

The Letting Agent Code of Practice & The New Private Residential Tenancy

Letting Agent Code of Practice

The letting industry is currently unregulated, at present anyone can open a Letting Agency, regardless of knowledge or experience.

From 31 Jan 2018 all Letting Agents must comply with the new Letting Agent Code of Practice and from 1 October 2018 all letting agents must have completed compulsory training and be registered by the Scottish Government.

Campbell and Dean is a Royal Institution of Chartered Surveyors (RICS) regulated firm. As a regulated firm we are covered by the RICS Client Money Protection Scheme, hold professional indemnity insurance and are governed by RICS Firm rules as well as The Property Ombudsman code of conduct. RICS rules include holding client accounts which are regularly reconciled and a commitment to continual professional development of all staff. The Register means all letting agents in Scotland will be required to operate at a similar standard.

***Campbell+Dean's view:** The private rental sector accounted for 15% of Scottish housing in 2016. The National Landlord Association has been calling for regulation for over 2 years. Regulation will protect both tenants and landlords from unscrupulous agents and is a great step forward in consumer protection, further improving the perception of the private rental sector.*

A New Private Residential Tenancy Regime

The new private residential tenancy (PRT) regime will come into force on 1 December 2017. It will decrease the time and cost to evict tenants in rent arrears. Court cases will transfer to The Housing & Property Chamber (HPC). The cost of eviction will be greatly reduced as there is no fee to apply to the tribunal and Landlord/ agents can represent themselves. The PRT will remove the ability to end a tenancy due to it reaching its natural end, referred to as the 'no fault' ground

The new regime does not affect existing tenancies.

The lease agreement - The Scottish Government has provided a model lease. Agents can remove optional clauses and add their own, provided they don't contradict mandatory clauses.

Only one date is needed on the lease – the start date. The legislation does not allow the parties to agree a duration for the lease or an end date (for example the granting of a lease for 1 year). The tenancy can be terminated any time after the start date, by Landlord or tenant, with the tenant being required to give 28 days written notice.

The agent will need to provide tenants with guidance notes similar to the current Tenant Information Pack, containing all property safety certificates. The AT5 form will no longer be required.

Rent increases - The first rent increase can be carried out at any time after the start of the lease but then it cannot be increased more frequently than once a year. The tenant has to be given three months' notice of a rent increase using a prescribed form.

Local authorities can apply to Scottish ministers for areas to be designated as Rent Pressure Zones, within which mid tenancy rent increases are capped.

Ending the tenancy - The Landlord can only end the tenancy if one of 18 grounds for possession apply. The no fault ground has been removed. The sale of the property or if the Landlord intends to live in the property remain grounds for possession. All 18 grounds are summarised at the end of this document.

28 days notice is required, if the tenant has owed some rent for 3 consecutive months (possession is mandatory if on day of tribunal hearing the tenant owes at least one months' rent).

The notice period for the sale of the property or if the Landlord/ family member intends to live in the property is 84 days' (12 weeks). Evidence of property sale must be provided to the Tribunal should the tenant not vacate (Home report, estate agent valuation etc.).

Eviction - If the tenant doesn't leave the property when asked to on the Notice to Leave, then the Landlord needs to apply to the HPC to have the tenant evicted. Applications to the HPC will be free of charge and Landlord s and tenants are expected to represent themselves at the chamber rather than using a solicitor.

Existing tenancies - The new regime does not affect existing tenancies such as assured and short assured tenancies provided the fixed term is still running or they are renewing by tacit relocation. These will continue to operate under the old regime.

Campbell+Dean's view: *Notice to Leave is greatly reduced for rent arrears, the Notice process is far simpler and Landlords/ agent no longer need to employ expensive solicitors to obtain possession. As hearings will be transferred from the courts to the HPC, the date for a hearing to be set will also greatly reduced.*

Desirable properties will remain desirable and will continue to rent well. Under the current tenancy regime, after the 6mth fixed term tenants only have to give 1mths notice to vacate.

The Scottish Government has reflected societies desire for security of tenure in the new Private Residential Tenancy.

Falkirk and surrounding towns, particularly Grangemouth have lots of contract workers. The landlord/agent will need to be vigilant when referencing to find out how long an applicant's contract will bring them to the area and decide accordingly.

Summary of the 18 grounds for possession:

The landlord can only end the tenancy if one of 18 grounds for possession apply:

1. Landlord intends to sell the property at market value within 3 months of tenant leaving (mandatory)
2. Property is to be sold by mortgage lender (mandatory)
3. Landlord intends to refurbish which will entail significantly disruptive works (mandatory)
4. Landlord intends to live in the property (mandatory)
5. Family member intends to live in property (discretionary)
6. Landlord intends to use property for non-residential purpose (mandatory)
7. Property required for religious purpose (mandatory)
8. Tenant is no longer an employee of landlord (mandatory if application made within 12 months of tenant ceasing to be employee)
9. Tenant is no longer in need of supported accommodation (discretionary)
10. Tenant is not occupying the property (mandatory)
11. Tenant has breached tenancy agreement (but not rent clauses) (discretionary)
12. Tenant has owed some rent for 3 consecutive months (mandatory if on day of tribunal hearing tenant

owes at least one months' rent and arrears are not due to delay/failure in benefit payment)

13. Tenant convicted of using property for immoral/illegal purpose or convicted of offence committed at/near property (mandatory)
14. Tenant has acted in anti-social manner (discretionary)
15. Tenant associates with someone who has a criminal conviction or who has engaged in anti-social behavior (discretionary)
16. Landlord has been refused registration or had registration revoked (discretionary)
17. Landlord's HMO licence has been revoked (discretionary)
18. Overcrowding statutory notice has been served on the landlord (discretionary)

The notice period for most grounds is 28 days' if the tenant has been entitled to occupy the property for 6 months or less, and 84 days' if the tenant has been entitled to occupy the property for more than 6 months.

Grounds 10-15 require 28 days' notice, regardless of the duration of time the tenant has been entitled to occupy the property.