



# Private Housing (Tenancies) (Scotland) Act 2016 2016 asp 19

## PART 5

### TERMINATION

VALID FROM 01/12/2017

#### CHAPTER 1

##### SECURITY OF TENURE

**44 No termination by parties except in accordance with this Part**

A tenancy which is a private residential tenancy may not be brought to an end by the landlord, the tenant, nor by any agreement between them, except in accordance with this Part.

**45 Landlord's interest transfers with ownership of property**

When ownership of a property let under a private residential tenancy is transferred, the landlord's interest under the tenancy transfers with it.

**46 Protection for sub-tenants**

(1) Subsection (2) applies (subject to section 47) where—

- (a) a lawfully granted sub-tenancy is terminated by the termination of the tenancy of the person who was the landlord under the sub-tenancy, and
- (b) immediately before it terminated, the sub-tenancy was a private residential tenancy.

(2) On the termination of the sub-tenancy, the person who was the tenant under the sub-tenancy becomes the tenant under a new tenancy which—

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- (a) has the same terms as the sub-tenancy had immediately before it was terminated, and
  - (b) is deemed to have been granted at the time that the sub-tenancy terminated by whoever was entitled to grant a tenancy in those terms at that time.
- (3) A sub-tenancy is not lawfully granted for the purpose of subsection (1) if—
- (a) sub-letting the let property is precluded by a term of—
    - (i) the tenancy of the person who granted the sub-tenancy (“the mid-landlord”), or
    - (ii) the tenancy of a tenant from whom the mid-landlord's tenancy is held (directly or indirectly), and
  - (b) the person entitled to enforce the term mentioned in paragraph (a) has not expressly or impliedly consented to the sub-tenancy being granted or continuing.

#### **47 Qualification of sub-tenant protection**

- (1) Section 46(2) does not apply where the tenancy of the person who was the landlord under the sub-tenancy was brought to an end by an eviction order and either—
- (a) the order was issued (exclusively or not) on the basis of an eviction ground mentioned in subsection (2), or
  - (b) the order states that section 46(2) does not apply.
- (2) The eviction grounds referred to in subsection (1)(a) are—
- (a) that the landlord intends to sell the let property,
  - (b) that a lender intends to sell the let property,
  - (c) that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property,
  - (d) that the landlord intends to live in the let property,
  - (e) that a member of the landlord's family intends to live in the let property,
  - (f) that the landlord intends to use the let property for a purpose other than housing,
  - (g) that the let property is required for use in connection with the purposes of a religion,
  - (h) that the tenancy was entered into to provide an employee with a home and the tenant is not a qualifying employee,
  - (i) that the tenancy was entered into on account of the tenant having an assessed need for community care and the tenant has since been assessed as no longer having that need,
  - (j) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004,
  - (k) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006,
  - (l) that an overcrowding statutory notice has been served on the landlord.

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## CHAPTER 2

### TERMINATION BY TENANT

#### 48 Tenant's ability to bring tenancy to an end

- (1) A tenant may bring to an end a tenancy which is a private residential tenancy by giving the landlord a notice which fulfils the requirements described in section 49.
- (2) A tenancy comes to an end in accordance with subsection (1) on the day on which the notice states (in whatever terms) that it is to come to an end.
- (3) But a tenancy does not come to an end in accordance with subsection (1) if—
  - (a) before the day mentioned in subsection (2), the tenant makes a request to the landlord to continue the tenancy after that day, and
  - (b) the landlord agrees to the request.
- (4) In subsections (1) and (3), in a case where two or more persons jointly are the landlord under the tenancy, references to the landlord are to any of those persons.

#### 49 Requirements for notice to be given by tenant

- (1) A notice fulfils the requirements referred to in section 48(1) if—
  - (a) it is given—
    - (i) freely and without coercion of any kind,
    - (ii) after the tenant begins occupying the let property,
  - (b) it is in writing, and
  - (c) it states as the day on which the tenancy is to end a day that is after the last day of the minimum notice period.
- (2) A notice is to be regarded as fulfilling the requirements referred to in section 48(1), despite its not complying with the requirement described by subsection (1)(c), if the landlord agrees in writing to the tenancy ending on the day stated in the notice.
- (3) In subsection (1)(c), “the minimum notice period” means a period which—
  - (a) begins on the day the notice is received by the landlord, and
  - (b) ends on the day falling—
    - (i) such number of days after it begins as the landlord and tenant have validly agreed between them, or
    - (ii) if there is no such valid agreement, 28 days after it begins.
- (4) An agreement as to the number of days after which a minimum notice period ends is invalid for the purpose of subsection (3)(b)(i) if the agreement—
  - (a) is not in writing, or
  - (b) was entered into before the tenancy became a private residential tenancy.
- (5) In a case where two or more persons jointly are the landlord under the tenancy, references in this section to the landlord are to any one of those persons.

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## CHAPTER 3

### TERMINATION AT LANDLORD'S INSTIGATION

VALID FROM 01/12/2017

#### *Consensual termination*

#### **50 Termination by notice to leave and tenant leaving**

- (1) A tenancy which is a private residential tenancy comes to an end if—
  - (a) the tenant has received a notice to leave from the landlord, and
  - (b) the tenant has ceased to occupy the let property.
- (2) A tenancy comes to an end under subsection (1) on the later of—
  - (a) the day specified in the notice to leave in accordance with section 62(1)(b), or
  - (b) the day on which the tenant ceases to occupy the let property.
- (3) For the avoidance of doubt, a tenancy which is to come to an end under subsection (1) may be brought to an end earlier in accordance with section 48.

#### *Eviction order*

VALID FROM 01/12/2017

#### **51 First-tier Tribunal's power to issue an eviction order**

- (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.
- (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.
- (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.
- (4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

VALID FROM 01/12/2017

#### **52 Applications for eviction orders and consideration of them**

- (1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

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- (2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—
  - (a) subsection (3), or
  - (b) any of sections 54 to 56 (but see subsection (4)).
- (3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.
- (4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.
- (5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—
  - (a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or
  - (b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

VALID FROM 01/12/2017

### **53 First-tier Tribunal's power to disapply protection for sub-tenants**

- (1) This section applies in a case where a sub-tenant would become a tenant by virtue of section 46(2) were the First-tier Tribunal to issue an eviction order against the sub-tenant's landlord.
- (2) If the First-tier Tribunal considers it is reasonable to do so, it may state in an eviction order that section 46(2) is not to apply when the tenancy of the sub-tenant's landlord is brought to an end by the order.
- (3) The First-tier Tribunal may not include in an eviction order the statement mentioned in subsection (2) unless it has afforded the sub-tenant an opportunity to make representations.

VALID FROM 01/12/2017

### *Restrictions on applying for eviction order*

#### **54 Restriction on applying during the notice period**

- (1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.
- (2) The relevant period in relation to a notice to leave—
  - (a) begins on the day the tenant receives the notice to leave from the landlord, and
  - (b) expires on the day falling—
    - (i) 28 days after it begins if subsection (3) applies,

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(ii) 84 days after it begins if subsection (3) does not apply.

(3) This subsection applies if—

- (a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or
- (b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
  - (i) that the tenant is not occupying the let property as the tenant's home,
  - (ii) that the tenant has failed to comply with an obligation under the tenancy,
  - (iii) that the tenant has been in rent arrears for three or more consecutive months,
  - (iv) that the tenant has a relevant conviction,
  - (v) that the tenant has engaged in relevant anti-social behaviour,
  - (vi) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.

(4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

#### **55 Restriction on applying 6 months after the notice period expires**

- (1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired.
- (2) In subsection (1), “the relevant period” has the meaning given in section 54(2).
- (3) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

#### **56 Restriction on applying without notifying local authority**

- (1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant unless the landlord has given notice of the landlord's intention to do so to the local authority in whose area the let property is situated.
- (2) Notice under subsection (1) is to be given in the manner and form prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003.
- (3) In a case where two or more persons jointly are the landlord under a tenancy, references in subsection (1) to the landlord are to any one of those persons.

VALID FROM 01/12/2017

### *Wrongful termination*

#### **57 Wrongful termination by eviction order**

- (1) This section applies where a private residential tenancy has been brought to an end by an eviction order.

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- (2) An application for a wrongful-termination order may be made to the First-tier Tribunal by a person who was, immediately before the tenancy ended, either the tenant or a joint tenant under the tenancy.
- (3) The Tribunal may make a wrongful-termination order if it finds that it was misled into issuing the eviction order by the person who was, immediately before the tenancy ended, the landlord under the tenancy.
- (4) In a case where two or more persons jointly were the landlord under the tenancy immediately before it ended, the reference to the landlord in subsection (3) is to any one of those persons.

## **58 Wrongful termination without eviction order**

- (1) This section applies where a private residential tenancy has been brought to an end in accordance with section 50.
- (2) An application for a wrongful-termination order may be made to the First-tier Tribunal by a person who was immediately before the tenancy ended either the tenant or a joint tenant under the tenancy (“the former tenant”).
- (3) The Tribunal may make a wrongful-termination order if it finds that the former tenant was misled into ceasing to occupy the let property by the person who was the landlord under the tenancy immediately before it was brought to an end.
- (4) In a case where two or more persons jointly were the landlord under the tenancy immediately before it ended, the reference to the landlord in subsection (3) is to any one of those persons.

## **59 Wrongful-termination order**

- (1) In this section and in sections 57, 58 and 60, “a wrongful-termination order” means an order requiring the person who was the landlord under the tenancy immediately before it ended to pay the person who made the application for the wrongful-termination order an amount not exceeding six months' rent.
- (2) Subsection (3) applies where—
  - (a) the First-tier Tribunal intends to make a wrongful-termination order under section 57 or 58, and
  - (b) two or more persons jointly were the landlord under the tenancy in question immediately before it was brought to an end.
- (3) The Tribunal may make a wrongful-termination order—
  - (a) against all, some, or only one of the former joint landlords,
  - (b) stating 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 six months' rent,
  - (c) stating that each person against whom the order is made is jointly and severally liable for the whole amount to be paid.
- (4) In subsections (1) and (3)(b), “rent” means—
  - (a) the amount that was payable in rent under the tenancy immediately before it ended, or

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- (b) in a case where two or more persons jointly were the tenant under the tenancy immediately before it ended, the amount mentioned in paragraph (a) divided by the number of persons who were at that time joint tenants under the tenancy.

#### **60 Notice to local authority of wrongful-termination order**

- (1) When the First-tier Tribunal makes a wrongful-termination order against a person, the Tribunal must send a copy of it to any local authority with which the person is registered as a landlord.
- (2) For the purposes of subsection (1)—
- (a) the reference to a person against whom a wrongful-termination order is made is a reference to the person who is liable to make a payment under the order,
- (b) a person is registered as a landlord with a local authority if the person is entered in the register prepared and maintained by the local authority for the purposes of Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004.

### *Sub-tenancies*

#### **61 Sub-tenancy notice to leave**

- (1) In addition to giving a tenant a notice to leave, a landlord (“the superior landlord”) may give to anyone who holds a tenancy directly or indirectly from the superior landlord's tenant a sub-tenancy notice to leave.
- (2) In the event that a person to whom a sub-tenancy notice to leave has been given becomes a tenant of the superior landlord by virtue of section 46(2), references in this Part to a notice to leave are to be read as references to the copy of the notice to leave which, in accordance with subsection (3), forms part of the sub-tenancy notice to leave.
- (3) A sub-tenancy notice to leave is a notice which—
- (a) incorporates the notice to leave given to the superior landlord's tenant, and
- (b) fulfils any other requirements prescribed by the Scottish Ministers in regulations.
- (4) In a case where two or more persons jointly are the landlord under a tenancy, a sub-tenancy notice to leave may be given by any one of those persons.

#### **Commencement Information**

**II** S. 61(3) in force at 31.10.2016 for specified purposes by [S.S.I. 2016/298](#), reg. 2, [sch.](#)

## **CHAPTER 4**

### INTERPRETATION OF PART

#### **62 Meaning of notice to leave and stated eviction ground**

- (1) References in this Part to a notice to leave are to a notice which—



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- (a) is in writing,
  - (b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,
  - (c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and
  - (d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.
- (2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.
- (3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).
- (4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.
- (5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

#### Commencement Information

**I2** S. 62(1) in force at 31.10.2016 for specified purposes by [S.S.I. 2016/298, reg. 2, sch.](#)

VALID FROM 01/12/2017

#### 63 Landlord includes lender in some cases

In—

- (a) sections 50 to 56, and
- (b) sections 61 and 62,

references to the landlord under a private residential tenancy include a creditor in a heritable security over the let property who is entitled to sell the property.

VALID FROM 01/12/2017

#### 64 Six month periods

- (1) A reference in this Part to a period of six months (however expressed) is to a period which ends in the month which falls six 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.

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(2) Subsection (1) does not apply in relation to the references to six months in section 59.

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