

## The New Private Residential Tenancy

### A New Private Residential Tenancy Regime

The new private residential tenancy (PRT) regime came into force on 1 December 2017, replacing the previous system of assured and short assured tenancies.

The PRT removed 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 will have removed optional clauses and add their own, this is allowed, 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.

Prior to the PRT being signed, the agent needs to provide the tenant with guidance notes, as well as all property safety certificates. From 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. 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 (estate agent valuation, Home Report 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 First-tier Tribunal for Scotland (Housing & Property Chamber) to have the tenant evicted. Applications to the HPC are free of charge and landlords and tenants are expected to represent themselves at the chamber rather than using a solicitor. This greatly reduces the cost of eviction.

**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:** *The Notice to Vacate process is far simpler and Landlord/ agent can represent themselves at Tribunal. As hearings have been transferred from the courts to the Housing and Property Tribunal, the date for a hearing to be set should also be reduced.*

*Desirable properties will remain such and will continue to rent well. Under the old Short Assured Tenancy regime, after the 6mth fixed term ended tenants typically only had to give 1mths notice to vacate.*

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

### **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.