

Gebbie & Wilson Newsletter

NOVEMBER/DECEMBER 2008

RESIDENTIAL LEASES AND RECOVERY OF POSSESSION

Short Assured Tenancies

The short assured tenancy is the most common type of let in the rented accommodation sector and is governed by The Housing (Scotland) Act 1988.

A short assured tenancy is an assured tenancy of a fixed term of not less than 6 months, where the relevant statutory notice has been served.

To create a short assured tenancy

- The landlord must serve a notice in the prescribed form (AT5) on the prospective tenant *before* the creation of the tenancy
 - The notice must state that it is to be a short assured tenancy
- Failure to observe these formalities will mean that it is not a short assured tenancy.

Recovery of Possession

The landlord has an automatic right to recover possession at the end of the term of a short assured tenancy, *provided the landlord has given sufficient notice* to the tenant that he requires possession of the house. The minimum period of notice is 2 months, longer if the tenancy specifies a longer period.

The requirements for recovery of possession are:

- The landlord must serve a on the tenant notice to quit in the prescribed form
- The landlord must serve on the tenant a notice of intention to raise proceedings for possession under Section 19 of the 1988 Act (AT6)
- The landlord must have one of the grounds for recovery of possession stated in Schedule 5 to the 1988 Act (see below)
- if the ground is one of those set out in Part I of the Schedule (grounds 1 – 8) the Sheriff has *no discretion* but must make an order for possession.
- If the ground is one of those set out in Part II of the Schedule (grounds 9 -17) not only must the ground be established, but the Sheriff must consider it reasonable to make an order for possession.

Grounds on which sheriff must order possession

Ground 1 Landlord recovering possession of principal home, or requires house as principal home for spouse

Ground 2 Sale by landlord's creditors under heritable security

Ground 3 "Off season" lets of holiday houses

Ground 4 Short leases not exceeding 12 months

Ground 5 House required for occupation by Minister of Religion or full-time lay Missionary

Ground 6 The landlord intends to demolish or reconstruct the whole or a substantial part of the house or to carry out substantial works on the house or any part of the building in which it needs to recover possession of the house to do so

Ground 7 Tenancy has passed under will or intestacy of former tenant and proceedings have begun within 12 months of the death of former tenant

Ground 8 Both when the required notice of intention to recover possession is served and at the date of the Court Hearing, at least 3 months' rent lawfully due from the tenant is in arrears

Grounds on which the Sheriff may order possession

Ground 9 Suitable alternative accommodation is available for the tenant or will be available for him when the order takes effect

Ground 10 Tenant has given notice to quit

Ground 11 Tenant has persistently delayed paying rent lawfully due.

Ground 12 Some rent is unpaid at the date when proceedings are begun. The rent must also have been in arrears when the notice of intention to recover possession was served.

Ground 13 Any obligations of the tenancy (except rent) has been broken or not performed

Ground 14 Deterioration in condition of the house owing to acts of waste by, or neglect or default of the tenant or sub-tenant or lodger or family member

Ground 15 This ground allows eviction where:

-the tenant or anyone living in the house, or a visitor has been convicted of using the house for immoral or illegal purposes; or an offence punishable by imprisonment committed in or in the locality of the house

- the tenant or anyone living in the house, or a visitor has acted in an anti-social manner in relation to a person living, visiting or otherwise engaging in lawful activity in the locality, or pursued a course of anti-social conduct towards any such person

Ground 16 As 14 for deterioration of furniture

Ground 17 House let for the purposes of employment when tenant has ceased to be so employed

Costs

Gebbie & Wilson will be happy to raise proceedings for a landlord whereby one of the grounds above are met. Our approximate costs would be:

For an undefended action:

Fees: Approx between £550 - £750 plus VAT

Outlays: Sheriff Officers Fee for service of AT6 & Notice to Quit

Sheriff Officers Fee for proceeding to repossess

Scottish Court Service Fee for raising Summary Cause

If the action is defended, thereafter we would charge at our hourly rate. However, in our experience 95% of actions are undefended