



Private Housing (Tenancies) (Scotland) Act 2016

2016 asp 19

PART 4

RENT

CHAPTER 2

RENT VARIATION INSTIGATED BY LANDLORD'S NOTICE

Process by which rent may be varied

22 Landlord's power to increase rent

- (1) The landlord under a private residential tenancy may increase the rent payable under the tenancy by giving the tenant a notice in accordance with this section ("a rent-increase notice").
- (2) The notice must—
 - (a) specify—
 - (i) the rent that will be payable once the increase takes effect,
 - (ii) the day on which the increase is to take effect, and
 - (b) fulfil any other requirements prescribed by the Scottish Ministers in regulations.
- (3) The rent increase takes effect on the effective date, unless before that date—
 - (a) the landlord intimates to the tenant that the notice is rescinded, or
 - (b) the tenant makes a referral to a rent officer under section 24.
- (4) For the purpose of subsection (3), the effective date is the date of the later of—
 - (a) the day specified in the notice in accordance with subsection (2)(a)(ii), or
 - (b) the day after the day on which the minimum notice period ends.
- (5) In subsection (4)(b), "the minimum notice period" means a period which—

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- (a) begins on the day the notice is received by the tenant, and
 - (b) ends on the day falling—
 - (i) three months after it began, or
 - (ii) whatever longer period after it began as the landlord and tenant have agreed between them.
- (6) In subsection (5), the reference to a period of three months is to a period which ends in the month which falls three months after the month in which it began, either—
- (a) on the same day of the month as it began, or
 - (b) if the month in which the period ends has no such day, on the final day of that month.

23 Modification of rent-increase notice by parties

- (1) Anything specified in a rent-increase notice in accordance with section 22(2)(a) may be modified by agreement between the landlord and tenant concerned.
- (2) A modification made to a rent-increase notice by virtue of subsection (1) ceases to have effect if the notice subsequently prompts a referral to a rent officer under section 24(1).

24 Tenant's right to refer increase to rent officer

- (1) Having received a rent-increase notice, a tenant may make a referral to a rent officer for the area in which the let property is situated seeking an order under section 25.
- (2) But, a tenant may not make a referral under subsection (1) if the let property is in a rent pressure zone.
- (3) A referral to a rent officer under subsection (1) must be—
 - (a) in the prescribed form,
 - (b) accompanied by the prescribed fee (if any),
 - (c) intimated by the tenant to the landlord in the prescribed manner, and
 - (d) made before the end of the day falling 21 days after the tenant receives the notice.
- (4) In subsection (3), “prescribed” means prescribed by the Scottish Ministers by regulations.

25 Rent officer's power to set rent

- (1) Where a rent officer receives a referral under section 24(1), the rent officer must make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the rent officer in accordance with section 32.
- (2) For the purpose of subsection (1), the effective date is—
 - (a) where the rent officer makes the order 14 days or more before the original effective date, the original effective date,
 - (b) otherwise, the first payment date falling at least 14 days after the day on which the rent officer makes the order.
- (3) In an order made under subsection (1), the rent officer must record the amount of the rent that is fairly attributable to the provision of services, unless the amount is negligible or no amount is so attributable.

(4) In subsection (2)—

“original effective date” means the date on which the rent would have been increased in accordance with section 22(4) had the referral to the rent officer not been made, and

“payment date” means a date on which a rent payment falls to be made in accordance with the terms of the tenancy.

26 Rent officer's duty to issue provisional order

(1) Before making an order under subsection (1) of section 25, a rent officer must issue a provisional order stating—

- (a) the rent which the rent officer proposes to specify under that section, and
- (b) the amount which the rent officer proposes to record for the purpose of subsection (3) of that section.

(2) Where a rent officer has issued a provisional order under subsection (1), the landlord or the tenant may ask the rent officer to reconsider the proposed amounts.

(3) A request under subsection (2) may not be made more than 14 days after the provisional order is issued.

(4) If a request is made under subsection (2), the rent officer must reconsider the proposed amounts prior to making an order under section 25(1).

27 Rent officer's power to correct final order

(1) A rent officer may, within 14 days of making an order under section 25(1), re-make the order for the purpose of curing an error in the original order.

(2) The effective date of the re-made order is to be specified in accordance with subsection (2) of section 25 as though it were an order made under that section.

(3) Where an order has been re-made under this section—

- (a) the original order is of no effect,
- (b) references in this Chapter to an order made under section 25(1) are to be read as references to the re-made order,
- (c) if the original order has been appealed against under section 28(1), the appeal is to be regarded as having been made against the re-made order.

(4) Subsection (3)(b) does not apply in relation to—

- (a) subsection (1),
- (b) section 26.

28 Right of appeal to First-tier Tribunal

(1) Where a rent officer has made an order under section 25(1) in relation to the rent payable under a private residential tenancy, the landlord or the tenant may appeal against the order to the First-tier Tribunal.

(2) An order under section 25(1) may not be appealed against—

- (a) more than 14 days after the order is made, or
- (b) where the order is made by virtue of section 33(2).

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- (3) Making an appeal under subsection (1) renders the order being appealed against of no effect.

29 First-tier Tribunal's power to set rent

- (1) Where an appeal is made to the First-tier Tribunal under section 28(1), the First-tier Tribunal must make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the First-tier Tribunal in accordance with section 32.
- (2) For the purpose of subsection (1), the effective date is—
- (a) where the First-tier Tribunal makes its order on or before the original effective date, the original effective date,
 - (b) otherwise, the first payment date falling on or after the day on which the First-tier Tribunal makes its order.
- (3) In an order made under subsection (1), the First-tier Tribunal must record the amount of the rent that is fairly attributable to the provision of services, unless the amount is negligible or no amount is so attributable.
- (4) In subsection (2)—
- “original effective date” means the date on which the rent would have been increased in accordance with section 22(4) had a referral to the rent officer not been made, and
- “payment date” means a date on which a rent payment falls to be made in accordance with the terms of the tenancy.

30 Finality of First-tier Tribunal's decision

- (1) An order under section 29(1) may be reviewed in accordance with this section only.
- (2) Accordingly (and without prejudice to the generality of subsection (1)), a decision of the First-tier Tribunal to make an order under section 29(1) may be neither—
- (a) reviewed under section 43 of the Tribunals (Scotland) Act 2014, nor
 - (b) appealed against under section 46 of that Act.
- (3) The First-tier Tribunal may review an order under section 29(1)—
- (a) at its own instance, or
 - (b) at the request of the landlord or the tenant under the tenancy to which the order relates.
- (4) In a review under subsection (3), the First-tier Tribunal may—
- (a) take no action, or
 - (b) correct a minor error contained in the order.

31 Liability for over or under paid rent

- (1) This section applies where—
- (a) the rent payable under a private residential tenancy has been changed by an order made under section 25(1) or 29(1),
 - (b) the effective date stated in the order (“the actual effective date”) falls later than the date on which the rent would have been increased in accordance with

- section 22(4) had a referral to a rent officer not been made (“the originally proposed effective date”), and
- (c) the rent payable from the actual effective date (“the new rent”) differs from the rent payable immediately before that date (“the old rent”).
- (2) If the new rent is less than the old rent, on the date the order is made the landlord becomes liable under this subsection to pay the tenant the difference between—
- (a) the amount actually paid in rent between the originally proposed effective date and the actual effective date, and
- (b) the amount that would have been payable in rent during the same period had the new rent been the rent payable from the originally proposed effective date.
- (3) If the new rent is more than the old rent, on the date the order is made the tenant becomes liable under this subsection to pay the landlord the difference between—
- (a) the amount that would have been payable in rent between the originally proposed effective date and the actual effective date had the new rent been the rent payable from the originally proposed effective date, and
- (b) the amount that should have been paid in rent during the same period (whether or not it was actually paid).
- (4) Subsection (5) applies if, at the end of the day falling 28 days after a tenant’s liability under subsection (3) arose, that liability is (in whole or in part) still outstanding.
- (5) For the purposes of paragraph 12 of schedule 3, the liability mentioned in subsection (4) is to be regarded as a sum that fell to be paid by way of rent on the day the liability arose.
- (6) In this section, a reference to a period between two dates includes both of those dates.

32 Determination of open market rent

- (1) Where an order maker is to determine the rent under section 25(1) or (as the case may be) 29(1), the determination is to be made on the basis that the property in question would be let by a willing landlord to a hypothetical willing tenant under a new tenancy which would—
- (a) be a private residential tenancy,
- (b) begin on the date on which the rent would have been increased in accordance with section 22(4) had a referral to a rent officer not been made,
- (c) have the same terms as the tenancy to which the referral or (as the case may be) appeal relates.
- (2) In determining the open market rent of the property under subsection (1), the order maker is to disregard—
- (a) any positive effect on the rental value of the property that is attributable to work paid for or carried out by the tenant or a previous tenant under the same tenancy, unless the work was paid for or carried out pursuant to a requirement under the terms of the tenancy,
- (b) any negative effect on the rental value that is attributable to a failure by the tenant or a previous tenant under the same tenancy to comply with the terms of the tenancy.
- (3) In a case where two or more persons jointly are the tenant under a tenancy, a reference to the tenant in subsection (2) includes any one of them.

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33 Withdrawal of referral or appeal

- (1) This section applies—
 - (a) where a referral made under section 24(1) is withdrawn by the tenant, or
 - (b) where—
 - (i) an appeal made under section 28(1) is withdrawn by one party, and
 - (ii) the other party has not made an appeal in respect of the tenancy in question, or any appeal made by the other party has been withdrawn.
- (2) The order maker must make an order under section 25(1) or (as the case may be) 29(1) stating that from the effective date the rent payable under the tenancy is—
 - (a) the rent specified in the rent-increase notice, or
 - (b) an amount which the parties have asked the order maker to state in the order.
- (3) Where the order maker is the First-tier Tribunal, an order may not be made by virtue of subsection (2) until the earlier of—
 - (a) the expiry of the period within which an appeal under section 28(1) may be made, or
 - (b) the date on which both parties become ineligible to make an appeal (whether by withdrawing an appeal or by waiving the right to appeal).
- (4) The following do not apply in relation to an order made by virtue of subsection (2)—
 - (a) the requirement to record in the order an amount in accordance with section 25(3) or (as the case may be) 29(3),
 - (b) the duty to issue a provisional order under section 26.
- (5) In subsection (2), “the rent-increase notice” means the rent-increase notice which prompted the referral or (as the case may be) led to the appeal.

Information about open market rent determinations

34 Duty to make information available

- (1) Rent officers and the First-tier Tribunal collectively must make publicly available information about—
 - (a) the rents they have taken into account in determining the open market rents for let properties under section 32, and
 - (b) what rents they have determined to be payable in accordance with that section.
- (2) The Scottish Ministers may by regulations—
 - (a) specify—
 - (i) the information that is to be made available under subsection (1),
 - (ii) the manner in which it is to be made available,
 - (b) prescribe the fees (if any) which may be charged for supplying the information.