

# A NEW TENANCY FOR THE PRIVATE SECTOR

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# STRATEGY

May 2013: “A Place to Stay, A Place to Call Home”, a Strategy for the Private Rented Sector in Scotland, sets out an agenda aimed at improving management standards and quality of service for tenants and prospective tenants, as well as enabling growth and investment in the sector.

As part of that strategy the Scottish Parliament has already enacted section 16 of the Housing (Scotland) Act 2014 which transfers jurisdiction for proceedings under the Housing (Scotland) Act 1988 and the Rent (Scotland) Act 1984 from the sheriff courts to the first tier tribunal. That section is not yet in force.

# CONSULTATION

Scottish Government held a first *Consultation on a New Tenancy for the Private Sector*, in late 2014.

Followed up by a second consultation which closed on 10 May 2015. “There was a consensus among the respondents to the first consultation that we should provide more detail on how we expected our proposals to work in practice.”

The second consultation leaves certain initial recommendations untouched, but amends certain proposals and seeks further views.

Documents are available on the Scottish Government website.

# THE “SPRT”

Both the assured and short assured tenancy will be replaced by the Scottish Private Rented Tenancy (SPRT) for all PRS lets.

The SPRT will be analogous to the assured tenancy, in that recovery of possession proceedings will have to aver and prove a statutory ground for eviction.

There will be no equivalent to the short assured tenancy under the new system. It will not be possible to achieve recovery of possession simply on the basis that the period of the tenancy has come to an end.

# SPRT DURATION

The SPRT will have a minimum period of six months.

For that initial period neither party can end the tenancy unless certain grounds arise (being those which involve fault on the part of the tenant or repossession by the landlord's mortgage lender).

A longer or a shorter period may be agreed. After the initial period expires, the tenancy will continue indefinitely. Both the tenant and landlord will then be able to give notice to end the tenancy at any time, with the required notice periods. Tenancies will not roll over on a monthly basis.

# NOTICES

In order to simplify the system, there will be no pre-tenancy notices (such as those required for the use of grounds 1-5 under the 1988 Act).

The government proposes that the notice to quit and notice of proceedings (the AT6) will be replaced by a single “notice to leave”, which may be served by either party.

The period and form of notice depends on:

- (a) the length of the tenancy;
- (b) who is serving the notice;
- (c) in the case of a notice from the landlord, the ground for seeking recovery of possession.

# GROUNDS FOR RECOVERY (1)

There are to be 11 grounds for recovery of possession:

1. The landlord is selling the home.
2. The mortgage lender is selling the home.
3. The landlord or a family member of the landlord wants to move into the property.
4. Refurbishment.
5. Change of business use.
6. The tenant failed to pay the full rent for three consecutive months.
7. Antisocial behaviour.
8. The tenant has otherwise breached their tenancy agreement.
9. Abandonment.
10. The tenant is no longer employed by the landlord.
11. The property is required to house a full-time religious worker.

## GROUNDS FOR RECOVERY (2)

As originally conceived, the grounds were all going to be mandatory. In that case, the landlord would only have to show that the ground was established, and the court would then have to grant the order. There would be no “reasonableness” test, and the court would have no discretion to refuse to grant the order.

In the second consultation, however, the Government asked “Do you agree that the First-tier Tribunal should have an element of discretion in grounds 6-8?” (i.e. those grounds which involve fault on the part of the tenant)

# MODEL TENANCY AGREEMENT

There will be a model tenancy agreement which has both mandatory and discretionary clauses.

This may be similar in style to the model agreement in the social rented sector.

If a landlord failed to give a tenant a tenancy agreement that contained at least the specified mandatory clauses, the tenant would be able to refer the matter to the First-tier Tribunal. The tribunal would be able to draw up a tenancy agreement that complied with the model agreement's mandatory requirements.