

NEW HOUSE RULES



The new Private Residential Tenancy in Scotland.
What you need to know.

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RENTING IS CHANGING

New laws around private renting start rolling out in Scotland from 1st December 2017. If you rent privately, it's important that you make sure you are switched on to how these **changes will affect you.**

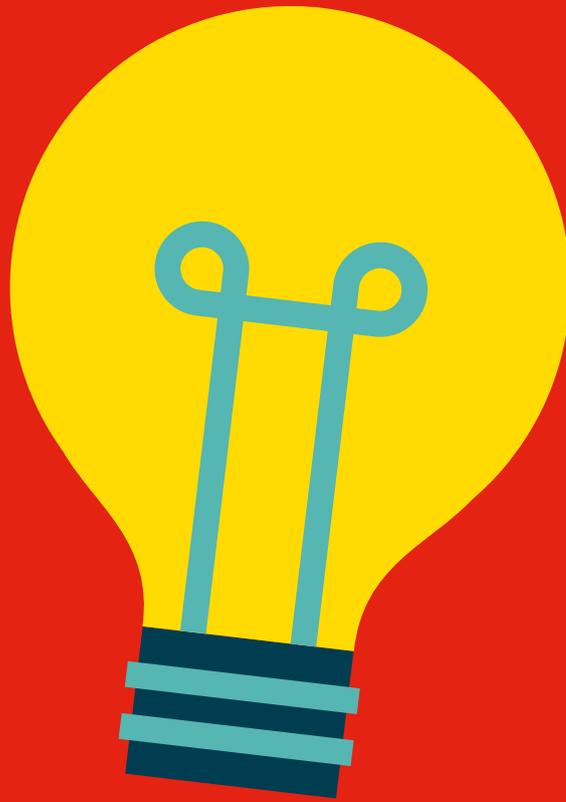
Improvements for tenants include:

- more security – it's an open-ended tenancy so your landlord can't just ask you to leave because you've been in the property for a set length of time
- protection from frequent rent increases – your rent can't go up more than once a year and you must get at least three months' notice of any increase
- rent increases can be referred to a rent officer, who can decide if they're fair
- if you've lived in a property for more than six months, landlords have to give 84 days' notice to leave (unless it's because you've done something wrong)
- if you think you were misled into moving out, you can now apply to the **First-tier Tribunal** for a 'wrongful termination order'. If the Tribunal gives the order it can award up to six months' rent in compensation
- local authorities can apply to Scottish Ministers to cap levels of rent increases for tenants with a PRT in areas where rents are rising too much

Private residential tenancies (PRT)

After 1st December 2017, any new tenancy you enter into will be a PRT as long as:

- the property is let to you as a separate dwelling. A property can still be considered a separate dwelling even if some of the core facilities are shared with other tenants. For example, if a tenant rents only a bedroom in a flat, but has a right to use a shared bathroom and kitchen, the property will be treated as a separate dwelling because the tenant has access to the range of facilities required for it to be regarded as a separate dwelling
- you live in it as your only or main home
- the tenancy isn't excluded **under schedule 1 of the Private Housing (Tenancies) (Scotland) Act 2016**



Existing tenancies

On the date the new tenancy comes into force (1st December 2017), any existing short assured or assured tenancy will continue until either you or your landlord bring it to an end by serving notice to quit the let property. If your short assured tenancy is renewing on a contractual basis, this can continue to renew under **the Housing (Scotland) Act 1988** until either you or your landlord bring it to an end by serving notice to quit the let property.



If you're a student living in a halls of residence, or if you live with your landlord, **the new rules don't apply to you!**

WHAT DO THESE CHANGES MEAN FOR ME?

From December 1st 2017, **if your tenancy is a PRT it will no longer have an end date**, giving you more rights and the ability to plan your future in your home, giving you more rights and the ability to plan your future in your home. Unlike in the past, your landlord can't just ask you to leave without a good reason, they can only evict you by using one or more of 18 new grounds or reasons.



MANDATORY GROUNDS FOR EVICTION



The **first eight grounds** for eviction are **mandatory**. This means that if the First-tier Tribunal agrees that the ground exists, you **must** leave the property.

- 1** **Landlord intends to sell the let property within three months of you moving out.** They'll need evidence to prove it – this could include a letter from a solicitor or an estate agent, or a recent home report for the property.
- 2** **Let property to be sold by lender.** This ground applies if your landlord's mortgage lender wants to repossess the property and sell it.
- 3** **Landlord intends to refurbish the let property and it would be so disruptive you wouldn't be able to live there at the same time.** Example of evidence could include planning permission, or a contract between your landlord and an architect or a builder for the work to be carried out.
- 4** **Landlord wants you to move out of the property so they can move in.** Evidence could include an affidavit (a written statement, signed under oath in the presence of a Notary Public or a Justice of the Peace, that can be used as evidence in a court) saying this is what they are going to do.
- 5** **Landlord intends to use the let property for non-residential purpose (something other than a home).** Evidence could include planning permission that will let them use the property for a different purpose.
- 6** **Let property required for religious worker.** This ground applies if the property is held to be available for someone who has a religious job (like a priest, nun, monk, imam, lay missionary, minister, rabbi or something similar). The ground only works if the property has been used for this purpose before.
- 7** **Tenant has a relevant criminal conviction.** This ground applies if you're convicted of an offence punishable by imprisonment that involved you either:
 - using the property for illegal reasons
 - letting someone use the property for illegal reasons
 - committing a crime within or near the property
- 8** **Tenant is no longer occupying the let property.** This ground applies if the property isn't being used as your main or only home. This doesn't count if your landlord failed their duty to keep the property in good repair and you had to move out for your own safety.

DISCRETIONARY GROUNDS FOR EVICTION



The **next eight grounds** for eviction are **discretionary**. This means that even if the First-tier Tribunal agrees that the ground exists, it **still has to decide** whether it is reasonable to issue an eviction order.

9 **Landlord's family member intends to live in the let property.** This ground applies if a member of your landlord's family plans to move into the property as their only or main home for at least three months. See Scottish Government guidance for members of your landlord's family who qualify.

Your landlord will need evidence for this ground. This could include an affidavit stating that this is what their family member intends to do.

10 **Tenant no longer needs supported accommodation.** This ground applies if you moved into the property because you had a need for community care and you've since been assessed as no longer having that need.

11 **Tenant has breached a term of the tenancy agreement.** This ground applies if you haven't complied with one of the terms of tenancy. This doesn't apply to cases where you haven't paid your rent (known as 'rent arrears') – there's a separate ground for this.

12 **Tenant has engaged in relevant antisocial behaviour.** This ground applies if you've behaved in an antisocial way to another person, by doing something which either:

- causes them alarm or distress
- is a nuisance or annoyance
- is considered harassment

The First-tier Tribunal will consider the behaviour, who it involved and where it occurred to decide whether to issue an eviction order. To use this ground, your landlord has to apply to the Tribunal within a year of the behaviour taking place, unless they have a reasonable excuse.

13 **Tenant has associated in the let property with someone who has a criminal conviction or is antisocial.** This ground applies if you allow someone into the property and they behave in an antisocial way that would have them evicted if they were the tenant. To use this ground, your landlord has to apply to the Tribunal within a year of the conviction or behaviour taking place, unless they have a reasonable excuse.

14 **Landlord has had their registration refused or revoked.** This ground applies if your landlord isn't registered as a landlord in the local council area where the property is located.

15 **Landlord's HMO licence has been revoked.** This ground applies if the HMO (House of Multiple Occupancy) licence for the property has been removed and keeping all the tenants in the property would no longer be legal.

16 **An overcrowding statutory notice has been served on the landlord.** This ground applies if an 'overcrowding statutory notice' has been served on your landlord because the property is overcrowded to the extent that it may affect the health of the people living there.

Grounds which could be mandatory or discretionary

The final two grounds can be either mandatory or discretionary, depending on the circumstances of the case.

MANDATORY & DISCRETIONARY GROUNDS

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17 **Tenant is in rent arrears over three consecutive months.** This ground applies if you've been in 'rent arrears' (owed rent payments) for three or more months in a row.

If you still owe at least a month's rent by the first day of the Tribunal hearing, the ground is mandatory and the Tribunal must issue an eviction order. The Tribunal must also be satisfied that the arrears were not due to a delay or failure in the payment of a relevant benefit.

If you owe less than a month's rent (or are no longer in arrears) by the first day of the Tribunal hearing, the ground is discretionary and the Tribunal will decide whether it is reasonable to issue an eviction order. In deciding whether it is reasonable to evict, the Tribunal will consider whether you being in arrears is due to a delay or failure in the payment of a relevant benefit.

18 **Tenant has stopped being — or has failed to become — an employee.** This ground applies if your landlord let you move in because you were their employee (or were going to be one), and now you aren't. The First-tier Tribunal will have to give an eviction order if either:

- your landlord applies within 12 months of you no longer being an employee
- you never became an employee and your landlord applies within 12 months of the tenancy starting

The Tribunal will be able to decide whether to give an eviction order if:

- your landlord applies on or after the date 12 months after you stopped being an employee
- you never became an employee but your landlord applies on or after the date



WHAT IS MY NOTICE PERIOD?

Under the new rules, your landlord must give you a **minimum of 28 days' notice** if you have rented the property for six months or less. You will get **at least 84 days' notice** if you have lived there for more than six months and you are not at fault.



ENDING YOUR TENANCY

If you want to end the tenancy

You have to give your landlord **at least 28 days' notice in writing** if you want to end the tenancy (unless you ask for shorter notice and they agree in writing). The notice period will begin on the day your landlord gets your notice, and ends 28 days after that date.

So if you send the notice to your landlord by post or email, you must allow your landlord 48 hours to receive it. This delivery time should be factored into the amount of notice you give your landlord.

Your notice has to be given 'freely and without coercion'. This means your landlord must not have pressured you into leaving. If your landlord tries to persuade or force you to leave without following the correct legal process then they could be carrying out an illegal eviction. This is a criminal offence in Scotland. An example of an illegal eviction by coercion could be carrying out work that makes it impossible for you to continue to stay in the property, e.g. removing the toilet or stopping the drinking water supply.

To end a joint tenancy, all the joint tenants must agree to end the tenancy and sign the notice to leave. One joint tenant cannot terminate a joint tenancy on behalf of all the joint tenants.

If your landlord wants to end the tenancy

Your landlord can only end your tenancy by **using one of the 18 grounds for eviction**. When your landlord gives you notice to leave, they must tell you what eviction ground(s) they are using and may provide evidence to support this.

Notice needed

The amount of notice your landlord has to give you will depend on how long you've lived in the property and the grounds your landlord is using to evict you. However, they must give you **at least 28 days' notice if you have lived in the let property for six months or less**, regardless of what eviction ground they are using.

Regardless of how long you have lived in the let property; your landlord must give **at least 28 days' notice** if they are using one or more of the following eviction grounds:

- tenant is no longer occupying the let property
- tenant has breached a term(s) of tenancy agreement
- tenant is in rent arrears over three consecutive months on the date the landlord applies to the Tribunal for an eviction order
- tenant has a relevant criminal conviction
- tenant has engaged in relevant anti-social behaviour
- tenant associates with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.

Your landlord must give you **at least 84 days' notice if you have lived in the let property for more than six months** and they aren't only relying on one of the grounds above.

The notice period will begin 48 hours after the notice was sent. So if your landlord sends you the notice to leave by post or email, they must allow you 48 hours to receive it. This delivery time should be factored into the amount of notice your landlord gives you. However, 48 hours' notice is not required if the notice is hand delivered.



CHANGES YOU CAN BANK ON

Under the new rules, **your rent can only go up once a year with 3 months' notice**, giving you greater peace of mind where your money is concerned. The Private Housing (Tenancies) (Scotland) Act 2016 tells your landlord how they can increase the rent and what other charges they can make.



RENT INCREASES AND DISPUTES

Increasing your rent

If your landlord wants to increase the amount of rent you pay, **they have to give at least three months' written notice before they can do it.** They must use the correct form to let you know that they intend to do this – it's called a '**landlord's rent-increase notice to tenant(s)**'.

The notice period begins on the date you get the notice, and ends three months after that date on the same day of the month or, if there is no such date, the last day of the month. So if your landlord sends you the rent increase notice by post or email, they must allow you 48 hours to receive it. This delivery time should be factored into the amount of notice they give you.

If you disagree

If you think the rent increase is too high, you can contact a rent officer. They have the power to decide what the rent for the property should be. Remember that a rent officer can put the rent up for the property if they decide it should be higher, as well as putting it down if they think it is too high.

If you decide to do this, **you must contact a rent officer within 21 days of your landlord giving you notice of the rent increase.** You must also tell the landlord you're contacting a rent officer. You do this by completing Part 3 of the 'landlord's rent-increase notice to tenant(s)'.

If you or your landlord disagrees with the rent officer's decision you can ask them to reconsider it, or appeal to the First-tier Tribunal, who will make a final decision, which may agree with the amount set by the rent officer, be higher or lower.

If the rent officer or First-tier Tribunal decides that your rent should be increased, you will have to pay the increased amount from the date in the original rent increase notice from your landlord.

Illegal charges

Other than the rent, your landlord can ask you to pay a refundable deposit. This deposit can be no more than two months' rent. It's an offence for your landlord to make you pay any other:

- administration fees premiums
- further deposits
- additional charges, whether they're refundable or not

If you think you have been charged an illegal fee you may be able to claim this back and the landlord maybe guilty of an offence.

Rent pressure zones

If a local council thinks rents are rising too much in a certain area, they can apply to Scottish Ministers to have that area designated as a 'rent pressure zone'. This means a cap (a maximum limit) is set on how much rents are allowed to increase for existing tenants with a PRT each year in that area.

SIGNING ON THE DOTTED LINE

From 1st December 2017, your landlord now has to give you a copy of all of the terms of your tenancy **by the end of the date that you move in.**

This can be an electronic document instead of being printed on paper.

If you already live in the property under a different type of agreement, your landlord has to give you the document within 28 days of the tenancy becoming a private residential tenancy.

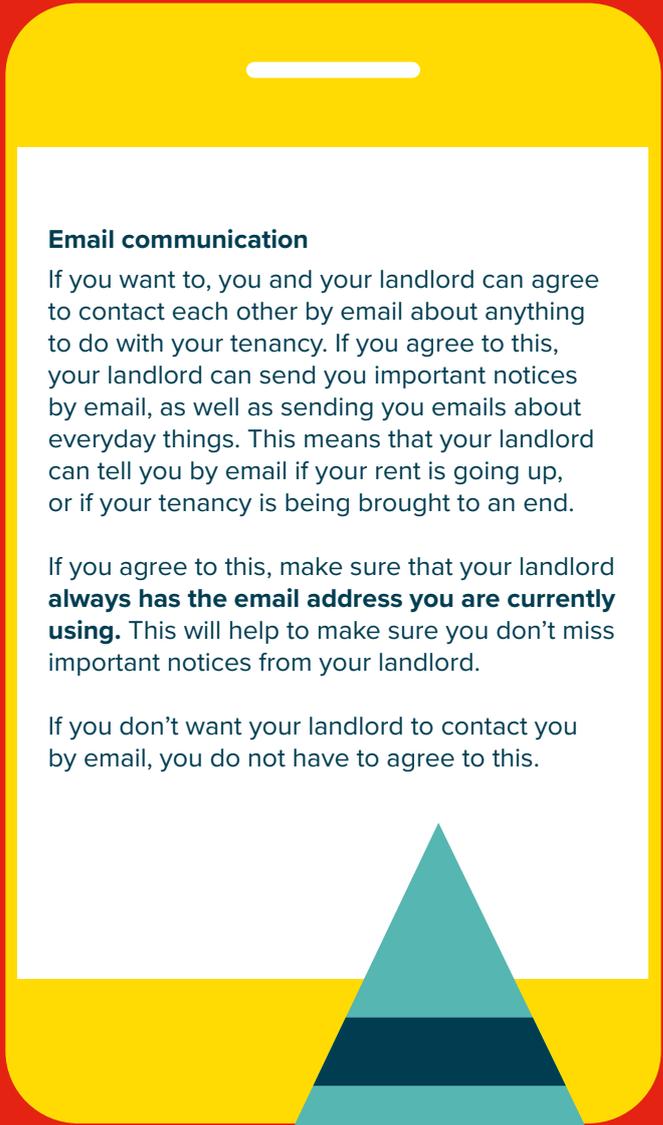
For example, if you're initially using the let property as your second home during the week while working away from your main home, you're likely to have a common law tenancy as the let property is not your only or principal home. If the let property later becomes your only or principal home, you will have all the protections of a private residential tenancy from the day your circumstances changed and your landlord must give you the written terms of your private residential tenancy within 28 days of that change.

If the terms of the tenancy change after it's started, your landlord must give you a document explaining the updated terms of the tenancy within 28 days of the change coming into effect.

For example, if the written terms of your tenancy state that pets are not permitted in the let property and your landlord subsequently agrees that you can keep a dog, this would be a change to a term of your tenancy and your landlord would be required to provide you with a document outlining this change.

You and your landlord can agree to 'sign' the tenancy agreement by typing your names in the electronic document and sending it by email if you want to. If you and your landlord don't want to do this, you can agree to sign a paper copy of the tenancy agreement instead.

Your landlord can't charge you for providing written tenancy terms or any other information which they legally have to provide.

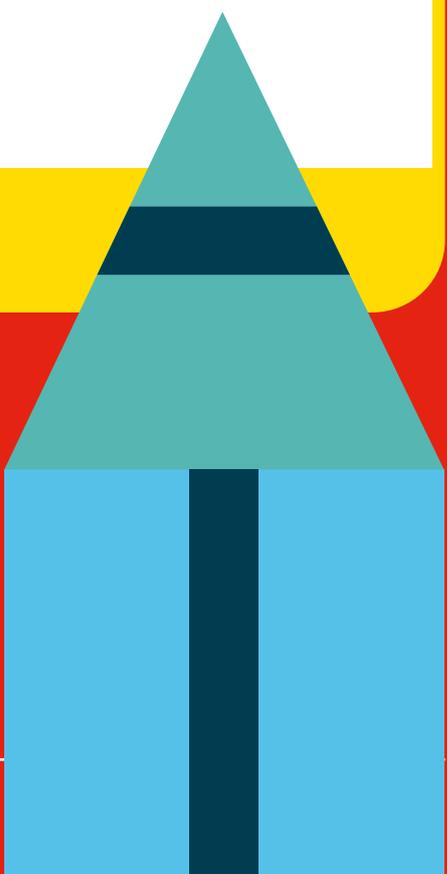


Email communication

If you want to, you and your landlord can agree to contact each other by email about anything to do with your tenancy. If you agree to this, your landlord can send you important notices by email, as well as sending you emails about everyday things. This means that your landlord can tell you by email if your rent is going up, or if your tenancy is being brought to an end.

If you agree to this, make sure that your landlord **always has the email address you are currently using.** This will help to make sure you don't miss important notices from your landlord.

If you don't want your landlord to contact you by email, you do not have to agree to this.



THE SCOTTISH GOVERNMENT MODEL PRIVATE RESIDENTIAL TENANCY AGREEMENT

To make sure you don't get mixed up, **the government has produced a new model tenancy agreement** to help you and your landlord follow the new rules.

Your landlord must provide you with all the written tenancy terms and the correct set of notes to help you understand your tenancy terms. The model tenancy agreement has been developed to help landlords meet that duty.

Your landlord must give you specified information about your tenancy terms. This information will help you to understand your rights and the things you have to do during your tenancy. The information you are given will depend on your tenancy agreement.

The Scottish Government has created the **Model Private Residential Tenancy Agreement** which landlords can use for private residential tenancies. After a landlord creates a tenancy agreement using this tool they can download it as a Word document. Landlords do not have to use this particular tenancy agreement if they do not want to. They can use a different tenancy agreement as long as it complies with the law.

If your landlord uses the Scottish Government's Model Private Residential Tenancy Agreement, they must give you the **'Easy Read Notes for the Scottish Government Model Private Residential Tenancy Agreement'**. These notes explain in plain language all of the standard tenancy terms in your tenancy agreement.

If your landlord does not use the Model Private Residential Tenancy Agreement, there are nine tenancy terms which your landlord must still include in your tenancy agreement by law. If your landlord does not use the Model Private Residential Tenancy Agreement, the document they must give you is called the 'Private Residential Tenancy Statutory Terms Supporting Notes'.

This document is a shorter set of notes, which will only give you information about the nine tenancy terms your landlord has to include in your tenancy agreement by law. If you need information about any other terms in your tenancy agreement, you may want to discuss them with your landlord, or contact the advice organisations on the back of this document.

All of the above documents can be found on the Scottish Government website.



WHAT TO DO IF YOU CAN'T RESOLVE A DISPUTE

Not all tenancies go smoothly **so if you disagree with your landlord it's now easier** to get problems heard by someone who can help get them fixed.

First-tier Tribunal Housing and Property Chamber

You can make an application to the First-tier Tribunal if your landlord does not give you:

- a written copy of all the terms of your tenancy (or any other information they have a duty to give you)
- a document explaining any updated terms of your tenancy within 28 days of the change
- the specified information relating to your tenancy terms

Before you can apply to the Tribunal, **you have to give your landlord 28 days' notice**. You must use the correct form to give your landlord notice – it's called a **'Tenant's notification to a landlord of a referral to the First-tier Tribunal for failure to supply in writing all tenancy terms and/or any other specified information'**.

The notice period begins on the later of:

- the day your landlord receives the notice from you
- the day after the deadline by which your landlord should have given you the information

If the Tribunal agrees with you, it may order your landlord to pay you up to:

- three months' rent if they haven't provided tenancy terms or haven't provided the specified information relating to your tenancy terms
- six months' rent if they haven't provided either

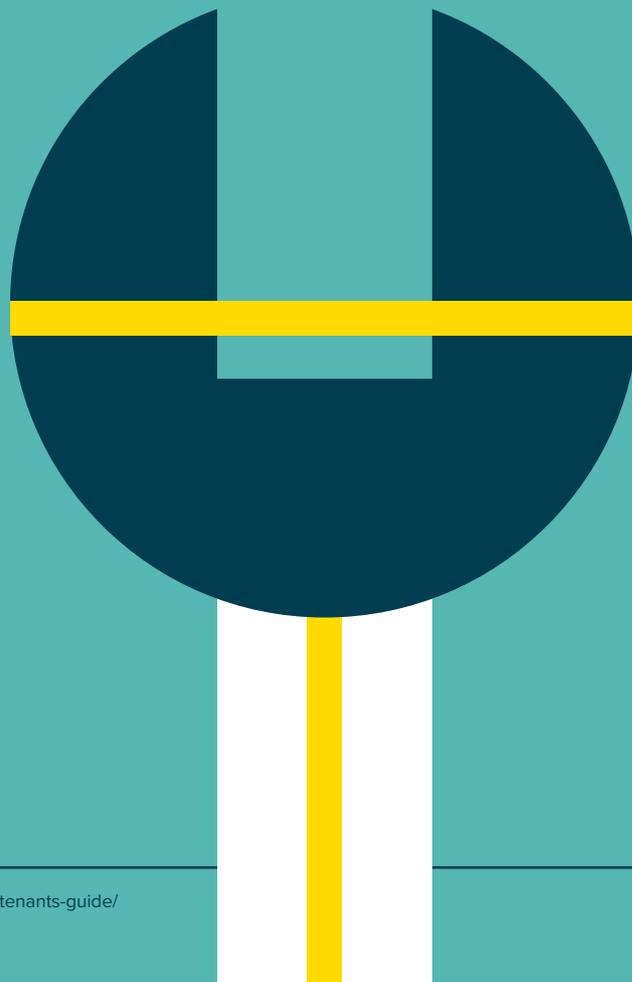
If your landlord isn't registered

If the First-tier Tribunal discovers that your landlord is unregistered, they have to report it to the local council for the area the property is located in. Your landlord is registered if he or she is entered in the Scottish Landlord Register prepared and maintained by the local authority for the purposes of Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004.

The Tribunal has to pass your landlord's name, their address and the address of the let property to the local council so they can investigate it.

Renting out property without being registered with the council is a criminal offence and your landlord can be served with a Rent Penalty Notice (which prevents them from charging you rent) or fined up to £50,000 if found guilty.

You can check whether your landlord or a property is registered using the Public Search facility on the **Scottish Landlord Register**. If your search is unsuccessful, please contact the relevant **local authority for more information**.



YOUR RESPONSIBILITIES

As part of the **Private Housing (Tenancies) (Scotland) Act 2016**, you also have new responsibilities around:

- letting your landlord repair the property
- people living with you

Access for repairs

If your landlord needs access to the property you have to give them reasonable access. This includes letting them:

- carry out work when they need to or are allowed to
- inspect the property to see if any work is needed
- carry out a valuation of the property

If your landlord needs to access the property they should always give you **at least 48 hours' notice**, unless they need access urgently to carry out work or assess what work they are obliged or entitled to do. Your landlord should not enter the property without your consent, except in an emergency.

Residents living in the property

Unless your landlord agrees in writing, you must not:

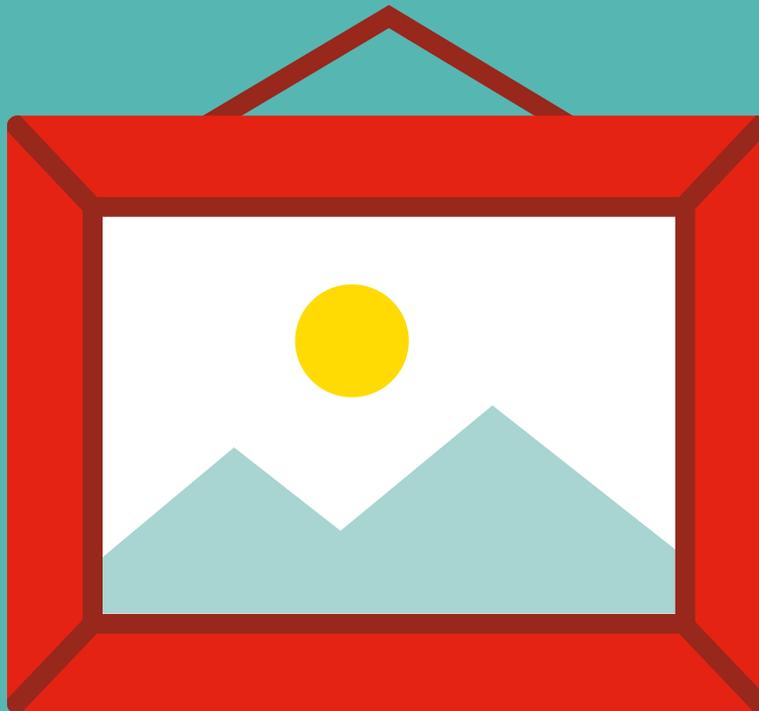
- sublet the property (rent it out to someone else)
- take in a lodger
- give up your tenancy to someone else

If you have other people living with you in the property — like a partner, family member or carer — you must have to let your landlord know.

You have to tell them in writing about any person who is:

- aged 16 or over
- not a joint tenant
- living with you in the property as their only or main home

You must tell your landlord the person's name and their relationship to you. You also have to let them know if that person moves out.





SOURCES OF ADVICE AND SUPPORT

If you are unsure of your rights and responsibilities as a tenant you should get advice as quickly as possible. You may be able to get this from an organisation which gives advice on housing matters such as your local authority, Shelter Scotland or your local Citizens Advice Bureau, or from a solicitor (you may get legal aid depending on your income).

To read this guidance in full, please visit:

beta.gov.scot/publications/private-residential-tenancies-tenants-guide/

A copy of the full legislation can be found on the Scottish Government website here:

www.legislation.gov.uk/asp/2016/19/contents/enacted

www.scottishlandlords.com

