

Note on the Coronavirus (Scotland) Act 2020 for Private Residential Letting

Adele Nicol, Partner

The Coronavirus (Scotland) Act 2020 has put in place a raft of emergency legislation in various sectors, including protection of tenants in private residential tenancies. The Act amends the Private Housing (Tenancies) (Scotland) Act 2016, the Housing (Scotland) Act 1988 and the Rent (Scotland) Act 1984 to make temporary changes to the law in relation to evictions of tenants. Below, we share insight relating to questions arising from these temporary measures.

What happens if the tenant is in rent arrears?

There is very little a Landlord can do if a Tenant cannot pay their rent. We would encourage you to have an open discussion with your tenant, while they may not be able to make the full payments, they may be able to make a reduced payment.

The arrears will remain due and can be recovered as and when the current restrictions are lifted.

If your tenant is already in arrears, those arrears must have existed for three or more consecutive months and if a full three month's rent is unpaid, a Notice to Leave can be issued. However, the period of notice to be given under a Notice to Leave has been extended under the Coronavirus (Scotland) Act 2020 from three months to six months.

What support is there for tenants?

Tenants affected by Coronavirus who are concerned about paying their rent can claim Universal Credit from the Department for Work and Pensions which includes support for housing costs, if eligible. The UK Government has introduced some temporary changes to make claiming this easier.

Is there any financial support for landlords?

If you have a mortgage, most mortgage lenders have advised that if the borrower cannot meet their mortgage, they can agree a three month 'holiday' allowing a break from mortgage payments. This must be agreed with your lender in advance and will currently only last for three months.

It is also worth noting that interest will still be charged on the mortgage during the holiday period and will be added onto repayments in due course.

Scottish Government has announced a new zero interest loan will be introduced to assist eligible private landlords. It is expected to be in place by the end of April but details are not yet available.

Can a tenant be evicted?

In short no; the Scottish Government have advised that no tenant should be evicted due to hardship suffered because of Coronavirus.

Following the enactment of the Coronavirus (Scotland) Act 2020, all mandatory grounds for recovering possession have become discretionary grounds. This also includes the 'no fault' ground to terminate a Short

Assured Tenancy on the basis it has reached its expiry date. The landlord must establish that a ground or grounds exist which justifies an eviction but, having established the ground, the First Tier Tribunal may only issue an order for eviction if it is satisfied that it is reasonable to do so.

In addition, the periods for Notices to Leave have been extended as follows:

- 28 days if the ground is the tenant is not occupying a let property as the tenant's home
- 3 months for certain grounds, including anti-social behaviour, criminal behaviour or the house is required by the landlord or their family for their own use
- 6 months for grounds including rent arrears, the landlord or lender wants to sell, change of use or major refurbishment or the tenant is no longer an employee

Is the First Tier Tribunal still open for applications?

The First Tier Tribunal is currently closed, and will reopen when the current restrictions are lifted. All existing cases have been put on hold. If your application is urgent or time critical, you can still make an application to the First Tier Tribunal. This will be processed to the 'notification of acceptance' stage in readiness for fixing a hearing when the tribunal reopens. However, applications have to be submitted electronically and may take longer to deal with due to staff shortages. It should be noted that a tenant being in arrears may not be considered urgent or time critical at this time; 'time critical' could, for example, relate to an application in respect of the return of a deposit under the Tenancy Deposit Schemes (Scotland) Regulations 2011, where that application must be made within three months of the end of the tenancy, failing which, it will be rejected.

It is also worth noting that non-urgent applications could still be made, but these will not be processed either to be accepted or rejected until the First Tier Tribunal has re-opened. There could be some merit in submitting an application while the Tribunal is closed as opposed to waiting until the Tribunal reopens as applications are dealt with in order of receipt.

What happens to a Notice to Leave served prior to the lockdown period?

All existing Notices to Leave that were served prior to the current restrictions and the Coronavirus (Scotland) 2020 coming into force will be unaffected. However, practically, as above, the Tribunal will not deal with an application until the First Tier Tribunal has reopened as all cases are currently on hold.

Is my eviction order from the First Tier Tribunal still valid?

An existing order granted by the Tribunal will remain valid, and can be actioned once the existing restrictions have been lifted when Sheriff Officers are able to action the orders.

Can a new tenant still move in?

Where a tenancy has already been agreed, or the tenant is at risk of becoming homeless unless they are permitted to move into the property, the tenant should be allowed to move in. Appropriate steps should be taken to ensure that the current social distancing measures are complied with.

Is the Landlord still liable for repairs?

A: The obligation to carry out repairs remains, however, unless that work is essential for the safety and security of any tenant/occupier, or for the property to be fit for human habitation, it should be postponed. The categories where work may have to be carried out are:

- there is a problem with the fabric of the building, for example, the roof is leaking
- the boiler is broken, leaving tenants without heating or hot water
- there is a plumbing issue, meaning tenants don't have washing or toilet facilities

Where tenants have any reason for concern about the condition of any gas or electrical fuelled appliances in their home, they can raise it with their landlord who can consider if there is a need for an engineer to attend their home to carry out emergency repairs or maintenance.

The landlord should maintain good communication with any tenants affected so they are clear on what action you are taking and the timescales for any emergency works.

What do I do if my safety certificates are due for renewal?

If your safety certificates are currently due for renewal, any work to renew them should be postponed until after the lockdown restrictions have been lifted. The inspection should be carried out as soon as possible thereafter. You should keep copies of all correspondence to arrange the works, especially if there are delays in being able to arrange a suitable contractor.

Where inspections have already been carried out, documents can be provided by post or in some circumstances it may be possible to provide digital copies.

What about the new energy efficiency regulations which mean that, from 1 October, the property must be at least EPC Band E when a tenancy changes?

The Energy Efficiency (Domestic Private Rented Property (Scotland) Regulations 2020 were due to come into force on 1 April 2020. However, the Scottish Government has decided to delay these regulations until after the current crisis has passed.

If you require further advice please contact [Adele Nicol](#), [Shirley Evans](#) or your usual Anderson Strathern contact.