



Private Housing (Tenancies) (Scotland) Act 2016

2016 asp 19

PART 3

TENANCY INFORMATION

Landlord's duties to provide information

10 Duty to provide written terms of tenancy

- (1) Where the terms of a private residential tenancy are not set out in writing between the parties, the landlord must, before the end of the day specified in subsection (2) or (as the case may be) (3), provide the tenant with a document which sets out all of the terms of the tenancy.
- (2) The day referred to in subsection (1) is—
 - (a) the day on which the tenancy commences, if the tenancy is a private residential tenancy on that day, or
 - (b) the day falling 28 days after the day on which the tenancy became a private residential tenancy, if it became one after the day on which the tenancy commenced.
- (3) If, as a result of a subsequent change to its terms, all of the terms of a private residential tenancy are no longer set out in writing—
 - (a) subsection (2) does not apply, and
 - (b) the day referred to in subsection (1) is the day falling 28 days after the change to the tenancy's terms takes effect.

11 Duty to provide specified information

- (1) The Scottish Ministers may by regulations impose a duty on any person who is, or is to be, the landlord under a private residential tenancy to provide the person who is, or is to be, the tenant—
 - (a) with information specified in the regulations,

- (b) by a deadline specified in the regulations.
- (2) The power to specify information under subsection (1)(a) includes the power to specify the form in which the information is to be provided.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons representing the interests of tenants and landlords under private residential tenancies as they think fit.
- (4) But subsection (3) does not apply in any case in which consultation has been carried out by the Scottish Ministers more generally, without specific reference to such tenants and landlords.

12 Regulations about providing information

The Scottish Ministers may by regulations make provision about how a duty arising by virtue of section 10 or 11 is to be performed (including when the duty is to be deemed to have been performed).

13 Prohibition on charging for information

The person who is, or is to be, the tenant under a private residential tenancy may not be charged for being provided by the landlord with—

- (a) a document which sets out the terms, or any term, of the tenancy, or
- (b) information in performance of a duty arising by virtue of section 11.

First-tier Tribunal's powers

14 Application to First-tier Tribunal to draw up terms

- (1) The tenant under a private residential tenancy may (subject to subsection (3)) apply to the First-tier Tribunal asking it to draw up the terms of the tenancy under section 15 if the landlord—
 - (a) has a duty under section 10 to provide the tenant with a document which sets out all of the terms of the tenancy, and
 - (b) the landlord has not provided that document to the tenant.
- (2) Either the tenant or the landlord under a private residential tenancy may apply to the First-tier Tribunal asking it to draw up the terms of the tenancy under section 15 if the tenant or landlord thinks that the written terms of the tenancy purport to displace a statutory term in an unlawful manner.
- (3) The tenant may not make an application under subsection (1) unless the tenant has given the landlord notice of the tenant's intention to make the application and the notice period described in section 17 has expired.
- (4) For the purpose of subsection (2), written terms of a tenancy purport to displace a statutory term in an unlawful manner if—
 - (a) the statutory term is not included in the written terms of the tenancy but is a term of the tenancy because regulations under section 7(3)(a) do not provide otherwise, or

- (b) the statutory term, as expressed in the written terms of the tenancy, bears to be subject to a modification which is not permitted by regulations under section 7(3)(b).
- (5) In a case where two or more persons jointly are the tenant under a tenancy, references to the tenant in this section are to any one of those persons.
- (6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this section are to any one of those persons.

15 First-tier Tribunal's power to draw up terms

- (1) On an application under section 14, the First-tier Tribunal may—
 - (a) draw up a document which accurately reflects all of the terms of the tenancy, or
 - (b) if there are already written terms of the tenancy and the Tribunal is satisfied that they accurately reflect all of the terms of the tenancy, make a declaration to that effect.
- (2) A document that is drawn up by the Tribunal under subsection (1)(a) or is the subject of a declaration under subsection (1)(b) is to be regarded as setting out all of the terms of the tenancy at that time.

16 First-tier Tribunal's power to sanction failure to provide information

- (1) On an application by the tenant under a private residential tenancy, the First-tier Tribunal may make an order under subsection (2) where—
 - (a) the landlord has failed to perform a duty arising by virtue of section 10 or 11 to provide the tenant with information,
 - (b) at the time the First-tier Tribunal considers the application, the landlord has still not provided the tenant with the information, and
 - (c) the landlord does not have a reasonable excuse for failing to perform the duty.
- (2) An order under this subsection is one requiring the landlord to pay the person who made the application an amount not exceeding—
 - (a) three months' rent, if the order is in respect of a failure by the landlord to perform—
 - (i) a duty arising by virtue of section 10, or
 - (ii) one or more duties arising by virtue of section 11,
 - (b) six months' rent, if the order is in respect of a failure by the landlord to perform—
 - (i) a duty arising by virtue of section 10, and
 - (ii) one or more duties arising by virtue of section 11.
- (3) An application under subsection (1)—
 - (a) may be made only during the course of the tenancy in question,
 - (b) where the application relates to a failure to perform a duty arising by virtue of section 10, may be made only as part of an application under section 14(1), and
 - (c) may not be made unless the tenant has given the landlord notice of the tenant's intention to make the application and the notice period described in section 17 has expired.

- (4) If—
- (a) an application has been made under subsection (1) in respect of a failure to perform a duty arising by virtue of section 11, and
 - (b) at the time the application was made, an application could have been made in respect of a failure to perform another duty arising by virtue of section 11,
- no application may be made in respect of that other duty.
- (5) Where two or more persons jointly are the landlord under the tenancy in question, an order by the First-tier Tribunal under subsection (2) may—
- (a) be made against all, some or only one of the joint landlords,
 - (b) state that each person against whom the order is made is liable to pay a specified amount, but the cumulative total of each of the specified amounts must not exceed the maximum set by subsection (2),
 - (c) state that each person against whom the order is made is jointly and severally liable for the whole amount to be paid.
- (6) In a case where two or more persons jointly are the tenant under a tenancy, references to the tenant in this section are to any one of those persons.
- (7) In subsection (2), “rent” means—
- (a) the amount that was payable in rent under the tenancy at the time that notice of the application was given to the landlord, and
 - (b) in a case where two or more persons jointly are the tenant under the tenancy, the amount mentioned in paragraph (a) divided by the number of those persons.

17 Meaning of notice period in sections 14 and 16

- (1) For the purposes of sections 14(3) and 16(3)(c), a notice period—
- (a) begins on the later of—
 - (i) the day that the landlord receives notice from the tenant of the tenant’s intention to make the application in question, or
 - (ii) the day after the deadline by which the landlord should have performed the duty to which the application in question relates, and
 - (b) expires on the day falling 28 days after it begins.
- (2) Where the application in question relates to a failure by the landlord to perform more than one duty, the reference to the duty in subsection (1)(a)(ii) is to be read as a reference to the duty with the latest deadline for performance.
- (3) A notice of a tenant’s intention to make an application under section 14(1) or 16(1) must fulfil any requirements prescribed by the Scottish Ministers in regulations.