must determine the rent by reference to the “open market rent” of the property
- PRT by a willing landlord to willing tenant

Rent Restrictions

Rent Officer must disregard effect on rent of

- Improvements carried out by tenant
- Any damage caused to property by tenant

Decision of Rent Officer can be appealed to
FTT-HPC

Further Rent Restrictions

- **Possibility of Rent Pressure Zones (RPZ)**
- **Local Authority makes application to have area declared as RPZ**
- **Scottish Ministers make final decision**
- **Regulations to be passed setting criteria**

Rents in Rent Pressure Zone

- Rent increase in RPZ restricted to
- $\text{CPI} + 1\% + X\% (+Y)$
- **CPI – Consumer Price Index increase from date of last rent increase (or start of tenancy)**
- **X will be prescribed by Scottish Ministers**
Y is possible additional increase for improvements via Rent Officer application

Security of Tenure

- **Flagship policy of the 2016 Act is to give security of tenure to PRT tenants and the removal of the ability of the landlord to evict on notice**
- **Termination of the tenancy only allowed in terms of Part 5 of the 2016 Act**
- **Either side may start termination process**
- **On sale of a property the landlord's interest passes to purchaser**

Termination by Tenant

- The tenant may bring the tenancy to an end by giving the appropriate amount of notice, provided this notice is given “freely and without coercion of any kind” – s. 49 (1)(a)(i) - and after the tenant began occupation
- The minimum amount of notice is 28 days unless any other period is agreed in writing by the parties

Consensual Termination

- This occurs where a “notice to leave” is given by landlord and the tenant ceases to occupy the let property
- The date is either that set out in the notice or the date the tenant leaves
- This period may be brought forward where the tenant responds by giving shorter notice themselves

Eviction Orders

- More conventional “eviction” process occurs where the landlord gives “notice to leave” (formerly “Notice to Quit”)
- Eviction order will come from FTT-HPC where the landlord has made an application specifying eviction ground(s)
- 18 eviction grounds in new system
- FTT-HPC has discretion in some grounds

Eviction Grounds

4 categories

- **Property required for another purpose**
- **Tenant's status**
- **Tenant's conduct**
- **Legal impediment to let continuing**

Property Required for Another Purpose

1. Landlord intends to sell
2. Property to be sold by lender
3. Landlord intends to refurbish
4. Landlord intends to live in property
5. Family member intends to live in property
6. Landlord intends to change use to non-residential property
7. Property required for religious purpose

Tenant's Status

8. Not an employee

9. No longer in need of supported accommodation

Tenant's Conduct

- 10. Not occupying let property
- 11. Breach of tenancy agreement
- 12. Rent arrears
- 13. Criminal behaviour
- 14. Anti-social behaviour
- 15. Association with person with relevant conviction or engaged in relevant anti-social behaviour

Legal Impediment to Let Continuing

16. Landlord has ceased to be registered

17. H.M.O. licence has been revoked

18. Overcrowding statutory notice

Notice Periods

Two different periods of notice laid down

- 28 days where the tenant has been in the property for not more than 6 months

or

- Eviction sought only on one of the six “conduct” grounds

Notice Periods

- In any other case the period is 84 days
- Notices to leave have a "life" of 6 months
- Can't apply to FTT-HPC unless landlord has notified the local authority of intention to do so

“Six Months” Periods

- References to “six months” periods is to a period which ends in the month which falls six months after the month in which it began either;
- On the same day of the month as it began (e.g. Feb 22 – Aug 22) or
- If that month has no such day, on the final day of the month (e.g. Dec 31 – June 30)

Sub-Tenant Rights

- The termination of tenant's rights in a PRT ends those of a lawful sub-tenant
- Lawful sub-tenant is then entitled to become the tenant under a PRT
- Has same terms as the sub-tenancy and deemed to start at the end of the previous tenancy
- Does not apply if sub-tenancies were prohibited in the original lease and no express/implied consent to the sub-tenancy being granted or continuing

Wrongful Termination Orders

- Introduces possible claims to FTT-HPC by former tenants
- Where FTT-HPC has made an eviction order through being misled by the landlord
- Where a tenant was misled into leaving the property
- WTO may order a payment to the ex-tenant of a sum not exceeding 6 months rent

Death of the Tenant

- If sole tenant dies, tenancy comes to an end if there is no-one to inherit
- Joint tenancy rights end on the death of a joint tenant
- “Bereaved partner” may inherit where the landlord has been informed the property was the only or principal home of the bereaved partner and the tenant did not themselves inherit the tenancy

“Bereaved Partner”

“Bereaved partner” and tenant must have been in a qualifying relationship –

- Married
- Civil partners
- Living together as though they were married (same sex couples too)

“Bereaved Partner”

- If neither married nor civil partners then bereaved partner will have to prove they have been in occupation as “only or principal home” for 12 months prior to the tenant's death
- Period only counts from when landlord informed

Family Member Inheritance Rights

- If no bereaved partner succeeds other members of the family can inherit the tenancy
- Any member of the family aged at least 16 and occupying property as their only or principal home for at least 12 months prior to the tenant's death
- Joint tenancy if more than one qualify
- Period calculated from the time the tenant informed the landlord the family member was occupying as their only or principal home

Carers' Inheritance Rights

- Provision for a “carer” to inherit if no bereaved partner or family member inheriting
- Must be the carer's only or principal home for at least 12 months prior to the death of the tenant and carer must have had a previous only or principal home which was given up
- Period counted from when the landlord was informed carer occupying as their only or principal home

First-tier Tribunal Housing and Property Chamber

- Brought into existence on 1st December 2016
- Replaced Homeowner Housing Panel and Private Rented Housing Panel

First-tier Tribunal Jurisdiction

- **FTT-HPC replaced sheriff court in all civil matters/disputes arising from PRS**
- **Won't deal with prosecution of a criminal offence**
- **FTT has a duty to report to the local authority if they learn or suspect that the landlord is not registered in the Landlord Register**

FTT-HPC Jurisdiction

Housing (Scotland) Act 2014 transferred jurisdiction from sheriff court to FTT-HPC in respect of “actions arising from tenancies and occupancy agreements” under

- Regulated tenancies
- Part VII contracts
- Assured tenancies

FTT-HPC Jurisdiction

- **FTT-HPC has sole jurisdiction in all civil proceedings arising from private residential tenancies under Private Housing (Tenancies) (Scotland) Act 2016**
- **Jurisdiction includes payment actions in all tenancy regimes**

Making an Application to FTT-HPC

- Application form to be prepared
- Lodge with FTT-HPC office
- Separate application for eviction and arrears
- Include required attachments
- No fee payable

Application Process

- Application received by tribunal
- Checked by staff
- Passed to President/tribunal member
- Sifting process
- Either dismissed, further information sought or referred to tribunal

Applications Dismissed at “Sifting”

- Frivolous or vexatious
- Dispute has been resolved
- “Not appropriate” to accept application
- Application is for a purpose other than that specified in application
- Identical to previous application

“Frivolous” Applications

- ALL applications are now checked by a legal member before proceeding to tribunal
- Much more stringent than sheriff court
- Application will be dismissed at sift if they are “futile, misconceived, hopeless or academic”
- Application has no prospects of succeeding

Scott v Bachhaznadj

- Application for eviction lodged 5 February 2018
- CMD set for 16 April
- Sheriff officers could not find the tenants to intimate CMD date
- Chamber President made the decisions
- Where tenants' address is not known application should be rejected at sift
- No provision in FTT rules for service by “advertisement” or on “walls of court”

KJB Housing v Rae

- Application lodged 3 January 2018
- Seeking eviction from a PRT
- Notice to leave dated 20 December 2017
- Notice specified 18 January as the effective date
- At sift, notice deemed invalid and ineffectual as failed to specify correct date
- Application thus “frivolous” and rejected

“Post-Sift” Application Process

- Notice given to all parties that application accepted
- Written representations requested from other party
- May issue “directions”
- Fix case management discussion or hearing

“Overriding Objective”

- **FTT-HPC must give effect to “overriding objective”**
- **Must manage proceedings in accordance with this objective**
- **Parties must assist tribunal**
- **“Deal with the proceedings justly”**

“Deal With the Proceedings Justly”

- Proportionate to the complexity of the issues and the resources of the parties
- Seeking informality and flexibility in proceedings
- Ensuring parties are on equal footing procedurally
- Using the special expertise of the First-tier Tribunal effectively
- Avoiding delay, so far as compatible with the proper consideration of the issues

Case Management Discussion

- Heard by legal member alone
- Identify issues to be resolved
- Identify agreed facts
- Discuss what witnesses/documents required
- Discuss whether “evidential” hearing is required
- Can make “final” decision at CMD

Hearing

- Held in public
- Held on weekdays during normal business hours
- Tribunal will consist of legal member (chair) and at least one “ordinary” member
- Can proceed in absence of party
- At least 14 days’ notice given to parties by FTT

Evidence at Hearings

- Documents to be lodged 7 days in advance
- Can lodge late with permission of FTT
- Witnesses should be listed in advance

Decisions at Hearings

- **Majority vote but chair has casting vote**
- **Decisions must be in writing**
- **Statement of reasons to be given if requested in eviction cases**
- **If decision not unanimous chair must also give a note on minority view**

Hall v Beattie

- **Hearing 11 September 2018**
- **Eviction action**
- **All in order except section 11 notice**
- **Named person was not tenant**
- **Tribunal held notice was mandatory**
- **Allowed adjournment for re-service in correct form**

Lewis v McKenzie

- Eviction action
- Application lodged 16 March 2018
- CMD 11 May 2018
- Tribunal questioned validity of NTQ and AT6
- Adjourned to 18 July 2018
- Decided both were invalid
- Application refused

Patience v Owens

- Eviction action
- CMD 6 June 2018
- Short assured tenancy
- NTQ served by sheriff officers
- No section 33 notice
- Landlord unaware it was needed
- Application dismissed

Royal College of Surgeons v Murray

- Eviction application
- Based solely on AT6 procedure
- Ground 8 eviction
- CMD 22 June 2018
- No specification of grounds in part 3 of AT6
- FTT held AT6 invalid and dismissed application

Scotcrafts Leasing v Kajaks

- Eviction case
- CMD 23 August 2018
- NTQ and section 33 hand delivered on 28 December 2017
- Tenant accepted he had received them
- FTT held service invalid and application dismissed

Appeals

- Appeal to Upper Tribunal
- On point of law only
- Requires leave of the FTT
- Must seek leave within 30 days of receiving decision
- If leave refused, applicant can ask for leave from Upper Tribunal
- Also a “review” process

Tenancy Deposit Cases

- **The Tenancy Deposit Schemes (Scotland) Regulations 2011**
- **Must lodge deposit with an approved Scheme within 30 days of start of tenancy**
- **Must provide information to the tenant re deposit amount, date paid, details of Scheme and circumstances in which deposit can be retained**
- **Currently 3 approved Schemes in Scotland**

Tenancy Deposit Cases

- **Over 90 published decisions on HPC website**
- **If Regs breached, award “must” be made**
- **Almost all make awards against landlords**
- **Most seem to be 1 or 2 times the deposit**
- **Very few have the full possible sanction!!**

Gordon v Ghafoor

- Tenancy started 28 February
- Deposit of £650 paid
- Tenant moved in and moved immediately out
- Keys returned 5 March
- Deposit not paid into scheme
- Landlord argued no need as tenancy had ended within 30 day period

Cook v Gilliard

- **Successive tenancies from 2014-2017**
- **Deposit £500 paid to letting agent**
- **Lease said lodged with Safe Deposit Scotland**
- **Actually lodged with LPS**
- **No information given to tenant**
- **Deposit returned at end to landlord**

Scheltdorf v Singh

- Deposit of £550 paid
- Not lodged with any of the schemes
- Landlord defence was “cash was put in a safe deposit box with RBS”

Letting Agent Registration

Who must register?

Anyone doing 'Letting agency work'

Work done in the course of a business in response to instructions

- With a view to a private landlord entering into a lease/occupancy agreement with an unconnected person to use house as a dwelling or
- Managing a house which is subject to a lease or occupancy agreement for collection of rent, inspecting the house making arrangements for repair and maintenance, improvement or insurance of the house

Letting Agent Registration

- Applications for registration
- Individuals/partnerships/limited companies
- Fit and proper person test
- Registered letting agent
- Registration number

Letting Agent Regulation

Letting Agent Code of Practice

- **The Letting Agent Code of Practice (Scotland) Regulations 2016**
- **Effective date: 31 January 2018**
- **Emphasis on written terms and procedures**
- **Enforcement via FTT-HPC**

Letting Agent Regulation

- Training requirements
- SCQF level 6 or above
- Most senior person
- All persons directly concerned with management and supervision of letting agent work
- Obtained within 3 years of registration
- Ongoing training requirement for older qualifications

Questions?

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