



Housing (Scotland) Act 1988

1988 CHAPTER 43

PART II

RENTED ACCOMMODATION

Protection from eviction

36 Damages for unlawful eviction.

- (1) This section applies if, at any time after 3rd December 1987, a landlord or any person acting on his behalf unlawfully deprives the residential occupier of any premises of his occupation of the whole or part of the premises.
- (2) This section also applies if, at any time after 6th July 1988, a landlord or any person acting on his behalf—
 - (a) attempts unlawfully to deprive the residential occupier of any premises of his occupation of the whole or part of the premises; or
 - (b) knowingly or having reasonable cause to believe that the conduct is likely to cause the residential occupier of any premises—
 - (i) to give up his occupation of the premises or any part thereof; or
 - (ii) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof,

does acts [^{F1}likely] to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence,
and, as a result, the residential occupier gives up his occupation of the premises as a residence.

- (3) Subject to the following provisions of this section, where this section applies, the landlord shall, by virtue of this section, be liable to pay to the former residential occupier, in respect of his loss of the right to occupy the premises in question as his residence, damages assessed on the basis set out in section 37 below.

Status: Point in time view as at 01/02/1991. This version of this provision has been superseded.

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- (4) Any liability arising by virtue of subsection (3) above—
- (a) shall be in the nature of a liability in delict; and
 - (b) subject to subsection (5) below, shall be in addition to any liability arising apart from this section (whether in delict, contract or otherwise).
- (5) Nothing in this section affects the right of a residential occupier to enforce any liability which arises apart from this section in respect of his loss of the right to occupy premises as his residence; but damages shall not be awarded both in respect of such a liability and in respect of a liability arising by virtue of this section on account of the same loss.
- (6) No liability shall arise by virtue of subsection (3) above if—
- (a) before [^{F2}the date on which the proceedings to enforce the liability are finally decided], the former residential occupier is reinstated in the premises in question in such circumstances that he becomes again the residential occupier of them; or
 - (b) at the request of the former residential occupier, the sheriff makes an order as a result of which he is reinstated as mentioned in paragraph (a) above.
- [^{F3}(6A) For the purposes of subsection (6)(a) above, proceedings to enforce a liability are finally decided—
- (a) if no appeal may be made against the decision in these proceedings;
 - (b) if an appeal may be made against the decision with leave and the time limit for applications for leave expires and either no application has been made or leave has been refused;
 - (c) if leave to appeal against the decision is granted or is not required and no appeal is made within the time limit for appeals; or
 - (d) if an appeal is made but is abandoned before it is determined.
- (6B) If, in proceedings to enforce a liability arising by virtue of subsection (3) above, it appears to the court—
- (a) that, prior to the event which gave rise to the liability, the conduct of the former residential occupier or any person living with him in the premises concerned was such that it is reasonable to mitigate the damages for which the landlord would otherwise be liable, or
 - (b) that, before the proceedings were begun, the landlord offered to reinstate the former residential occupier in the premises in question and either it was unreasonable of the former residential occupier to refuse that offer or, if he had obtained alternative accommodation before the offer was made, it would have been unreasonable of him to refuse that offer if he had not obtained that accommodation,
- the court may reduce the amount of damages which would otherwise be payable to such amount as it thinks appropriate.]
- (7) In proceedings to enforce a liability arising by virtue of subsection (3) above, it shall be a defence for the defender to prove that he believed, and had reasonable cause to believe—
- (a) that the residential occupier had ceased to reside in the premises in question at the time when he was deprived of occupation as mentioned in subsection (1) above or, as the case may be, when the attempt was made or the acts were done as a result of which he gave up his occupation of those premises; or

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- (b) that, where the liability would otherwise arise by virtue only of [^{F4}the doing of acts or] the withdrawal or withholding of services, he had reasonable grounds for [^{F5}doing the acts or] withdrawing or withholding the services in question.
- (8) In this section—
- (a) “residential occupier”, in relation to any premises, means a person occupying the premises as a residence whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises;
- (b) “the right to occupy”, in relation to a residential occupier, includes any restriction on the right of another person to recover possession of the premises in question;
- (c) “former residential occupier”, in relation to any premises, means the person who was the residential occupier until he was deprived of or gave up his occupation as mentioned in subsection (1) or subsection (2) above (and, in relation to a former residential occupier, “the right to occupy” and “landlord” shall be construed accordingly).

Textual Amendments

- F1** Word substituted by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140(1), [Sch. 17 para. 86\(a\)](#)
- F2** Words substituted by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140(1), [Sch. 17 para. 88\(a\)](#)
- F3** S. 36(6A)(6B) inserted by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140(1), [Sch. 17 para. 88\(b\)](#)
- F4** Words inserted by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140(1), [Sch. 17 para. 86\(b\)\(i\)](#)
- F5** Words inserted by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140(1), [Sch. 17 para. 86\(b\)\(ii\)](#)

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