

Private Housing (Tenancies) (Scotland) Act 2016

2016 asp 19

PART 5

TERMINATION

CHAPTER 3

TERMINATION AT LANDLORD'S INSTIGATION

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

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.

Status: This is the original version (as it was originally enacted).

- (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.

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.
- (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.

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.

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,
 - (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.

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.
- (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
 - (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.