

GUIDANCE NOTES FOR LANDLORDS ON NOTIFICATION OF A TENANT'S INTENTION TO MAKE AN APPLICATION TO THE FIRST-TIER TRIBUNAL FOR SCOTLAND

(These notes are for guidance only)

Your Tenant will use this notice if they have a private residential tenancy, as set out in the Private Housing (Tenancies) (Scotland) Act 2016¹ (the Act), and you have failed to give them certain information.

YOUR RESPONSIBILITY TO PROVIDE WRITTEN TERMS AND OTHER INFORMATION.

1. The Act says that a Landlord must give a Tenant a copy of all the written terms of their tenancy agreement no later than the day the tenancy starts, if those terms are not already in writing (section 10 of Act).
 2. The Landlord's duty under section 10 is on-going, so if the terms of the tenancy change during the tenancy and the terms of the tenancy are no longer fully set out in writing, the Landlord must give the Tenant a new document explaining the new terms of their tenancy within 28 days of the change happening.
 3. The Scottish Ministers also have a power to make regulations to state other specified information that a Landlord must give to a Tenant and the timescales for doing this (section 11 of the Act). The Private Residential Tenancies (Information for Tenants) (Scotland) Regulations 2017 state that a Landlord must give a Tenant either the 'Easy Read Notes for the Scottish Government Model Tenancy Agreement'², or the 'Private Residential Tenancy Statutory Terms Supporting Notes'³.
 4. The 'Easy Read Notes for the Scottish Government Model Private Tenancy Agreement' set out the terms of the tenancy and must be issued where a landlord uses the Scottish Government Model Private Residential Tenancy Agreement. The 'Private Residential Tenancy Statutory Terms Supporting Notes' must be issued when another form of private residential tenancy agreement is used.
 5. The written tenancy terms and notes must be given to the Tenant no later than the day the private residential tenancy starts (assuming the tenancy becomes a private residential tenancy immediately), or, if the tenancy only later becomes a private residential tenancy, within 28 days of it becoming one.
 6. If a Landlord fails to give the written tenancy terms to the Tenant, and/or the correct set of notes, the Tenant can refer a case to the First-tier Tribunal for Scotland Housing and Property Chamber.
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¹ <http://www.legislation.gov.uk/asp/2016/19/contents/enacted>

² <https://www.gov.scot/publications/easy-read-notes-scottish-government-model-private-residential-tenancy-agreement/>

³ <https://www.gov.scot/publications/private-residential-tenancy-statutory-terms-supporting-notes-essential-housing-information/>

NOTICE REQUIRED BEFORE YOUR TENANT CAN MAKE AN APPLICATION TO THE TRIBUNAL

7. Your Tenant must give you at least 28 days' notice before making an application to the Tribunal. The 28 day period starts on the day you received this notice from the Tenant, and ends on the day 28 days after it began.
 8. A notice is only valid if it is served on you in one of the following ways:
 - by hand delivery
 - by sending it to you by recorded delivery post to your address
 - by emailing it to your current email address (if you have previously agreed that email is the preferred contact method)
 9. Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies, which means that unless delivered personally, your Tenant must give you 48 hours to receive the notice. This delivery time should be added on to the amount of notice your Tenant gives you. If your Tenant is sending this document by post or email, the date shown in Part 2 must be at least 30 days after the date on which they sent this notice.
 10. For example, if your Tenant sends you this notice by recorded delivery post or email on 13 January, you would be expected to get this notice on 15 January and the 28 days' notice period would run from 15 January until the end of the day on 11 February. That means the earliest date your Tenant could insert into Part 2 of this Notice and make an application to the Tribunal would be 12 February. You can challenge the 48 hours delivery time, but you must give your Tenant evidence which shows the exact date you received this notice.
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WHAT SHOULD YOU DO IF YOU RECEIVE THIS NOTICE?

11. When you get this notice, you should try to give your Tenant the missing information as soon as possible. If you give your Tenant all the necessary information within the 28 days' notice period, your Tenant can't make an application to the Tribunal regarding the missing information.
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IF YOUR TENANT MAKES AN APPLICATION TO THE TRIBUNAL

12. The Act lets a Tenant apply to the Tribunal to draw up the terms of the tenancy and/or to make a 'payment order' against you if you fail to give them all the written terms of their tenancy and/or the correct set of notes outlined in paragraph 3.
13. The Tribunal could order you to pay the Tenant up to a maximum of three months' rent if you have failed to give your Tenant one of the following:
 - a) all the written terms of the tenancy agreement (section 10 of the Act)
 - b) the correct set of notes – either the 'Easy Read Notes for the Scottish Government Model Tenancy Agreement' **or** the 'Private Residential Tenancy Statutory Terms Supporting Notes' (The Private Residential Tenancies (Information for Tenants) (Scotland) Regulations 2017).
14. If you have failed to give your Tenant both the terms of the tenancy required under section 10 and the notes required by the 'Private Residential Tenancies (Information for Tenants) (Scotland) Regulations 2017', the Tribunal could order you to pay the Tenant up to a maximum of six months' rent.

15. If the failure is about the written terms of the tenancy, the Tribunal can give the Tenant(s) a document which explains all the terms of their tenancy, or, if there are already written terms of the tenancy, the Tribunal can declare them as accurate.
16. Any document that the Tribunal creates or declares as accurate will constitute all the terms of your Tenant's tenancy.
17. The Act says that if there are joint Landlords, the Tribunal may make an order against all, some or only one of them. The total amount that a Tenant may get is the same as it would be if the Tenant had a sole Landlord. If a joint Tenant makes an application, the award made by the Tribunal will be divided by the number of joint Tenants so that even if the other joint Tenants make separate applications later, the total amount that you need to pay is the same as it would be if there was a sole Tenant.