



Help to Rent Edinburgh *for* landlords

You're ending
homelessness

Landlord Obligations

Registering as a Private Landlord: Your Obligations

Landlord registration was introduced in Scotland in 2006, through the Antisocial Behaviour etc. (Scotland) Act 2004, with an aim of improving standards in the private rented sector. All private landlords in Scotland, apart from resident landlords and a small number of exempt groups, must register themselves and each rented property.

Though each local authority administers landlord registration applications for their own area, applications should be made online to the national register (<https://www.landlordregistrationscotland.gov.uk/>). This is the official Scottish register of private landlords, which can be searched by members of the public. If you are unable to apply online, you should contact the landlord registration team in the authority area where the rental property is located.

The registration process asks you to provide your name and address, the address of each property you rent out and give details of any joint owner(s) and agent(s) you use, and pay a fee, which is set nationally. You must inform the local authority if any of these details change.

To approve your application, the local authority must be satisfied that you are a "fit and proper person", so, when applying, you will be asked questions on convictions for fraud, firearms, sexual, violent and drug offences, Anti-Social Behaviour Orders (ASBOs) against you or your tenant(s), unlawful discrimination and breaches of housing or letting law.

Registration lasts for three years. You must display your landlord registration number when advertising your property for rent.

Cost of registration: £55 plus £11 for each registered property

What if I don't register?

If you let out property without registering yourself as a landlord and each rented property individually, you can be fined up to £50,000. You could also be fined for giving the local authority false, misleading or incomplete information in your application, or failing to inform of changes including starting/ceasing to use or changing an agent.

Using a Letting Agent: Your Obligations

If you use a letting agent for tenant find and referencing, and/or property management, they will probably carry out many of the actions and duties listed as your responsibilities. It's important to understand that, although your agent may discharge responsibilities on your behalf, you, as the landlord remain legally responsible. If you use an agent at all, you must declare this when registering as a private landlord, and the agent must be found "fit and proper" by the local authority.

From 1 October 2018, all letting agents who operate in Scotland are required to have an application approved to be entered onto the Scottish Government's Register of Letting Agents before they carry out letting agency work. To have an application approved, an agent must pass a "fit and proper person" test; show they have had the correct training and gained a relevant qualification; be able to show that they meet the Code of Practice; and be able to show that they hold client money protection, a dedicated client bank account and the correct insurances. There is a fee to register, dependent on the number of offices the agency has.

You can check whether the agent you use, or intend to use, is registered by searching the public register at: www.lettingagencyregistration.gov.uk If an agent applied before 1 October 2018 and the application is still being determined, they are not committing an offence by carrying out letting agency work. If they act as an agent without having applied, or applied after 1 October without receiving an approval, it's a criminal offence and they could receive a fine of up to £50,000, up to a 6 months' prison sentence, or both.

What if my agent isn't registered, or I didn't list them on my registration?

If you use a letting agent but have not provided, or updated, their details on the Register of Private Landlords, you are committing an offence and could receive a fine of up to £1,000.

If you use a letting agent who is not registered on the Register of Letting Agents, it is the agent who is committing an offence, not you. However, you are ultimately responsible for the work carried out by the agent in respect of your landlord obligations. It's likely an agent who isn't registered is not completing other responsibilities which could have implications for you.

Landlords are entitled to apply to the First Tier Tribunal if an agent is not adhering to the Code of Practice.

Applying for an HMO Licence: Your Obligations

In 2000, an Order was made under the Civic Government (Scotland) Act 1982, making it mandatory for all local authorities to introduce a licensing scheme in their areas for Houses in Multiple Occupation (HMOs). The Housing (Scotland) Act 2006 updated this Order and described the particular standards HMOs must meet in Scotland today.

Each local authority keeps its own list of licenced HMOs in its area. This list is not publicly available in the same way as the register of landlords.

Each local authority in Scotland has its own HMO application process and form. You should apply to the local authority where the HMO is located (even if you don't live in that area). The application will ask for your name and address and those of any agent you use, and full details on the HMO, including occupancy capacity and floor plans.

You need to supply a range of documents confirming electrical, gas and fire safety measures, tenancy agreements and insurance. You will pay a fee, set by the local authority and determined by occupancy capacity of the property.

You must publicly display your application outside the HMO for at least 21 days, to allow for community concerns to be raised.

The local authority is likely to inspect the property before issuing a licence, which sets down the specific licensing conditions.

If you have an HMO licence, you don't need to pay a separate landlord registration or per property fee for the HMO. Licences usually last three years.

Cost of HMO licence: from £540

What if I let out an unlicensed HMO?

If you rent out an HMO without a licence, you could be fined up to £50,000. If you fail to adhere to your licence conditions, you could be fined up to £10,000.

Repairing Standard: Your Obligations

The Repairing Standard was introduced by the Housing (Scotland) Act 2006. It covers the legal responsibilities of private landlords for the physical condition of the properties they rent out. Its standard is basic, and should be seen as a minimum.

The Repairing Standard is relevant before a tenancy starts, and during the tenancy. You should inspect your property before renting it out, to identify all work needed to bring it up to the Standard. Tenants can move in before work is completed, but you must notify them of any work you are going to do before they move in. You have an ongoing duty to repair and maintain the property throughout the tenancy, within a reasonable timescale based on when you were notified of a problem.

A property meets the Repairing Standard if:

- ✓ it meets the Tolerable Standard
- ✓ it's wind-, watertight, and in all other respects, reasonably fit for people to live in
- ✓ its structure and exterior (including drains, gutters and external pipes)
- ✓ fixtures, fittings and appliances that you provide as part of the tenancy; and installations for supplying water, gas, electric, heating and for sanitation are in a reasonable state of repair and in proper working order. (more details below)
- ✓ all furnishings you provide can be used safely for their intended purpose
- ✓ it has satisfactory detection and warning systems for fire and carbon monoxide (more details below)

What if my property doesn't meet the Repairing Standard?

If your property doesn't meet the Repairing Standard and you don't act on tenants' requests to complete repairs or maintenance, your tenant(s) or the local authority can apply to the Housing and Property Chamber of the First Tier Tribunal. The Tribunal can issue a "Repairing Standard Enforcement Order" (RSEO) instructing you to carry out the work.

It's a criminal offence not to comply with an RSEO, or to re-let the property to someone else whilst the Order applies. If you don't comply, the Tribunal has the option to serve a Rent Relief Order (RRO), which reduces the amount of rent your tenant(s) are required to pay by up to 90%. The local authority could also complete the work instead, and send you the bill.

Tolerable Standard: Your Obligations

The Tolerable Standard was introduced by the Housing (Scotland) Act 1969. It applies to all housing regardless of tenure. It is concerned with the building itself, rather than its utilities, fixtures or fittings. It describes the basic elements which must be present for a building to be fit to act as a home. If any of the elements are missing, the home is classed as falling Below the Tolerable Standard ("BTS").

Local authorities have a duty to ensure any BTS homes in their area are closed, demolished or brought up to standard.

A property meets the Tolerable Standard if it:

- ✓ is structurally stable
- ✓ is substantially free from damp
- ✓ has satisfactory lighting, ventilation, heating and thermal insulation
- ✓ has an adequate piped supply of fresh water
- ✓ has an indoor sink with hot and cold water supply
- ✓ has an indoor toilet, available for exclusive use of the house occupants
- ✓ has a fixed bath or shower and hand-basin, with hot and cold water supply
- ✓ has an effective drainage and sewerage system
- ✓ has satisfactory facilities to allow cooking
- ✓ has satisfactory access to all external doors
- ✓ has electricity and its electrical installations must meet safety regulations

For more detail on electrical safety requirements, see below.

What if my property doesn't meet the Tolerable Standard?

If your property fails the Tolerable Standard, this means it doesn't meet the Repairing Standard either. See below for what can happen if your property doesn't meet the Repairing Standard.

Electrical Safety: Your Obligations

Private landlords in Scotland are required by the Housing (Scotland) Act 2014 to ensure that their properties are electrically safe. You must get your property inspected by a registered electrician before any new tenancy begins, or at least once at least every five years.

The inspection must cover electric supply installations, fixed electrical equipment, electrical fittings and portable electrical appliances. You should receive an Electrical Installation Condition Report (EICR) from the inspection of installations, fixtures and fittings. If your property is a new build or has been recently fully rewired, you may have an Electrical Installation Certificate (EIC) instead of an EICR.

The Portable Appliance Test (PAT) must cover any appliances you provide as part of the tenancy. The PAT can be done by an electrician, or anyone who has completed the required training as a PAT tester, including you.

You must immediately repair or replace any items which do not pass electrical safety inspections. You should give your tenant(s) copies of the EICR and PAT documentation.

Cost of EICR and PAT: From £120

What if I don't do these checks?

If you don't comply with electrical safety legislation, you won't meet the Repairing Standard. See above for what can happen if your property doesn't meet the Repairing Standard.

Gas Safety: Your Obligations

Private landlords in Scotland are required by the Gas Safety (Installation and Use) Regulations 1998 to ensure any gas appliances and installations in properties they let out are safe. A Gas Safe Registered Engineer must carry out an annual inspection of every property, and produce a report on the safety condition of any gas installations or appliances. Reports are valid for 12 months.

You must provide your tenant(s) with a copy of the most recent report. You should give your tenant(s) adequate notice of a gas safety inspection, and they are required to give you access for this purpose.

Cost of a gas safety check: £35-£150

What if I don't do a gas safety check?

Failure to adhere to gas safety legislation as a landlord is a criminal offence. The Health and Safety Executive (HSE) is responsible for enforcing gas safety and your tenant(s) could report you to the HSE. Gas safety is also part of the Repairing Standard. See above for what can happen if you don't meet the Repairing Standard.

Carbon Monoxide Safety: Your Obligations

From 2015, private landlords in Scotland are required under the Repairing Standard to ensure that properties are fitted with devices that can detect a build-up of carbon monoxide and provide a warning to tenants.

You can install a battery-powered or hard-wired mains operated detector. The former type should contain a warning device to alert the tenant(s) when its working life is due to expire and should be replaced, and the latter a device to signal if the sensor is failing.

You should install one detector in every space containing a fixed combustion appliance and one detector within any room deemed "high risk", for example, because a flue passes through it.

Cost of a carbon monoxide detector: from £20

What if I don't fit a carbon monoxide detector?

Carbon monoxide safety is now part of the Repairing Standard. See above for what can happen if your property doesn't meet the Repairing Standard.

Fire Safety: Your Obligations

The Repairing Standard sets a high benchmark for smoke and fire detection in properties rented privately in Scotland. The standard is in line with that required in new build housing, and is higher than what is currently required in non-rented housing, though this will change in 2021. There are also strict regulations on fire resistant furnishings for private landlords who provide these as part of a tenancy.

To ensure compliance with the Repairing Standard's requirements on fire safety, your property should, at the very least, be fitted with:

- ✓ One functioning smoke alarm in the living room/lounge and one in the corridor/landing/stairwell of every floor level. Smoke alarms should conform to BSEN 14604
- ✓ One heat alarm in every kitchen, which should conform to BS 5446-2

All alarms must be ceiling-mounted, interlinked, and either mains-operated or fitted with a tamper proof, long-life lithium battery. You must ensure expiry dates on battery-operated alarms are visible, *and* make your tenant aware of these. Multi-sensor alarms should conform to BS EN 54-29 or BS EN 14604.

The Scottish Fire and Rescue Service (SFRS) can provide free Home Fire Safety Visits. These offer a risk assessment of fire within the home and advice on preventing fire, avoiding spread and formulating an escape route. To arrange a free visit, call 0800 0731 999, text FIRE to 80800 or visit www.firescotland.gov.uk

Cost of installing a hard-wired smoke alarm: from £95

What if I don't take these precautions?

If you don't comply with fire safety regulations, you won't meet the Repairing Standard. See above for what can happen if your property doesn't meet the Repairing Standard.

Furnished Accommodation: Your Obligations

The Repairing Standard sets a high benchmark for smoke and fire detection in properties rented privately in Scotland. It includes strict regulations on fire resistant furnishings for private landlords who provide these as part of a tenancy.

If you provide furnished accommodation, you must ensure potentially flammable upholstered/filled items such as sofas, chairs, beds, mattresses, children's furniture, cushions and pillows, meet the Furniture and Furnishings (Fire) (Safety) Regulations 1993. Such items should have a permanent safety label present which displays compliance. Furniture purchased since March 1990 should satisfy these Regulations and be permanently labelled.

The Scottish Fire and Rescue Service (SFRS) can provide free Home Fire Safety Visits. These offer a risk assessment of fire within the home and advice on preventing fire, avoiding spread and formulating an escape route. To arrange a free visit, call 0800 0731 999, text FIRE to 80800 or visit www.firescotland.gov.uk

What if I don't take these precautions?

If you don't comply with fire safety regulations, you won't meet the Repairing Standard. See above for what can happen if your property doesn't meet the Repairing Standard. Failure to comply with furniture regulations is a criminal offence. If convicted you could receive a fine, with the potential for more serious penalties if an accident occurs.

Legionella Risk Assessment: Your Obligations

Legionnaire's Disease is a potentially fatal type of pneumonia caused by the inhalation of droplets of contaminated water containing Legionella. Legionella grows within man-made hot and cold-water systems of all sizes. Under the Health and Safety at Work Act 1974, landlords (both commercial and residential) are responsible for ensuring their tenant(s) are not exposed to avoidable risks to their health and safety.

As a landlord of any premises or property where water is used or stored, you are required to identify and assess risks of hazardous substances, including biological agents (such as Legionella). This does not require a detailed assessment. You can assess these risks yourself, or arrange to have someone do this for you.

In a domestic setting of daily water usage where water is from a fresh supply (rather than a storage tank), the risk is likely to be low. Risk can be minimised by keeping water moving, keeping hot water hot and cold water cold, avoiding debris in the water system, avoiding stagnation of water in void properties, removing redundant pipework and regularly cleaning and disinfecting shower-heads. Advising tenants on good practice is a further means of managing risk.

What if I don't risk assess Legionella?

You don't need to produce or retain a risk assessment document for Legionella. However, if a tenant was to contract Legionnaire's from a water system within your property, you could be liable to prosecution under health and safety legislation.

Energy Performance Certificates (EPC): Your Obligations

Energy Performance Certificate (EPC) regulations first came in in Scotland in 2008, requiring all homes being sold or rented to have an EPC detailing the current and potential energy efficiency of the property. New, higher standards for energy efficiency in private rented homes were announced by the Scottish Government in 2018 and will be increased over time.

- until 1 April 2020, you are legally required to provide an EPC before you rent out a property
- from 1 April 2020, any new private tenancy should be for a property with an EPC of at least E
- by 31 March 2022, all properties (including those rented to existing tenants), must have an EPC of at least E
- from 1 April 2022, any new private tenancy should be for a property with an EPC of at least D
- by 31 March 2025, all properties (including those rented to existing tenants), must have an EPC of at least D

You must get an EPC completed by an energy performance assessor before you advertise your property, and include the EPC rating in any advertising. You must provide your tenant(s) with a free copy of the EPC if requested and display the certificate in the property. The certificate is valid for a period of 10 years.

Home Energy Scotland (0808 808 2282) provides free, impartial advice and property assessments for private landlords. It advises and assists on energy efficiency measures, technology options and financial support such as loans, incentives and tariff advice.

Cost of EPC: from £60

What if I don't get an EPC?

If you don't get an EPC completed, or fail to include the EPC rating when advertising your property, you may be liable to a fine of up to £1,000.

The Private Residential Tenancy (PRT): Your Obligations

The Private Residential Tenancy (PRT) was introduced by the Private Housing (Tenancies) (Scotland) Act 2016, which came into force on 1 December 2017. Almost all private tenancies offered as a person's main home in Scotland after that date are PRTs, regardless of the tenancy agreement provided¹.

The PRT is quite different to the most common type of private tenancy previously used in Scotland, the Short Assured Tenancy (SAT). Through the PRT, the Government aimed to increase security, stability and simplicity, for private landlords and private tenants.

Unlike the SAT, the PRT doesn't require pre-tenancy notices, comes with a model tenancy agreement and template notices and permits legal communication by email, where both parties agree. Unlike the SAT, the PRT is open-ended and lasts until a tenant gives notice, or the landlord uses one of 18 standardised grounds for eviction. There is no provision under a PRT for a landlord to end a tenancy without providing grounds.

Evictions, as well as matters relating to tenancy, rent or repair disputes, are now dealt with by the First-tier Tribunal for Scotland (Housing and Property Chamber), instead of by the Sheriff Court.

What are my obligations as a landlord of a PRT?

By law*, you must

- ✓ give your tenant(s) written tenancy terms and accompanying notes, before the tenancy starts, without charging for this. You can download a model tenancy agreement and easy read notes from the [Scottish Government website](#)²
- ✓ issue your tenant(s) with a [privacy notice](#) in order to be compliant with your obligations, and let tenant(s) know their rights, under the General Data Protection Regulation (GDPR)

* Private Housing (Tenancies) (Scotland) Act 2016 Part 3, S.10 (1) and (2).

<http://www.legislation.gov.uk/asp/2016/19/contents/enacted>

¹ With a small list of exceptions, including where the landlord resides in the same home, student lets and agricultural lets. See

<http://www.legislation.gov.uk/asp/2016/19/schedule/1/enacted>

² <https://www.mygov.scot/tenancy-agreement-scotland/>

- ✓ use Scottish Government [prescribed forms and notices](#) during the tenancy, for example if you wish to increase the rent, or ask a tenant or sub-tenant to leave
- ✓ agree with your tenant(s) the **form of communication** you want to use, both for signing the agreement and during the tenancy. This may be by letter or electronically. You can't *require* your tenant(s) to communicate by email
- ✓ limit any **refundable deposit** requested to not more than two months' rent
- ✓ not ask tenant(s) to pay **administration fees** (for example, for credit checks or references), premiums or other charges – these are illegal
- ✓ give tenant(s) at least 48 hours' notice if you need to **access** the property, unless it is an emergency situation. By law, the tenant(s) must give you reasonable access
- ✓ increase the **rent** only once a year, giving your tenant(s) at least three months' notice of a rent increase, and using the Scottish Government [form](#) to notify them

How do I end a PRT?

By law, you must

- ✓ use one (or more) of 18 standardised **eviction grounds** if you want to end a tenancy, by serving a [Notice to Leave](#) document. The amount of notice you need to give is 28 or 84 days, depending on how long the tenant(s) have been living in the property, and on the grounds
- ✓ apply to the First-Tier Tribunal for an eviction order, if you serve a Notice to Leave but your tenant(s) stay put. To make a valid application to the Tribunal, you must:
 - apply within six months of the notice period expiring
 - provide the Notice to Leave document
 - issue a [Section 11 notice](#) to the local authority, to let them know your tenant(s) may become homeless. You do not need to use a particular form, but you do need to ensure it includes set information³

³ http://www.legislation.gov.uk/ssi/2008/324/pdfs/ssi_20080324_en.pdf

What are the grounds for ending a PRT?

By law, you must use (at least) one of the 18 PRT standardised grounds: you can no longer ask tenants to leave without stating a reason.

Of these **18** grounds:

- **seven** are mandatory. This means the Tribunal must grant an eviction order, as long as you provide evidence to support the grounds
- **ten** are discretionary. This means that, even if you provide evidence, the Tribunal can exercise discretion in deciding whether to grant an eviction order
- **one** can be mandatory or discretionary, which is rent arrears over three consecutive months. If at least one month's rent is owed on the day of the Tribunal hearing, and this is not due wholly or partly to a delay or failure in payment of a relevant benefit, this is a mandatory ground; in all other arrears cases, this is a discretionary ground

The diagram overleaf shows the mandatory, discretionary and mixed grounds.

What notice period does a PRT have?

Tenants must give you

- **28** days' notice before ending the tenancy, unless you both agree a shorter timeframe

As a landlord, you must give

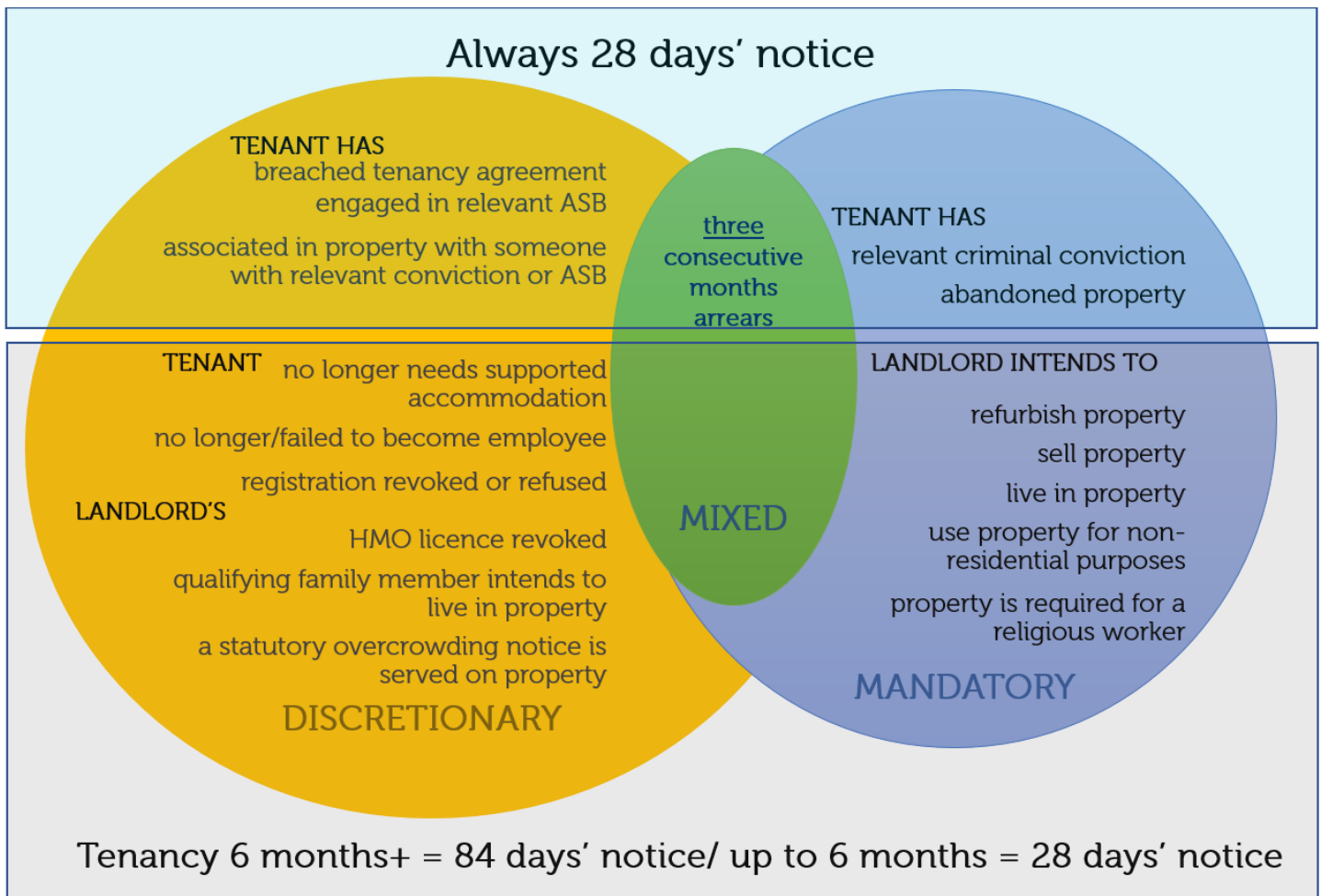
- **28** days' notice
 - ☞ in all cases where the tenancy lasted less than **six** months
 - ☞ where the tenancy has lasted more than **six** months AND the grounds of the notice are based on tenant conduct (see diagram)
- **84** days' notice, where the tenancy lasted over **six** months AND you are bringing it to an end for reasons other than tenant conduct (see diagram)

What could happen if I don't follow these rules?

If you don't give your tenant(s) either a written tenancy agreement or the accompanying notes, the tenant(s) can apply to the First Tier Tribunal. If the Tribunal agrees with the tenant(s), it can order you to pay them three, or up to six, months' rent.

If you fabricate a reason to end a tenancy, provide inaccurate evidence, or mislead the Tribunal in granting an eviction order, your former tenant(s) can apply to the Tribunal for a Wrongful Termination Order. If the Tribunal agrees, you could be ordered to pay the tenant(s) up to six months' rent.

Grounds for ending a PRT



Ready to Rent

Landlord

Checklist

READY TO RENT LANDLORD CHECKLIST

		TICK
Landlord ready?		
Registered with local authority?		
HMO licence if needed?		
Mortgage lender informed?		
Insurance provider informed?		
Letting agent registered and listed?		
Property ready?		
Meets Repairing Standard?	Meets Tolerable Standard?	
	Gas safety inspection done and report available?	
	Electrical safety inspection done and report available?	
	Correct smoke and heat alarms installed?	
	Carbon monoxide detectors installed?	
	Furniture provided meets safety standards?	
Energy Performance Certificate obtained and provided to tenant?		
Legionella risk assessment completed?		
Tenancy ready?		
Starting tenancy	Private Residential Tenancy agreement and required notes provided?	
	Privacy Notice provided to tenant(s)?	
	No more than two months' rent charged as refundable deposit, with no fees?	
During Tenancy	Government prescribed forms used where needed?	
	48 hours' notice given to access tenancy?	
	Rent increase limited to once a year, with 3 months' notice?	
Ending Tenancy	At least once of 18 standard eviction grounds used?	
	Correct notice period given?	
Apply to Tribunal	Application within 6 months of notice expiry date?	
	Notice to Leave document sent to Tribunal?	
	Section 11 document sent to local authority?	

NOTES