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TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

Tenant's Rights Brochure for SCOTLAND

Author: Mark Jordan, University of Southampton

Team Leader: Prof Peter Sparkes, University of Southampton

National Supervisor: Prof Angus McAllister, University of the West of Scotland

Tenant’s Rights Brochure

SCOTLAND

Mark Jordan

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1. Introductory information

- Give a very brief introduction on the national rental market
 - Current supply and demand situation

During the latter part of the twentieth century the owner occupier sector became the dominant tenure form in Scotland. Indeed, by 2011, the Scottish housing situation was increasingly distinguishable by high, although gradually declining, rates of owner occupation 65% (EU average ca. 71%) and lower rates of renting 33% (EU average ca. 29%). Within the rental market the local authority rented sector has been in consistent decline (15%). At the same time there has been strong growth in the size of the housing association sector (8.3%) as well as resurgence in the private rented sector (10.9%).

The Scottish population in 2011 is roughly 5.3 million and growing. Between 2001 and 2011 the number of households in Scotland increased by 8% to reach almost 2.4 million. A 2012 Government review set out that the number of households is increasing due to smaller average household size with more people living alone and in smaller households. The Scottish Executive predicts a need for more than 20,000 new homes to be built each year to accommodate household growth across all tenure forms.

In 2011, households in Scotland had an average of 5.0 rooms, this was a slight increase since 2001 when it was 4.8 rooms per household. The number of rooms per household varied widely across Scotland, reflecting the differing types of housing prevalent in urban and rural areas. Scotland's housing situation continues to be characterised by the presence of high levels of flats or apartments (38%) and the low levels of detached housing units (21%).

In the first quarter of 2013, Citylet recorded that the average Scottish rent nationwide was £675 but that average monthly rents varied considerably from city to city with the highest rents in Aberdeen (£961) and Edinburgh (£817) and lower rents in Dundee (£572) and Glasgow (£613). With respect to affordability the Review of the Private Rented Sector (2009) identified the private rented sector as the least affordable rented tenure - with almost two fifths of tenants paying more than a quarter of their income in rent (EU average ca. 16.9%).

- Main current problems of the national rental market from the perspective of tenants
 - gross under supply of public/social housing and associated long waiting times;
 - strong demand for private rented accommodation;
 - rising rents;
 - lack of social sector security
 - poor condition of rental properties;
 - rent arrears;
 - anti-social behaviour; and
 - disputes about the return of deposits

- Significance of different forms of rental tenure

The rights of both landlord and tenant vary according to whether the tenant is renting in the private rental market or is renting housing with a public task i.e. renting from a local authority or registered social landlord.

- Private renting

Over a third of all rental dwellings are rented out on the private rental market and the tenancies to which they are subject are governed primarily by the Housing (Scotland) Act 1988. This Act introduced the Assured Tenancy with market rents and full security and the Short Assured Tenancy with market rents but very limited security; this new regime applies to new tenancies entered into on or after 2 January 1989. Over the subsequent twenty five years the short assured tenancy has come to dominate the private rented sector.

- “Housing with a public task” (e.g. dwellings offered by housing associations, public bodies etc)

Roughly two thirds of all rental dwellings are rented out to the rental tenures with a public task (local authorities and registered social landlords i.e. housing associations) and the tenancies to which they are subject are governed primarily by the Housing (Scotland) Act 2001. Under this Act local authority or registered social landlord may grant a tenant a Scottish secure tenancy with below market rents and full residential security or in certain cases, usually in the case of anti-social behaviour, the landlord may grant a short Scottish secure tenancy with below market rents but limited security. The normal means of access to this sector (housing with a public task) would be by registration on a housing waiting list, though the wait may be substantial given the under investment in social housing stock over the years, though it may be shortened considerably by scoring highly in the points allocation process. People judged to be unintentionally homeless will have priority in seeking permanent accommodation

2. Looking for a place to live

2.1. Rights of the prospective tenant

- Finding a tenancy

Many properties for rent in the private rented sector are advertised online via sites such as rightmove.co.uk or via the classifieds on local and regional newspapers. Interested parties may contact the advertising party, usually the landlord or letting agent (the landlord's representative) and arrange a viewing of the property. Generally, this will entail a guided viewing of the property by the landlord or letting agent where the tenant may ask questions and inspect the property. It is important that the tenant makes sure that the property is in good working order e.g. that there is no damp or inadequate ventilation etc. The rent and other most important matters are often negotiable. Where the tenant is happy with the property they may make an offer to the landlord or letting agent. In the event of an agreement the landlord will often require a security deposit, generally one month's rent, be paid. Throughout each party has various legal rights and obligations which govern key aspects of the relationship. In the event of a dispute, then regard must be had to tenancy law.

- What is the role of estate agents in assisting the tenant in the search for housing?

Estate agents provide a number of services in the Scottish residential sector ranging from providing basic advice and information through to agency and complete property management services. Amongst the main services provided are; a property appraisal service during which the letting agent will advise on the current rental value of the property as well as a range of insurance services for landlords. In addition, letting agents provide a means of marketing a rental property either through in store advertisement or via online mediums such as happylets.co.uk, rightmove.co.uk, citylets.co.uk, findaproperty.com and S1homes.com.

- What fees can be charged to the tenant?

It is an offence to charge or receive any premium or make any loan a condition of the grant, renewal or continuance of an assured tenancies. A 'premium' is 'any fine, sum or pecuniary consideration, other than the rent, and includes any service or administration fee or charge'. Ministers have power to make provision about charges that may be made in connection with the grant, renewal or continuance of a tenancy, including categories of sum which are not to be treated as a premium. Secondary legislation now clarifies the law in this area to the effect that such fees are illegal. New tenancy referencing schemes have been launched in Scotland whereby tenants pay for the background check while letting agents get a referral fee.

- What kinds of checks on the personal and financial status of the tenant are usual and legal (e.g. the landlord requiring an independent credit report)?

In some cases the landlord may simply ask the tenant for certain information, for instance a letter from his employer stating his current employment status or for a certificate from a credit agency stating his credit worthiness. While the prospective tenant is at liberty to refuse the request, negative inferences would most likely be drawn from such a refusal. However, providing the landlord with such information involves time and expense burdens for the tenant and often it is the case that the landlord or estate agent will prefer to use a dedicated tenant referencing service. The private rented market across the UK has developed a sophisticated tenant referencing industry with a number of operators across Scotland offering swift tenant referencing services. While the procedure for following out the checks may in the most part be lawful, in particular the tenant must first provide consent for the check; there have been instances in which illegal fees have been charged to the tenant in order to carry out such checks.

- What bases for discrimination in the selection of tenants are allowed/prohibited? What about, for example, status as a foreigner, student, unmarried partner, or person with a short-term work contract?

Anti-discrimination provisions apply to landlords in both the private and social rented sectors. When a landlord is letting accommodation he must ensure that no person or group of persons is treated less favourably than any other person or group of persons because of their race, colour, ethnic or national origin, sex, disability or sexual orientation. The landlord should not discriminate against a tenant or prospective tenant because of their entitlement to Housing or other Benefits and should not advertise vacant properties in a manner that could be described as discriminatory. When dealing with persons with a disability a landlord must not unreasonably withhold consent to the tenants to adapt the rented accommodation to meet the needs of the disabled occupants.

2.2. The rental agreement

- What are the requirements for a valid conclusion of a rental contract (is written form necessary? Is registration necessary Etc)

The basic legal requirements for a valid conclusion of a tenancy contract in Scotland vary according to the length of the tenancy entered into. A short term tenancy may be created orally with very limited formal requirements, contractual creation being based on offer and acceptance. This includes a yearly tenancy, even one which rolls over so as to last many years, and any periodic tenancy with a period of less than a year. The same is true of other occupation rights. In the case of a lease for one year or less which complies with statutory requirements but has been created orally, a party may be prevented from withdrawing from the agreement where the other party has done something in reliance of the contract and would be materially affected by such a withdrawal. Where a lease is for more than one year then it should be in writing, and should be signed by both landlord and tenant. Finally every landlord in the private rented sector must register with their local authority and in order to secure registration the landlord must pass a fit and proper person test

- What is the mandatory content of a contract?

In all tenancies, whether private or social, there must be a lease of a separate dwelling, which includes flats as well as separate buildings, to an individual who occupies the dwelling as his principal home. Where an occupancy agreement has been created without a requirement of rent then it is most likely this will be a licence and not a lease and this will mean that the occupier will not be able to avail of tenancy rights.

- Duration: open-ended vs. time limited contracts (if legal, under what conditions?)

In general practice the term of the lease should be stated however failure to state a term is not fatal and instead the law will imply a term of one year in cases where no term has been set out. The private rented sector is dominated by the short assured tenancy. The tenancy is a short assured tenancy if the initial term is for at least six months and the landlord serves a notice before the grant warning the tenant of his limited security. This tenancy will be governed by contractual rules for its duration. At the term date, the 'ish', the parties may contract for a new tenancy or a new tenancy may be implied from the payment and acceptance of rent (that is by tacit relocation), and in either case this new tenancy will continue to be a short assured tenancy. The landlord will have an automatic right to possession of the property when the current contractual arrangement comes to an end, that is either at the ish of the initial grant or when any express or implied relocation ends.

Scotland has long had a single housing tenure throughout the social sector, the Scottish Secure Tenancy, which is common whatever the nature of the landlord. Social landlords are expected to grant Scottish secure tenancies in normal

circumstances. The basis is an initial fixed period followed by a tacit relocation on a periodic basis, which may be weekly, fortnightly, four weekly or calendar monthly. However, the tenant has security of tenure so the landlord is prevented from simply terminating the relocation by notice; it will be necessary for the landlord to seek a court order for repossession, and this will only be granted on proof of a ground for possession.

- How are rents set?

In a short assured tenancy the rent is a matter for free market negotiation, but if housing benefit is used to cover any of the rent payment, there will be limits on the rent level accepted for benefit claims. The landlord can increase the rent payable under a short assured tenancy most easily by granting a series of short contractual terms, thus reserving the possibility of increasing the rent at the next contractual renewal. Rents in the social sector are 'reasonable' rents which are expected to be more affordable than in the assured sector. The initial rent is stated by the landlord, often plus a service charge. Increases are by four weeks' notice before the start of any rental period after consultation with the body of tenants.

In both cases the rent will be governed by the terms of the contract and usually in residential rented accommodation rent will be due monthly on the date on which the parties entered the agreement. It is usual in the private sector for rent to be demanded in advance, and with a deposit of up to two months. The model of the Scottish Secure Tenancy refers to rent payable in advance or in arrears; but housing benefit is paid in arrears and 70% of tenants in the social sector are in receipt of benefit which suggests that it is only realistic to ask for rent in arrears. Should the tenant fail to pay the rent in time this will be a breach of the tenancy agreement. In an assured tenancy where there is consistent delayed payment the landlord may seek to terminate the tenancy and seek an order of possession on this ground and this is also a ground of possession in a Scottish Secure Tenancy.

- Repairs, furnishings, and other usual content of importance to tenant
 - Is it legal for the landlord to shift the costs for certain kinds of repairs (if yes, which?) to the tenant?

The landlord is primarily responsible for maintenance and repairs of the dwelling and cannot shift the costs for most kinds of repairs onto the tenant except where the tenant is responsible for damage done to the property which is beyond normal wear and tear.

- Is the landlord or the tenant expected to provide furnishings and/or major appliances?

It is open to the landlord and tenant to agree whether or not the dwelling will be fully furnished or not. However, generally the landlord will provide furnishings and/or major appliances.

- Is the tenant advised to have an inventory made so as to avoid future liability for losses and deteriorations (especially in the case of a furnished dwelling)?

It is highly advisable that the tenant have an inventory made so as to avoid future liability for losses and deteriorations. Furthermore, where possible the tenant should take photos to record the condition of the dwelling upon moving in.

- Parties to the contract
 - Which persons, though not mentioned in the contract, are allowed to move into the apartment together with the tenant (partner, children etc.)?

In the private sector, this is a matter of contractual negotiation between landlord and tenant. Today it is generally assumed that a tenant may live with a spouse, civil partner or cohabitee (of whatever gender), but it is usual for a couple to take a tenancy as joint tenants to make occupation rights clear. It is usual also for children to live with their parents and for the tenant to share with other family members, but this should be negotiated with the landlord. Family courts have powers to direct the residence of children, but only after landlords have been heard. Rights of family members may be limited as a result of previous antisocial behaviour. In the social sector this is again a matter for the tenancy agreement, but the Model states that:

You are entitled to have members of your family occupying the house with you, as long as this does not lead to overcrowding.

Family members will have been identified during the allocation process. Tenants should tell their landlord who is in occupation, and landlords may require tenants to disclose this information.

Occupancy of the apartment will be limited to a certain number of people. The limit will usually be set by the overcrowding rules and possibly the terms of any House in Multiple Occupation licence.

- Is the tenant obligated to occupy the dwelling (i.e. to use as tenant's primary home)?

In a lease the tenant is under an obligation to enter into possession of the dwelling on the date of entry. This will either be the date of the lease or a different date stated in it. Once in possession the tenant is required to remain in possession for the rest of the lease. A tenant may be held liable in damages for any damage caused to the property by his absence. In the case where there is a prolonged absence by the tenant the landlord may be able to escape the contract by rescission or he may elect to take action to compel the tenant to take possession by virtue of an order of specific implement.

This principle is emphasised in particular in the social sector. Occupation of properties keeps them in good condition, particularly in the Scottish weather, and a tenant is required to occupy property as his principal home. Failure to occupy

property would be a ground for repossession, but in fact it is not necessary to go through a court repossession since there are specific provisions dealing with abandonment. A social landlord can give notice that the property appears to have been abandoned which places the onus on the tenant to challenge the notice or to give notice of their intention to occupy the property

- Is a change of parties legal in the following cases?
 - divorce (and equivalents such as separation of non-married and same sex couples);

In the past tenancies in the private rented and social rented sector were granted to the husband and the housing rights of women were quite limited in Scotland. In the event of a relationship breakdown the spouse who was neither owner nor tenant had no right to remain in the property. The Matrimonial Homes (Family Protection) (Scotland) Act 1981 introduced protections for parties without formal property rights. These "occupancy rights" allowed the party without formal property rights not to be summarily evicted and not to have to endure intolerable conduct because of their decision to remain in the property. Under this Act the non-entitled spouse may make an application to have the tenancy transferred in an action for separation. In the event that a person occupies a dwelling as tenant or joint tenant then they may rely on their tenancy rights to remain in the dwelling and they may not be lawfully evicted by force. Where a tenant seeks the other to vacate the property they must seek an exclusion order. The landlord must be notified of applications and has an opportunity to object.

- apartments shared among students (in particular: may a student moving out be replaced without permission of the landlord)

This is covered by the discussion of joint tenants immediately above; the default position is that one joint tenant can give notice to terminate the tenancy on the spot (but not before) and this will end the tenancy of all the others. If this is not desired, the lease agreement must include a contrary provision.

- death of tenant;

Residential tenancies are subject to sectoral schemes for succession to tenancies. In the private sector where the tenant is a post-1988 tenant with a fully assured tenancy, succession can occur to a sole tenant's

spouse or civil partner, or

cohabitant living with the tenant as man and wife (though regardless of gender).

Succession can only occur to someone who was also occupying the house as his or her principal home immediately prior to the death of the tenant. In these circumstances the surviving partner will retain possession of the house under a statutory assured tenancy.

Succession rights to social tenancies are set out in the Housing (Scotland) Act 2001 and apply to the death of a tenant of a local authority or registered social landlord. Upon the death of a tenant the tenancy will pass to a qualified person, unless the survivor killed the tenant. The Act also provides for a further succession on the death of the first successor. However, upon the death of the second successor the tenancy is terminated except where a joint tenant continues to use the house as that person's only or principal home.

The definition of a qualified person is broad and includes in order of priority:

- a tenant's spouse or civil partner,
- a cohabitee (regardless of gender),
- a member of the tenant's family, and
- a carer.

Where several people with equal property claims qualify, they must agree who is to take, or otherwise the landlord can determine the successor.

- bankruptcy of the landlord;

This is more likely to be an issue in a business lease rather than a residential one. While bankruptcy of the tenant does not automatically terminate the tenancy, its occurrence may well precipitate a termination. Upon bankruptcy the tenancy will pass to the tenant's trustee in bankruptcy who has the option to adopt the lease. Should the trustee adopt the lease then he will assume the responsibilities which the bankrupt tenant had under the lease. In the event that the trustee chooses not to adopt the lease and there is vacant possession then the landlord may claim damages for any loss, provided that he has not exercised his right of irritancy. In the case of assured tenancies, protected tenancies and Scottish Secure Tenancies the lease will not vest automatically in the trustee instead the trustee will be required to serve a notice on the tenant before any transfer can take place.

- Subletting: Under what conditions is subletting allowed? How can an abuse of subletting (when the tenant is offered not an ordinary lease contract but only a sublease contract) be counteracted?

In order for the creation of a sub tenancy in the private rented or social rented sectors consent from the landlord is an essential requirement.

When a lease is assigned, the landlord is unchanged, so the status of the tenancy (e.g. as an assured or Scottish secure tenancy) would be unchanged also. If a social tenancy is sublet, then the subtenancy cannot be a Scottish secure tenancy, since the head tenant is not a local authority or registered social landlord, and will be prevented from being a regulated or assured tenancy by virtue of s 32(7) of the

Housing (Scotland) Act 2001. If a private sector tenancy is sublet with the landlord's consent, then the sublet will normally qualify as an assured tenancy

So far as a private sector tenancy is concerned, a tenant holding under an assured tenancy is not permitted to assign the tenancy or sublet or part with possession of the whole or any part of the house without the consent of the landlord. This is subject to the terms of the tenancy either allowing or restricting transactions; to allow free assignation would be very unusual. No premium may be charged.

In the social sector, a tenant holding under a Scottish Secure tenancy is not permitted to assign the tenancy or sublet or part with possession of the whole or any part of the house without the written consent of the landlord. In the case of assignation, the dwelling must have been the purported assignee's principal home in the six months prior to the application for landlord consent to the assignation. Where the landlord is a registered social landlord then the assignee or subtenant must be a member of the association at the time of the transfer. An authorised sub-tenant is a qualifying occupier who is entitled to receive notice of, and defend, an action raised for possession. A Scottish secure tenant is entitled to exchange his home for another property also held subject to a Scottish secure tenancy if he is able to find a suitable match and obtain the consent of both landlords.

- Does the contract bind the new owner in the case of sale of the premises?

Again the private and social sectors must be distinguished. However, throughout, it must be remembered that a tenancy is proprietary in character and it will therefore bind a purchaser; a short tenancy does not need to be entered on the Land Register since it will be an overriding interest.

Where there is a change of the landlord through inheritance, sale or public auction the impact on the position of the tenant will vary. In the first instance the successor is bound by the terms of lease and as such they cannot terminate the tenancy without a good reason. In the case of inheritance, the successor may wish to keep the tenant and therefore the position of the tenant would be unaffected, however the successor may elect to sell the dwelling and they may seek to bring about termination of the tenancy (see section on termination). Where the landlord sells the property either privately or through public auction, they may elect to terminate the tenancy prior to sale. This would be common practice as in general a property with vacant possession will fetch a higher price and the provisions concerning termination of assured tenancy facilitate such action (see section on termination). When selling the property the landlord may need to access the property in order to show estate agents, surveyors and prospective buyers around the property. In doing so the landlord must give the tenant reasonable notice (24 hours) and the access must be reasonable (within suitable hours). Should the landlord sell the property without terminating the lease then the new owner will not be able to terminate the lease without good reason and

may not increase the rent without following the statutory procedure (see section on rent increase).

In the public sector, the powers of disposal of a social landlord are strictly limited (apart from sales to the sitting tenant under the Right to Buy) and will require the consent of the Housing Regulator. Recent years have seen mass stock transfers from local authorities to housing associations. Tenants must be consulted before their landlord is changed.

- Costs and Utility Charges
 - What is the relevant legal regulation of utilities (i.e. the supply of water, heating and electricity)? Must the landlord or the tenant conclude the contracts for provision of utilities? Which utilities may be charged from the tenant by the landlord? What is the standard practice?

Parties are free to apportion responsibility for arranging for utilities in the tenancy agreement however generally speaking the landlord will usually assume responsibility for connecting certain utilities, particularly water supply, electricity, heating etc. However, generally the tenant will take over responsibility for making payments in respect of utilities encountered during the term of the tenancy. For instance with regard to electricity, common practice would be for the landlord to ensure that the property is connected to the national grid before letting and upon letting the tenant would take over responsibility for paying for the electricity for the duration of their lease.

- Is the tenant responsible for taxes levied by local municipalities for the provision of public services (e.g. for waste collection or road repair)?

Council tax is the responsibility of the tenant, but may be collected by the landlord; full time students are exempt but must claim this exemption from the local authority.

- Deposits and additional guarantees
 - What is the usual and lawful amount of a deposit?

There are no provisions in the social sector about premiums or deposits, and most social landlords do not ask for a deposit. In the private sector a distinction needs to be drawn between premiums and deposits. Premiums are prohibited, and this includes requirements for advance payment of rent. However it is permissible to take a deposit of up to two months to cover rent payments, damage, cleaning bills and unpaid utility bills and indeed a security deposit is normally required of a private sector tenant at the commencement of a tenancy. It is important to agree an inventory of goods at the property and a note of any defects.

- How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant)?

The landlord/agent who has received the tenancy deposit must turn over the deposit to an independent third party operating a deposit protection scheme. The vast

majority of private rented tenants are regulated by the three deposit protection schemes:

- Letting Protection Service Scotland;
- Safe deposits Scotland; and
- My deposits Scotland.

When transferring the deposit to a deposit protection scheme the landlord must provide the tenant with relevant information concerning the scheme including the amount of the deposit, relevant dates, address of the property concerned, a statement from the landlord setting out that they are registered as well as the terms under which the deposit may be kept at the end of the tenancy. Should the landlord fail to register a deposit then the tenant can apply to the sheriff court which can order the landlord to pay the tenant up to three times the amount of the deposit. The function of the deposit is to provide security for the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or the discharge of any of the occupant's liabilities which so arise. The usual amount of the deposit in Scotland is equivalent to one months' rent however the landlord or letting agent may require a deposit equivalent to two months' rent. At the end of the tenancy the landlord must apply to the tenancy deposit scheme for repayment of the deposit. Where the landlord seeks to make deductions from the deposit, he must include details of those deductions and state the amount of deposit to be returned in the application. The tenant is then contacted by the tenancy deposit scheme and given the opportunity to agree or disagree with the amount of the deposit to be returned. Where the tenant confirms the amount to be returned is correct he will receive the deposit within five working days. In the situation that the tenant does not agree with the amount of the deposit to be returned he may apply to the dispute resolution process. This involves an independent adjudicator making a decision based upon the evidence submitted during the dispute resolution process. Should either party be unhappy with the decision of the adjudicator they may apply for a review after which the decision will be final.

3. During the tenancy

3.1. Tenant's rights

- Defects and disturbances
 - Which defects and disturbances are legally relevant (e.g. mould and humidity in the dwelling; exposure to noise e.g. from a building site in front of the dwelling; noisy neighbours; occupation by third parties)?

The landlord is under a duty to provide subjects which are in a tenantable or habitable condition. They must also be maintained in this condition, but no duty arises until the tenant has brought a defect to the landlord's attention. Should the landlord fail to carry out repairs after notification then this will amount to a breach of the landlord's obligation. For a defect of the dwelling to result in a material breach of the contract, entitling the tenant to rescind, it must be one which reduces the condition of the property in such a way as to make it substantially unsuitable.

Traditionally a defect would be associated with the physical or structural condition of the dwelling. Noise from a building site or from noisy neighbours may constitute a nuisance for which the appropriate remedy would be an order for interdict, or action for damages. Once the tenant has taken possession of the dwelling and damage has been caused to the dwelling by a third party or parties, the landlord is not liable for the repairs and it will fall to the tenant to make good the damage caused, in this respect they may take action against the third party. Where the dwelling is not occupied by a tenant and a third party has caused damage to the dwelling then the landlord will be in the best position to take action against the party responsible.

- What are the tenant's remedies against the landlord and/or third parties in such situations (e.g. unilateral rent reduction vs. rent reduction to be allowed by court; damages; "right to cure" = the landlord's right to repair the defect; the tenant first repairs the defect and then claims the costs from the landlord)

A breach which is not so serious as to amount to a material breach may result in the award of damages or will allow the tenant to retain his rent.

Specific implement and interdict (enforcement orders): Where a party has failed to carry out some action required under the contract then the court may award specific implement to ensure performance of the act. In the private rented sector the Private Rented Housing Panel, where called upon, may make enforcement orders to ensure that repairs are carried out.

Rescission: this is the right of a party to exit a contract completely. Given the drastic nature of this remedy it is only available in limited circumstance. The other party's actions must be sufficiently serious to constitute a material breach of the contract so where the landlord fails to hand over possession of the subjects there must be a substantial failure rather than a mere a delay. Delays of 20 and 35 days in giving entry have been held to be sufficiently material to allow rescission by the tenant.

Frustration: where the landlord is unable to hand over possession of the dwelling because of some event which has made this impossible the contract will be frustrated.

Damages: this monetary remedy is designed to place the wronged party in the position they would have been had the wrong not taken place. Damages may be claimed, along with other remedies, by a party where a breach of contract has occurred.

Retention of rent and abatement: The practice of withholding rent where the landlord is in breach arises from the principle of mutuality in contracts. Where the landlord is in breach of the tenancy agreement then the tenant has a right to withhold. However, for retention of rent to be permissible the breach must be more than merely trivial, though it need not be sufficiently serious to justify rescission.

- Repairs of the dwelling
 - Which kinds of repairs is the landlord obliged to carry out?

Different legal standards of repair apply to the private rented and social rented sectors. In the private rented sector the landlord must ensure that the dwelling meets the repairing standard at all times throughout the tenancy.

In order to meet the repairing standard the house must be wind and watertight and in all respects reasonably fit for human habitation, the structure and exterior of the house (including drains, gutter and external pipes) must be in a reasonable state of repair and in proper working order. Any installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water must be in a reasonable state of repair and in proper working order. This also applies to any fixtures and fittings and appliances provided by the landlord under the tenancy. In addition, any furnishings provided by the landlord under the tenancy must be capable of being used safely for the purpose for which they are designed and finally the dwelling must be provided with fire alarms. Once the landlord becomes aware of a defect in the dwelling which requires repair or maintenance work he is under a duty to act within a reasonable time. Essentially this means that the time in which the landlord should carry out the repairs depends on the nature of the defect in question with more material defects requiring prompt attention.

When carrying out repairs the landlord will be responsible for any damage caused and he must make good any damage caused while carrying out any work. It is possible for a landlord to avoid the repairing obligation in certain situations. In particular where the defect requiring maintenance work is down to the fault of the tenant the landlord will not be under a duty to carry out repairs. Furthermore, the landlord will not be liable for failure to carry out maintenance or repairs where the only reason for that failure was the tenant's refusal to grant access rights.

Where disputes arise concerning the repairing standard in the private rented sector the tenant may apply to Private Rented Housing Panel which is responsible for enforcement of repair and maintenance obligations in the private rented sector.

While the repairing standard does not apply to the social landlords they are bound by other standards i.e. the tolerable standard. To meet the tolerable standard the landlord must ensure that the dwelling is wind and watertight and in all other respects reasonable fit for human habitation and the landlord must ensure that the dwelling be kept in this condition throughout the tenancy. Additionally, the landlord must ensure that the dwelling does not fall below the standard set out in the building regulations due to disrepair or sanitary defect etc. While the local authority, in their capacity as landlord, will be concerned with maintenance and repair of their own housing stock, they also are under a wider public duty to ensure that all rented housing in their operational area meets the minimum legal standard i.e. the tolerable standard, are not overcrowded, and are not substandard. In carrying out this task the local authority have powers of inspection as well as the power to enable those properties be repaired, closed and demolished. Local authorities and RSLs are required to meet the Scottish Housing Quality Standard by 2015. In order to meet this standard the dwelling must meet the tolerable standard, be free from serious disrepair, be energy efficient, be provided with modern facilities and services and be healthy safe and secure. The Scottish Housing Regulator is responsible for monitoring social landlords' performance towards meeting the Scottish Housing Quality Standard.

- Does a tenant have the right to make repairs at his own expense and then deduct the repair costs from the rent payment?

Certain small urgent repairs, so called qualifying repairs, which might affect a tenant's health, safety or security, have to be done quickly. Where the landlord is unable to carry out such repairs within the time limit then the tenant may be entitled to carry out the repairs and charge them to the landlord.

- Alterations of the dwelling
 - Is the tenant allowed to make other changes to the dwelling?

Assured tenancies

The extent to which the tenant is allowed to make improvements or changes to the dwelling depends primarily on the lease agreement as parties are free to include terms governing alterations of the dwelling and indeed the modern residential lease will usually contain a term restricting the tenant from carrying out improvements or alterations of the dwelling without the landlords prior consent. It is important that an assured tenancy should include this term. Should the agreement remain silent in this area then the issue will depend on the nature of the improvement or change and following this whether the landlord consents to the alterations. In particular the tenant will not be allowed to make such major changes that the possession is inverted, that is that the nature of the tenancy is changed unilaterally. Where the tenant makes

material structural alterations of the dwelling without the landlord's approval he runs the risk of incurring liability for breach of contract and may be required to return the dwelling to its original condition. However where the changes are trivial or periodical then the tenant will not incur liability for breach. Scottish Secure tenancy

Under the Housing (Scotland) Act 2001, a Scottish secure tenant is not permitted to carry out work in relation to the house without the written consent of the landlord, which must not be unreasonably withheld. Work is defined as alteration, improvement or enlargement of the house or of any fittings or fixtures, the addition of new fittings or fixtures, the erection of a garage, shed or other structure. If the tenant wishes to carry out work on the dwelling there is a detailed statutory framework which the tenant must adhere. The tenant must make a written application to the landlord for the landlord's consent, giving details of the proposed work and the landlord has one month to either consent to the work, consent but impose conditions or refuse the request. Should the landlord fail to reply within the time period he will be taken to consent to the work. This reply must contain any conditions imposed or where consent is refused, it must contain reasons for the refusal. In deciding whether to impose conditions the landlord must have regard to the age and condition of the house as well as the cost of complying with the condition. A tenant may appeal a refusal or condition to the court by way of summary appeal.

- In particular, adaptations for disability (e.g. building an elevator, ensuring access for wheelchairs etc.)

When dealing with persons with a disability a landlord must not unreasonably withhold consent to the tenants to adapt the rented accommodation to meet the needs of the disabled occupants.

- Uses of the dwelling
 - Are the following uses allowed or prohibited?
 - keeping domestic animals
 - producing smells
 - receiving guests over-night
 - fixing pamphlets outside
 - small-scale commercial activity

The tenant is under a common law duty to use the property only for the purpose for which it was let. Otherwise the tenant will invert the possession as set out above, and the tenant may be forced to reverse any structural inversions. The lease will generally contain a clause prohibiting use of the dwelling which could result in a nuisance; this could relate keeping animals, odours, receiving guests etc. It is illegal for landlords and letting agents to discriminate against a tenant if they are disabled. This means that the landlord must not treat the tenant less favourably than a non-disabled person because of their disability. With regard to keeping animals this means that the landlord is not allowed to refuse to let the tenant keep a guide dog or other assistance dog under a 'no pets' rule, Using or allowing the house to be used for

immoral or illegal purposes is a ground for recovery of possession in assured tenancies and Scottish secure tenancies and therefore the landlord may rely on this as a ground to terminating the tenancy where the dwelling has been used for illegal or immoral purposes.

3.2. Landlord's rights

- Is there any form of rent control (restrictions of the rent a landlord may charge)?

The system of rent regulation depends on the type of tenancy at issue with distinct systems applying to assured tenancies, regulated tenancies, Scottish secure tenancies and other tenancies.

Private rental market

Since deregulation of the late 1980s market rents have prevailed in the private rented sector in Scotland. A market rent is understood to mean the amount which the house in question might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy. While parties are free to include a term governing rent increases in the lease, the operation of this term must not result in an above market rent.

Rent increases in 'houses with public task'

Scottish Secure tenancies

With regard to housing with a public task, local authority rents and Registered Social Landlords rents are lower than the market rate. Local authorities have discretion over the amount of rent to charge to their tenants and there are no external limitations on what landlords can charge tenants.

- Rent and the implementation of rent increases
 - When is a rent increase legal?

Assured tenancy

A landlord is not free to increase unilaterally the rent during the fixed term of an assured tenancy. This is so unless the agreement contains a procedure for rent review during the fixed term. Otherwise when any fixed term ends, the landlord can give the tenant a written notice of the proposed increase or, alternatively, a written notice to change the terms of the tenancy including the rent charged. The length of the notice given before the rent increase takes effect must be at least one rental period. Therefore, if rent is paid monthly, the tenant must receive at least one month's notice before the rent goes up. In an assured tenancy the tenant does not have the option to have the rent considered during the term of the tenancy. There is nothing in law to prevent the inclusion in a tenancy agreement clauses relating to rent increase mechanisms. Where no such provision is present then the rent cannot be unilaterally increased and in this situation should the landlord wish to increase the rent he will usually have to terminate the contractual tenancy and utilise the statutory mechanism for increases in a statutory assured tenancies. The Private Rented Housing Committee will only regulate the fixing of market rents in a statutory assured tenancy, which has come into operation at the end of the term when the landlord

serves notice terminating the tenancy. Then the landlord may seek an increase in rent and the tenant has the opportunity to refer the increase to the Committee.

Short assured tenants

Where the tenant has a short assured tenancy, the rent is fixed contractually during the initial fixed term, but the landlord can increase the rent when they renew the tenancy agreement. In theory rents can be referred to the Private Rented Housing Committee but it can be difficult to challenge the increase when the landlord can evict a tenant quite easily.

Other types of tenants

Landlords of all other types of tenants do not have to follow specific procedures to increase the rent, so rent can be increased at any time after a contractual agreement has ended.

Scottish secure tenancy

Under a Scottish secure tenancy the local authority or RSL has the right to increase the rent, but that body must give the tenant at least four weeks' notice before doing so. In addition, they must consult with the tenant in a meaningful way, which takes into account the views of the tenant, before increasing the rent.

- Entering the premises and related issues
 - Under what conditions may the landlord enter the premises?

The landlord has a right of reasonable access which he may rely upon to enter the dwelling in order to inspect the condition of the dwelling, to carry out repairs or to show prospective tenants around. In order to avail of rights of access the landlord must give the tenants at least 24 hours' notice and access must be limited to reasonable times of the day. Where the tenant refuses the landlord reasonable access then the landlord may not be liable for the repairs.

- Is the landlord allowed to keep a set of keys to the rented apartment?

It would not be unusual for the landlord or representative of the landlord to retain a set of keys to the rented dwelling in order to inspect the dwelling, carry out repairs or to show prospective tenants around. However, the landlord does not have a general right of access, rather, as set out above, the landlord has a right of reasonable access. This in turn is largely dependent on the landlord giving the tenant sufficient notice. Should the landlord attempt to exercise excessive access of the dwelling this could constitute an unfair exclusion of the landlord's common law duty to maintain the tenant in full possession and not to derogate from his grant, and as McAllister notes the inclusion of a term to this effect in the lease may be considered to be an unfair contract term.

- Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

A landlord is not permitted to lock a tenant out of the rented dwelling. In the event that the landlord has given notice to quit but the tenant has refused to leave the landlord can only remove the tenant with a court action, during which the tenant will be allowed to lodge a defence. The competent court in this regard is the Sheriff Court and the action for recovery of heritable property will take the form of a summary cause. It is only when the Sheriff Court grants a decree of removing will the landlord be able to proceed with an eviction. Should the landlord try to evict the tenant without a court order, he may be liable to the tenant in damages. All occupiers of residential property are protected against unlawful eviction. It is a criminal offence for a landlord to do 'acts calculated to interfere with the peace and comfort of the residential occupier or members of his household'. The tenant, on application to the court, could get a non-harassment order against the landlord or they could get a court order which will force the landlord to let the tenant back into the dwelling along. It is open to the tenant to claim damages for illegal eviction or for harassment. A particularly high level of damages may be awarded under provisions introduced in 1988 and designed to penalise landlords who yielded to the temptation to evict a Rent Act tenant to relet on a more lucrative assured tenancy basis, that is to threaten force to persuade a tenant to move from a fair rent to a market rent.

- Can the landlord legally take or seize a tenant's personal property in the rented dwelling, in particular in the case of rent arrears?

The landlord does not have a right to take or seize a tenant's personal property in the rented dwelling.

4. Ending the tenancy

4.1. Termination by the tenant

- Open ended contract (if existing): under what conditions and in what form may the tenant terminate the tenancy?

Where the tenant wishes to terminate the tenancy he must give the landlord valid notice to quit. Any notice of termination for tenancies of houses let for rent or other valuable consideration, whether by landlord or tenant, must be in writing and must be served not less than 4 weeks before the date on which it is to take effect. This minimum notice period applies to all residential tenancies regardless of whether the tenancy is an assured tenancy, a regulated tenancy or a Scottish secure tenancy. Otherwise, the length of notice required from a tenant depends on the kind of tenancy that they have and the agreement reached between the parties. In the private sector, the tenancy agreement will usually specify how much notice is required and in most cases this will be one month. A tenant with an assured tenancy or a short assured tenancy with a fixed term of more than 3 months must give the landlord at least 40 days' notice.

Where the tenancy is a fixed term tenancy the tenant may leave on the expiration date (the "ish"), but notice is required to the landlord as otherwise the tenancy will be renewed automatically via the process of tacit relocation. He is not allowed to terminate the tenancy unilaterally prior to the expiry date (the "ish") and any such action may cause the tenant to be liable in damages to the landlord and the tenant may be required to continue to pay rent for the duration of the term. The parties are at liberty to include a provision for early termination, a "break clause" for the benefit of the tenant in which case care is needed to comply with the terms of the notice, however this is more typical of commercial rather than residential leases.

- Under what circumstances may a tenant terminate a tenancy before the end of the rental term (e.g. unbearable neighbours; bad state of dwelling; moving for professional reasons)?

Parties are free to include an early termination or break clause. In the event that parties fail to include an early termination clause, they remain free to come to a mutual agreement which allows for termination prior to expiry of the term provided that a valid notice period is given. Where the tenancy is a fixed term tenancy the tenant is not allowed to terminate unilaterally the tenancy and any such action may cause the tenant to be liable in damages to the landlord and he may be required to continue to pay rent for the duration of the term. However, the tenant may terminate the tenancy where the landlord has breached his obligations. Where the tenant wishes to leave the tenancy upon expiry of the term, he must give notice to the

landlord of at least 28 days. In the event that the tenant is seeking to bring about a termination due a breach of obligation by the landlord, the tenant must first notify the landlord of the failure in writing and give the landlord the opportunity to remedy the failure in a reasonable time. The landlord does not have a right to compensation where an early termination has been brought about in a manner which complies with the statutory notice requirements. It is only when the tenant deviates from the required procedure that a landlord may claim compensation.

- May the tenant leave before the end of the rental term if he or she finds a suitable replacement tenant?

Tenancies in the residential sector would rarely provide for the tenant to propose a replacement tenant for one who leaves but there is nothing to prevent a tenant finding a replacement he wants to assign to. This might be appropriate where a flat is taken by a group of students to avoid the problem that a notice by one joint tenant would end the tenancy of all the others. However, such clauses are rare and in general the landlord will find a replacement tenant without the previous tenant's assistance.

4.2. Termination by the landlord

- Open-ended contract (if existing): under what conditions and in what form may the landlord terminate the tenancy (= eviction) (e.g. the landlord needs the house for himself or wants to renovate and use it differently in the future)?
- Are there any defences available for the tenant against an eviction?
- Under what circumstances may the landlord terminate a tenancy before the end of the rental term?
- Are there any defences available for the tenant in that case?
- What happens if the tenant does not leave after the regular end of the tenancy or does not hand in (all) the keys of the dwelling?

The effect of a notice of termination depends very much on the sectoral allocation of the tenancy, the key division being between short assured tenancies and tenancies with full security - fully assured tenancies in the private sector and Scottish secure tenancies in the social sector. There is also a residual category of tenancies falling outside security regimes.

Short assured tenancy

A short assured tenancy requires a fixed contractual grant for a term of six months or more. The landlord will be able to terminate the tenancy at the end of the fixed term subject to three basic requirements. One is that the contractual term of the tenant has reached its end. Second, any contractual regrant or tacit relocation must have ended. When the fixed period ends, the lease may state how it will continue (for example subject to monthly renewal) or it may be subject to tacit relocation (for example a tenancy for a year might roll over for another year), so the landlord will need to give sufficient notice to terminate these contractual rights. Third, the

landlord must give a statutory notice, which must be of two months duration and to expire on or after the ish. At the expiration of the notice the landlord may raise a possession action in the Sheriff Court and the Sheriff must make an order for possession. This ends the tenancy. The landlord can also terminate a short assured tenancy during any contractual period using most of the misconduct grounds for possession against an assured tenant, provided the tenancy allows this. The most common ground would be for rent arrears.

As noted above the landlord can terminate a short assured tenancy during any contractual period using most of the misconduct grounds for possession against an assured tenant, provided the tenancy allows this. Some of the grounds are mandatory grounds for recovery of possession.

In total there are seventeen grounds of possession of which all the grounds 2 and 8 - 17 are discretionary grounds and 1-7 are mandatory. Of these the mandatory ground 8 and the discretionary grounds 11-16 are based on the misconduct of the tenant. Where the landlord can establish that any of the grounds for possession from 1 to 8 exists then the sheriff must give back possession to the landlord. As such these grounds are termed mandatory grounds of possession. Where grounds 1 – 5 are raised the tenant must have been given written notice setting out that possession might be required under the ground at issue, this is the 'usual notice requirement' however with grounds 1 and 2 the sheriff has discretion to dispense with the notice requirement where it is reasonable to do so. Amongst the mandatory grounds of possession are where occupancy required by landlord, mortgage default, redevelopment etc. In the case of discretionary grounds the Sheriff is not to grant an order for possession unless he considers it reasonable to do so. In this manner the sheriff has discretion to delay an order of possession or to adjourn proceedings etc.

The tenant must be given notice of the proceedings for possession and this notice must state the relevant ground as well as giving any relevant information. In relation to grounds 1,2,5,6,7,9 and 17 two months notice is required and in all other cases the period of notice is two weeks. The Sheriff also has power to dispense with notice in some situations. Therefore when a landlord is seeking to terminate a contractual tenancy he must serve two notices, a notice to quit which will bring the term of the lease to an end and will prevent tacit relocation and a second notice informing the tenant of the landlord's intention to raise proceedings for recovery of possession. Where a sub-tenancy is in operation then termination by the head landlord of the tenancy will cause the sub-tenant to take the place of the head tenant.

Scottish secure tenancy

A Scottish secure tenancy can only be terminated in a limited number of circumstances. These include termination by agreement, termination following abandonment, where the landlord obtains a court order for recovery of possession or if the tenancy is converted to a short Scottish secure tenancy. When seeking to terminate the tenancy the landlord must give the tenant written notice setting out the

ground of termination as well as the date from which the landlord may bring proceedings for recovery of possession. A minimum notice period of four weeks is required and the date set in the notice cannot be earlier than the date on which the tenancy would have been brought to an end by a notice to quit had it not been a Scottish secure tenancy. In addition, the landlord is required to serve notice on any qualifying occupier. Before serving this notice the landlord is required to make such inquiries as may be necessary to establish so far as is reasonably practicable whether there are any qualifying occupiers of the house and, if so, their identities. Where a qualifying occupier applies to the court to be 'sisted' as a party to proceedings for recovery of possession, the court must grant the application. A notice will cease to have effect if it is not used within six months or if the landlord has withdrawn it before then.

Special provisions apply to action on the basis of rent arrears, the commonest action raised. There is considerable case law about how sheriffs should exercise their discretion. Changes were made in August 2012. Where a suspended possession order is made on the basis of rent arrears the tenancy ends only if possession is obtained and the order should include a period of time for which the order has effect. The landlord must follow a pre-action procedure before raising the action: the tenant should be given full information and advice and must attempt to agree a plan for future payments. Proceedings should not be raised while the tenant is applying for housing benefit or taking other reasonable steps to clear arrears. The landlord must confirm compliance before raising proceedings.

Just as with the short assured tenancy there are a number of statutory grounds of possession, some of which are discretionary and others mandatory. Under grounds 1-7 and ground 15 the court has power to adjourn proceedings with or without imposing conditions as to the payment of outstanding rent or otherwise.

McAllister characterizes grounds 1 – 7 as conduct grounds which are employed when the tenant is at fault. When such grounds are raised there is no requirement that other accommodation will be available to the tenant but the court must be satisfied that it is reasonable to make the order. In this sense the Sheriff has discretion to refuse to grant an order for possession even where the ground of termination exists should the Court consider that the landlord did not act reasonably.

Throughout this stage the onus is on the landlord to show that the ground in question exists and also that it is reasonable for the tenant to be evicted even if the tenant does not defend. McAllister characterizes grounds 8 – 15 as management grounds as they may arise regardless of the actions of the tenant nevertheless there remains a good reason for him to move out. In all cases, before granting an order for possession the court must be satisfied that suitable alternative accommodation is available to the tenant. With respect to ground 15, it is necessary for the court to be satisfied that it is reasonable to make an order for possession and also that suitable alternative accommodation is available elsewhere.

4.3. Return of the deposit

- Within what timeframe and under what conditions does the landlord have to return the tenant's security deposit?
- What deductions can the landlord make from the security deposit?
 - In the case of a furnished dwelling: may the landlord make a deduction for damages due to the ordinary use of furniture?

At the end of the tenancy the landlord must apply to the tenancy deposit scheme for repayment of the deposit. Where the landlord seeks to make deductions from the deposit, he must include details of those deductions and state the amount of deposit to be returned in the application. The tenant is then contacted by the tenancy deposit scheme and given the opportunity to agree or disagree with the amount of the deposit to be returned. Where the tenant confirms the amount to be returned is correct he will receive the deposit within five working days. In the situation that the tenant does not agree with the amount of the deposit to be returned he may apply to the dispute resolution process. This involves an independent adjudicator making a decision based upon the evidence submitted during the dispute resolution process. Should either party be unhappy with the decision of the adjudicator they may apply for a review after which the decision will be final.

4.4. Adjudicating a dispute

- In what forum are tenancy cases typically adjudicated?
 - Are there specialized courts for adjudication of tenancy disputes?

Jurisdiction over tenancy law disputes is determined by the nature of the tenancy and also the nature of the dispute however in all cases the Scottish Courts may be called upon to determine the issue. The general civil court system comprises the Court of Session and the Sheriff Court. The Court of Session is the supreme civil court in Scotland, based in Edinburgh. The Court of Session is both a court at first instance for initial consideration of cases and the court of appeal for most civil matters. It is only at the Court of Session that judicial review of decisions by administrative authorities can be heard. The Sheriff Court is the local court and there are 49 sheriff courts across Scotland which deal with the majority of civil cases, including eviction cases etc. Certain matters have been taken out of the hands of the civil courts and devolved to specialist tenancy bodies, of which the Private Rented Housing Panel is the prime example. The Panel provide mediation services to tenants of the private rented sector in cases relating to the landlord's repairing obligations and also certain disputes concerning the setting of rent. In the social and public rented sector the courts remain the primary dispute resolution mechanism however the Scottish Housing Regulator plays a role in ensuring landlords abide by their legal obligations.

5. Additional information

- How does a prospective tenant proceed in order to get social or subsidized housing (e.g. dwellings offered by housing associations, municipalities, public bodies etc.) or housing allowances?

The normal means of access to this sector (housing with a public task) would be by registration on a housing waiting list, though the wait may be substantial given the under investment in social housing stock over the years, though it may be shortened considerably by scoring highly in the points allocation process. People judged to be unintentionally homeless will have priority in seeking permanent accommodation. Some housing associations may also advertise the availability of accommodation. When a person reaches the top of the waiting list, an offer of accommodation will be made by a social landlord. The scope for negotiation is limited to the extent that it is permitted to reject offers and the extent to which the accommodation offered is unsuitable.

- Are legal aid services available in the area of tenancy law?

. A scheme of civil legal assistance is available to support persons obtaining legal advice or taking their case to court. This support may completely cover the legal costs or the applicant may have to make a contribution towards it. This support is available for claims concerning housing matters such as rent or mortgage arrears, repairs and eviction. There are two forms of support available; advice and assistance and civil legal aid. Under the former, financial assistance is provided and advice from a solicitor on any matter of Scots law, civil or criminal. In order to avail himself of this support an applicant must demonstrate a financial need which will be ascertained from the income and capital status of the applicant. Where the applicant or his partner is in receipt of income support, or Income-based jobseeker's allowance or Income-related employment and support allowance he will qualify for advice and assistance on the income threshold but he must then qualify on capital in order to receive assistance.

In addition to advice and assistance there is civil legal aid. This is a financial support for meeting legal costs including preparation work, the hearing and funding for advocates and experts if needed. A solicitor cannot represent an applicant in court under legal aid for cases relating to small claims of less than £3,000, unless the claim involves personal, injury and some actions relating to bankruptcy. In order to receive legal aid the applicant must qualify financially, have a legal basis for their case (called "probable cause") and it must be reasonable to use public funds to support the case. Depending on their financial status a party may have their legal costs met entirely or they will be required to make a contribution. Where the applicant or their partner is in receipt of income support, or Income-based jobseeker's allowance or Income-related employment and support allowance they will qualify for advice and assistance on the income threshold but they must then qualify on capital in order to receive assistance.

- To which organizations, institutions etc. may a tenant turn to have his/her rights protected?

There are a wide range of tenant's associations and tenant information and support services across Scotland including the following;

- Tenants Information Services provide advice, training and support services to tenants, communities and landlords.
- Tenant Participation Advisory Service Scotland is the national tenant and landlord participation advisory service for Scotland which promotes good practice in tenant participation throughout Scotland for both tenants and landlords.
- Shelter Scotland is a housing and homelessness charity which provides information, advice and support services to households experiencing housing difficulties ranging from poor quality housing to homelessness.