



Tenants' Rights, Etc. (Scotland) Act 1980

1980 CHAPTER 52

PART II

RIGHTS OF PUBLIC SECTOR TENANTS TO SECURITY OF TENURE ETC

Security of tenure

10 Secure tenancies

- (1) From the commencement of this Part of this Act, subject to subsection (4) below and to sections 11 and 13(6) of this Act, a tenancy (whether created before or after the commencement of this section) of a dwelling-house shall be a secure tenancy if—
 - (a) the dwelling-house is let as a separate dwelling ;
 - (b) the tenant is an individual and the dwelling-house is his only or principal home ; and
 - (c) the landlord is one of the bodies mentioned in sub-section (2) below.
- (2) The bodies referred to in subsection (1)(c) above are—
 - (a) an islands or district council, or a joint board or joint committee of an islands or district council or the common good of an islands or district council, or any trust under the control of an islands or district council;
 - (b) a development corporation established by an order made, or having effect as if made, under the New Towns (Scotland) Act 1968;
 - (c) the Scottish Special Housing Association ;
 - (d) the Housing Corporation ;
 - (e) a registered housing association within the meaning of the Housing Act 1974 ;
 - (f) a housing co-operative within the meaning of section 5 of the Housing Rents and Subsidies (Scotland) Act 1975 ; and
 - (g) any housing trust which was in existence on 13th November 1953 or any authorised society within the meaning of the Housing Act 1914.
- (3) Where a tenancy of a dwelling-house is held jointly by two or more individuals, the requirements of subsection (1)(b) above shall be deemed to be satisfied if all the joint

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tenants are individuals and at least one of the joint tenants occupies the dwelling-house as his only or principal residence.

- (4) (a) A tenancy shall not be a secure tenancy if it is a tenancy of a kind mentioned in Schedule 1 to this Act.
- (b) Where the tenancy of a dwelling-house is excluded from being a secure tenancy by reason only of the operation of paragraph 2 of the said Schedule 1, sections 16, 17 and 21 to 25 of this Act shall nevertheless apply to that tenancy as if it were a secure tenancy.
- (5) A tenancy which has become a secure tenancy shall continue to be a secure tenancy notwithstanding that the requirements Of subsection (1)(b) above may have ceased to be fulfilled.
- (6) Where a tenant under a secure tenancy is accommodated temporarily in another dwelling-house of which the landlord is a body mentioned in subsection (2) above, while the dwelling-house which he normally occupies is not available for occupation, the other dwelling-house shall be deemed for the purposes of this Part of this Act, except sections 12 and 14, to be the dwelling-house which he normally occupies.

11 Special provision for housing associations

- (1) In this section—
 - " registered association " means a registered housing association within the meaning of the Housing Act 1974; and
 - " registered society " means a housing association which is a registered society within the meaning of section 74 of the Industrial and Provident Societies Act 1965 and whose rules restrict membership to persons who are tenants or prospective tenants of the association and preclude the granting or assigning of tenancies to persons other than members.
- (2) A tenancy shall not be a secure tenancy at any time when the interest of the landlord belongs to a housing association which is both a registered association and a registered society.
- (3) Part II of this Act with the exception of sections 16, 17 and 21 to 25 shall apply to a tenancy at any time when the interest of the landlord belongs to a housing association which is a registered society but is not a registered association.
- (4) If a housing association which is a registered society has been a registered association but ceases to be a registered association, it shall notify those of its tenants who become secure tenants on its ceasing to be a registered association that they have become secure tenants in terms of subsection (3) above.
- (5) Notice under subsection (4) above shall be given in writing to each tenant concerned, within the period of 21 days beginning with the date on which the association ceases to be a registered association.

12 Security of tenure

- (1) Notwithstanding any provision contained in the tenancy agreement, a secure tenancy may not be brought to an end except—
 - (a) by the death of the tenant (or, where there is more than one, of any of them), where there is no qualified person within the meaning of section 13 of this Act;

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- (b) by operation of section 13(4) or (5) of this Act;
 - (c) by written agreement between the landlord and the tenant;
 - (d) by operation of section 19(2) of this Act;
 - (e) by an order for recovery of possession under section 15(2) of this Act; or
 - (f) by 4 weeks notice given by the tenant to the landlord.
- (2) If while the dwelling-house which the tenant under a secure tenancy normally occupies is not available for occupation, the tenant is accommodated temporarily in another dwelling-house of which the landlord is a body mentioned in section 10(2) of this Act, either—
- (a) by agreement; or
 - (b) following an order under section 15(2) of this Act (in a case where an order has also been made under subsection (5) of that section),
- the landlord shall not be entitled to bring the tenant's occupation of the other dwelling-house to an end before the dwelling-house which he normally occupies is available for occupation unless the secure tenancy has been brought to an end.

13 Succession to secure tenancy

- (1) On the death of a tenant under a secure tenancy, the tenancy shall pass by operation of law to a qualified person, unless—
- (a) there is no qualified person, or the qualified person declines the tenancy under subsection (4) below; or
 - (b) the tenancy is terminated by operation of subsection (5) below.
- (2) For the purposes of this section, a qualified person is—
- (a) the tenant's spouse where the dwelling-house was his only or principal home at the time of the tenant's death;
 - (b) where the tenancy was held jointly by two or more individuals, a surviving tenant where the dwelling-house was his only or principal home at the time of the tenant's death;
 - (c) where there is no person falling within paragraph (a) or (b) above, a member of the tenant's family over the age of 16 years where the dwelling-house was his only or principal home throughout the period of 12 months immediately preceding the tenant's death.
- (3) Where there is more than one qualified person, the benefit of the provisions of subsection (1) above or, as the case may be, of subsection (6) below shall accrue—
- (a) to such qualified person ; or
 - (b) to such two or more qualified persons as joint tenants,
- as may be decided by agreement between all the qualified persons or, failing agreement within four weeks of the death of the tenant, as the landlord shall decide.
- (4) A qualified person who is entitled to the benefit of subsection (1) above may decline the tenancy by giving the landlord notice in writing within 4 weeks of the tenant's death, and—
- (a) he shall vacate the dwelling-house within 3 months thereafter;
 - (b) he shall be liable to pay rent which becomes due after the said death only in respect of any rental period (that is to say, a period in respect of which an instalment of rent falls to be paid) during any part of which he has occupied the dwelling-house after the said death.

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- (5) A secure tenancy which has passed under subsection (1) above to a qualified person shall not, on the death of a tenant (or one of joint tenants) so pass on a second occasion, and accordingly, the secure tenancy shall be terminated when such a death occurs; but the provisions of this subsection shall not operate so as to terminate the secure tenancy of any tenant under a joint tenancy where such a joint tenant continues to use the dwelling-house as his only or principal home.
- (6) Where a secure tenancy is terminated by operation of subsection (5) above, and there is a qualified person, he shall be entitled to continue as tenant for a period not exceeding 6 months, but the tenancy shall cease to be a secure tenancy.
- (7) Where a tenant gives up a secure tenancy in order to occupy another dwelling-house which is subject to a secure tenancy, whether by agreement or following termination of the first tenancy by an order under section 15(2)(b) of this Act, for the purposes of subsections (2) and (5) above those tenancies shall be treated as being a single secure tenancy.

14 Proceedings for possession

- (1) The landlord under a secure tenancy may raise proceedings for recovery of possession of the dwelling-house by way of summary cause in the sheriff court of the district in which it is situated.
- (2) Proceedings for recovery of possession of a dwelling-house subject to a secure tenancy may not be raised unless—
 - (a) the landlord has served on the tenant a notice complying with subsection (3) below ;
 - (b) the proceedings are raised after the date specified in the said notice ; and
 - (c) the notice is in force at the time when the proceedings are raised.
- (3) A notice under this section shall be in a form prescribed by the Secretary of State by statutory instrument, and shall specify—
 - (a) the ground, being a ground set out in Part I of Schedule 2 to this Act, on which proceedings for recovery of possession are to be raised ; and
 - (b) a date, not earlier than 4 weeks from the date of service of the notice or the date on which the tenancy could have been brought to an end by a notice to quit had it not been a secure tenancy, whichever is later, on or after which the landlord may raise proceedings for recovery of possession.
- (4) A notice under this section shall cease to be in force 6 months after the date specified in it in accordance with subsection (3)(b) above, or when it is withdrawn by the landlord, whichever is earlier.

15 Powers of sheriff in proceedings

- (1) The court may, as it thinks fit, adjourn proceedings under section 14 of this Act on a ground set out in any of paragraphs 1 to 6 of Part I of Schedule 2 to this Act for a period or periods, with or without imposing conditions as to payment of outstanding rent or other conditions.
- (2) Subject to subsection (1) above, in proceedings under the said section 14 the court shall make an order for recovery of possession—

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- (a) if it appears to the court that the landlord has a ground for recovery of possession, being a ground set out in any of paragraphs 1 to 7 of the said Part I and specified in the notice required by the said section 14 and that it is reasonable to make the order ; or
 - (b) where a ground for recovery of possession set out in any of paragraphs 8 to 14 of the said Part I is specified in the said notice, if it appears to the court that other suitable accommodation will be available for the tenant when the order takes effect.
- (3) Part II of Schedule 2 to this Act shall have effect to determine whether accommodation is suitable for the purposes of subsection (2)(b) above.
- (4) An order under subsection (2) above shall appoint a date for recovery of possession and shall have the effect of—
- (a) terminating the tenancy ; and
 - (b) giving the landlord the right to recover possession of the dwelling-house, at that date.
- (5) Where, in proceedings under section 14 of this Act on the ground set out in paragraph 10 of Part I of Schedule 2 to this Act, it appears to the court that it is the intention of the landlord—
- (a) that substantial work will be carried out on the building (or a part of the building) which comprises or includes the dwelling-house ; and
 - (b) that the tenant should return to the dwelling-house after the work is completed, the court shall make an order that the tenant shall be entitled to return to the dwelling-house after the work is completed ; and subsection (4)(a) above shall not apply in such a case.

Leases

16 Tenant's right to written lease

- (1) Every secure tenancy created after the commencement of this section shall be constituted by writing which shall be probative or holograph of the parties.
- (2) It shall be the duty of the landlord under every secure tenancy which is in existence at the commencement of this section to embody the existing terms of the tenancy (so far as not implied by law or already contained in a lease which complies with this subsection or in a lease which has been declared binding by the sheriff under subsection (5) below) in a written lease which shall be probative or holograph of the parties.
- (3) It shall be the duty of the landlord under a secure tenancy to draw up the documents required to comply with subsection (1) or (2) above, to ensure that they are duly executed—
- (a) in the case of subsection (1) above, before the commencement of the tenancy ; and
 - (b) in the case of subsection (2) above, within 2 years after the commencement of this section,
- and to supply a copy of the documents to the tenant.

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- (4) (a) A tenant (or any one of joint tenants) under a secure tenancy who considers that a lease drawn up by the landlord for the purposes of subsection (2) above does not fairly reflect the existing terms of the tenancy; or
- (b) a landlord, in a case where a tenant refuses or fails duly to execute a document for the purposes of this section,

may raise proceedings by way of summary application in the sheriff court of the district in which the dwelling-house is situated.

- (5) In proceedings under subsection (4) above the sheriff shall—
- (a) where it appears to him that the lease does not fairly reflect the existing terms of the tenancy, adjust the terms of the lease so that they do so ; and
- (b) in any case make an order declaring that the lease (or, as the case may be, the lease as adjusted by him) fairly reflects the terms of the tenancy, and the said lease shall then have effect as if it had been duly executed by the parties.
- (6) A tenant shall not be required to pay any fees in respect of anything done under subsection (3) above.

17 Variation of terms of secure tenancies

- (1) Notwithstanding anything contained in the tenancy agreement, the terms of a secure tenancy may not be varied, except—
- (a) by agreement between the landlord and the tenant; or
- (b) under subsection (2) or (4) below.
- (2) The rent or any other charge payable under a secure tenancy may, without the tenancy being terminated, be increased with effect from the beginning of any rental period (that is to say, a period in respect of which an instalment of rent falls to be paid) by a written notice of increase given by the landlord to the tenant not less than 4 weeks before the beginning of the rental period (or any earlier day on which the payment of rent in respect of that period falls to be made).
- (3) (a) Where a landlord wishes to vary the terms or conditions of a secure tenancy, but the tenant refuses or fails to agree the variation ; or
- (b) where a tenant wishes to vary any term of a secure tenancy which restricts his use or enjoyment of the dwelling-house, on the ground that—
- (i) by reason of changes in the character of the dwelling-house or of the neighbourhood or other circumstances which the sheriff may deem material, the term is or has become unreasonable or inappropriate ; or
- (ii) the term is unduly burdensome compared with any benefit which would result from its performance ; or
- (iii) the existence of the term impedes some reasonable use of the dwelling-house,

but the landlord refuses or fails to agree the variation,

the landlord or, as the case may be, the tenant may raise proceedings by way of summary application in the sheriff court of the district in which the dwelling-house is situated.

- (4) In proceedings under subsection (3) above, the sheriff may make such order varying any term of the tenancy (other than a term relating to the amount of rent or of any other charge payable by the tenant) as he thinks it reasonable to make in all

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the circumstances, having particular regard to the safety of any person and to any likelihood of damage to the dwelling-house or to any premises of which it forms part, including if the sheriff thinks fit an order that the tenant shall pay to the landlord such sum as the sheriff thinks just to compensate him for any patrimonial loss occasioned by the variation; and such an order shall not have the effect of terminating the tenancy.

- (5) At any time before he grants an order in proceedings under subsection (3)(b) above the sheriff may order the tenant to serve a copy of his application on any person who, in the capacity of owner or tenant of any land.—
- (a) appears to the sheriff to benefit from the term of which variation is sought; or
 - (b) appears to him to be adversely affected by the proposed variation.
- (6) An agreement under subsection (1)(a) above shall be in writing which is probative or holograph of the parties, and it shall be the duty of the landlord to draw up the said writing and to ensure that it is duly executed.
- (7) Section 62 of the Housing (Scotland) Act 1969 shall be amended as follows—
- (a) in subsection (1), for " (2) and (3)" substitute " (2), (3) and (8) " ;
 - (b) in the same subsection, after the first "rent", insert " or any other charge " ; and
 - (c) add at the end a new subsection as follows—

“(8) This section does not apply in relation to a tenancy which is a secure tenancy within the meaning of section 10 of the Tenants' Rights, Etc. (Scotland) Act 1980.”.

Abandonment of secure tenancy

18 Rights of landlord where secure tenancy appears to have been abandoned

- (1) This section shall have effect where a landlord under a secure tenancy has reasonable grounds for believing that—
- (a) the dwelling-house is unoccupied; and
 - (b) the tenant does not intend to occupy it as his home.
- (2) The landlord shall be entitled to enter the dwelling-house at any time, for the purpose of securing the dwelling-house and any fittings, fixtures or furniture against vandalism.
- (3) For the purposes of subsection (2) above the landlord and its servants or agents may open, by force if necessary, doors and lockfast places.
- (4) The landlord may take possession of the dwelling-house in accordance with section 19 of this Act.

19 Re-possession

- (1) A landlord wishing to take possession of a dwelling-house under section 18(4) of this Act shall serve on the tenant a notice—
- (a) stating that the landlord has reason to believe that the dwelling-house is unoccupied and that the tenant does not intend to occupy it as his home;
 - (b) requiring the tenant to inform the landlord in writing within 4 weeks of service of the notice if he intends to occupy the dwelling-house as his home; and

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- (c) informing the tenant that, if it appears to the landlord at the end of the said period of 4 weeks that the tenant does not intend so to occupy the dwelling-house, the secure tenancy will be terminated forth' with.
- (2) Where the landlord has—
- (a) served on the tenant a notice which complies with subsection (1) above; and
 - (b) made such inquiries as may be necessary to satisfy the landlord that the dwelling-house is unoccupied and that the tenant does not intend to occupy it as his home,
- and at the end of the period of 4 weeks mentioned in the said subsection (1) is so satisfied, it may serve a further notice on the tenant bringing the tenancy to an end forthwith.
- (3) Where a tenancy has been terminated in accordance with this section the landlord shall be entitled to take possession of the dwelling-house forthwith without any further proceedings.
- (4) The Secretary of State may by order made by statutory instrument make provision for the landlord to secure the safe custody and delivery to the tenant of any property which is found in a dwelling-house to which this section applies; and in particular—
- (a) for requiring charges to be paid in respect of such property before it is delivered to the tenant; and
 - (b) for authorising the disposal of such property, if the tenant has not arranged for its delivery to him before the expiry of such period as the order may specify and the application of any proceeds towards any costs incurred by the landlord and any rent due but unpaid by the tenant to the landlord.

20 Tenant's right of recourse to sheriff

- (1) A tenant under a secure tenancy who is aggrieved by termination of the tenancy by the landlord under section 19(2) of this Act may raise proceedings by summary application within 6 months after the date of the said termination in the sheriff court of the district in which the dwelling-house is situated.
- (2) Where in proceedings under this section it appears to the sheriff that—
- (a) the landlord has failed to comply with any provision of section 19 of this Act; or
 - (b) the landlord did not have reasonable grounds for finding that the dwelling-house was unoccupied, or did not have reasonable grounds for finding that the tenant did not intend to occupy it as his home; or
 - (c) the landlord was in error in finding that the tenant did not intend to occupy the dwelling-house as his home, and the tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of his intention so to occupy it,
- he shall—
- (i) where the dwelling-house has not been let to a new tenant, make an order that the secure tenancy shall continue; or
 - (ii) in any other case, direct the landlord to make other suitable accommodation available to the tenant.
- (3) Part II of Schedule 2 to this Act shall have effect to determine whether accommodation is suitable for the purposes of subsection (2)(ii) above.

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Subletting

21 Subletting

- (1) It shall be a term of every secure tenancy that the tenant shall not assign, sublet or otherwise give up to another person possession of the dwelling-house or any part thereof or take in a lodger except with the consent in writing of the landlord, which shall not be unreasonably withheld.
- (2) The landlord may refuse consent under this section if it appears to it that a payment other than—
 - (a) a rent which is in its opinion a reasonable rent; or
 - (b) a deposit returnable at the termination of the assignation, sublet or other transaction given as security for the subtenant's obligations for accounts for supplies of gas, electricity, telephone or other domestic supplies and for damage to the dwelling-house or contents, which in its opinion is reasonable, has been or is to be received by the tenant in consideration of the assignation, subletting or other transaction.
- (3) This section shall not apply to any assignation, subletting or other transaction entered into before the commencement of this section provided that the consent of the landlord to the transaction and to the rent which is being charged has been obtained.
- (4) An assignation, subletting or other transaction to which this section applies shall not be a protected tenancy or a statutory tenancy within the meaning of the Rent (Scotland) Act 1971, nor shall Part VII of that Act apply to such an assignation, sublet or other transaction.
- (5) Section 151(6) of the Housing (Scotland) Act 1966 is repealed.
- (6) In this section and in section 22 of this Act " subtenant" means a person entitled to possession of a dwelling-house or any part thereof under an assignation, subletting or other transaction to which this section applies, and includes a lodger.
- (7) The provisions of Schedule 3 to this Act shall have effect as terms of every secure tenancy.

22 Rent payable by subtenants

- (1)
 - (a) Where a landlord under a secure tenancy has given consent to an assignation, subletting or other transaction under section 21 of this Act, this section shall apply to the rent payable by the subtenant at the commencement of the assignation, subletting or other transaction;
 - (b) where, before the commencement of this Act, a landlord under a tenancy which has become a secure tenancy by virtue of this Act gave consent to an assignation, sublet or other transaction under section 151(6) of the Housing (Scotland) Act 1966, this section shall apply to the latest rent payable by the subtenant before the commencement of this Act provided that it is a reasonable rent within the meaning of paragraph (b) of the said section 151(6).
- (2) It shall be a term of every secure tenancy—
 - (a) that the tenant shall notify the landlord of any proposed increase in a rent to which this section applies; and

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- (b) that no increase shall be made in a rent to which this section applies if the landlord objects.

Alterations etc. to dwelling-house

23 Landlord's consent to work

- (1) It shall be a term of every secure tenancy that the tenant shall not carry out work, other than interior decoration, in relation to the dwelling-house without the consent in writing of the landlord, which shall not be unreasonably withheld.
- (2) In this section and in Schedule 4 to this Act " work " means—
- (a) alteration, improvement or enlargement of the dwelling house or of any fittings or fixtures ;
 - (b) addition of new fittings or fixtures ;
 - (c) erection of a garage, shed or other structure,
- but does not include repairs or maintenance of any of these.
- (3) The provisions of Schedule 4 to this Act shall have effect as terms of every secure tenancy.

24 Reimbursement of cost of work

- (1) On the termination of a secure tenancy, the landlord shall have the power (in addition to any other power which it has to make such payments) to make any payment to the tenant which it considers to be appropriate in respect of any work carried out by him (or by any predecessor of his as tenant under the same secure tenancy) before the commencement of section 23 of this Act or with the consent of the landlord which has materially added to the price which the dwelling-house might be expected to fetch if sold on the open market.
- (2) The amount of any payment under subsection (1) above shall not exceed the cost of the work in respect of which it is made, after deduction of the amount of any grant paid or payable under Part I of the Housing (Scotland) Act 1974.
- (3) Where a secure tenancy has been terminated (under section 12(1)(a) of this Act) by the death of the tenant, a payment under subsection (1) above may be made to the tenant's personal representatives.

25 Effect of works on rent

No account shall be taken at any time in the assessment of rent to be payable under a secure tenancy by a tenant who has carried out work on the dwelling-house or by a person who has succeeded him in the tenancy or by the spouse of such a person of any improvement in the value or amenities of the dwelling-house resulting from the work carried out by the tenant.