

The background image shows a cluttered outdoor space. On the right, there is a wooden chair with a white fabric seat and backrest featuring a floral pattern in shades of green, brown, and purple. To the left of the chair is a large, dark brown wooden chest or cabinet with several drawers. Behind the chair, a red gas cylinder is visible. The ground is covered in dirt, gravel, and some scattered debris. The overall scene suggests a state of disrepair or neglect.

LSA

Legal Services Agency
Scotland's National Law Centre

Preventing Eviction for Rent Arrears

**A guide to the legal rights of tenants
in Scottish Secure Tenancies**

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**A leaflet for the tenants of
registered social landlords
including councils and
housing associations.**

Contents

Information and Advice	1
Dealing with debt and other money matters	2
The aim of this guide	2
Scottish Secure Tenancies (SSTs)	4
Your rights if you are living with a tenant	4
The Court Process	5
Pre-court notice	5
The Summons	6
The First Calling	7
Continued Callings	7
Proofs	8
Expenses	8
Preventing Eviction	9
Possible defences are	10
What to do if the court decides you should be evicted	11
Repaying Rent Arrears	11
What to do if you are evicted, or lose your home	12
Applying for a new home	12
Sources of Help	13
Useful websites	15
Help with legal costs	15

Information and Advice

The prospect of eviction is alarming but usually there is a way to prevent it and to sort things out.

Good legal advice is vital, and the sooner the better. Things can get complicated! So, if you are facing court action for eviction, you should get legal advice immediately.

You can get advice from law centre solicitors (including LSA), Shelter Housing Aid Centres and Citizen's Advice Bureaux or solicitors in private practice. You can also contact Legal Services Agency (LSA) solicitors for help. See the end of this leaflet for contact details.

Advice from Law Centres (including LSA), Housing Aid Centres and CABx is generally free. You may also get free advice from a solicitor in private practice. This depends on your income.

LSA has published a booklet on defending eviction as well as a technical briefing. Contact LSA for further information.

This leaflet does not deal with Short Assured Tenancies in the Private Sector. LSA has a booklet for advisers on Defending Eviction which gives more information on the whole area. LSA also has a separate leaflet on Short Assured Tenancies.

Dealing with debt and other money matters

If you have rent arrears or other debt problems it is important to ask for help. CABx, Money Advice Projects or welfare rights officers at your local council can check that you are getting all the benefits you are due and help you work out what to do about any debts. Many local authorities and housing associations can help with housing benefit or money advice.

Remember that whilst actual or threatened court action for rent arrears is fairly common, actual eviction is less so and generally can be avoided if you get help with benefits, debt and legal representation for court procedures.

The aim of this guide

This guide briefly describes Scottish law on evicting tenants. It deals with eviction for rent arrears of tenants with Scottish Secure Tenancies including tenants of local authorities (Councils) or registered social landlords (housing association).

The rules on eviction depend on the kind of tenancy you have. If you are not sure what kind of tenancy you have, ask for advice (see the end of this leaflet).

This guide explains:

- Scottish Secure Tenancies
- Your rights if you are living with a tenant

- The court process for eviction based on rent arrears or combined eviction and rent arrears cases.
- How you can prevent eviction
- What to do if the court decides you should be evicted

It also gives a list of agencies to contact for help and advice.

Note: Eviction for Rent Arrears

If you owe rent arrears and are still living in the house concerned most landlords will raise a court action seeking eviction and payment under the Sheriff Court Procedure known as "Summary Cause". Alternatively they may raise an action simply seeking eviction based on rent arrears again under the Summary Cause Procedure. This leaflet deals with both these forms of action. Some times landlords raise an action for payment only - for instance if you have already moved out. This is called a payment action and this leaflet does not deal with this form of action at all.

There are many other reasons (grounds) for evictions. This leaflet only deals with rent arrears. For information about eviction for other reasons such as anti-social behaviour or abandonment, please contact LSA, a Law Centre, Shelter or a CAB.

Scottish Secure Tenancies (SSTs)

You have a Scottish Secure Tenancy if you rent your house from the council (local authority) or a housing association (registered social landlord).

When you got the tenancy you should have been given a tenancy agreement. The tenancy agreement tells you the type of tenancy and describes the terms of the let. If you are not sure about anything in the tenancy agreement, ask for this to be explained.

Councils and registered social landlords (Housing Associations) can give accommodation under other forms of tenancy or no tenancy at all (such as hostels or short SSTs). If this applies to you, get advice.

Your rights if you are living with a tenant

If you are married to, or the partner of, a tenant who is facing eviction it may be useful for you to get independent legal advice for yourself.

If you want to stay in the house, there may be options such as transferring the tenancy to your name.

You may also have legal rights to live in the home under the Matrimonial Homes (Family Protection) (Scotland) Act 1981.

If you are a member of the tenant's family (aged 16 or over) or an agreed sub-tenant or lodger, you may have certain rights. For instance to be sent formal notices. It is important to ask for advice. Details of organisations that can advise you are given at the end of this leaflet.

The Court Process

There are various stages that any court case goes through. These are described here. It is important that you get good advice about what to do at each stage, and that you get a solicitor, if possible, to speak on your behalf (represent you) in court. Good advice and legal representation mean that eviction is far less likely. Contact any of the agencies listed at the end of this leaflet for help.

If you cannot get anyone to represent you in court, it is very important that you go yourself.

A qualifying occupier (for example husband/wife or partner) also has a right to go to court.

When the reason (ground) for eviction is rent arrears, the court may only agree to the eviction if it thinks it is reasonable. This means that whether or not the eviction is reasonable may be the most important part of your defence.

There are other defences that you can use. Defences are explained further on.

Pre-court notice

Before a landlord can go to court to ask for an eviction (raise an eviction action) they must give you (serve) a document. This is a Notice of Proceedings for Recovery of Possession. It must say why the landlord wants to evict you and give a date when they intend to start court proceedings. This is always four weeks or more after you receive the notice.

The rules about dates are complicated so get legal advice to check that the landlord has got it right.

The main reason for the notice is to tell you and members of your family that you need to get help to sort things out. It is important to get help now and not wait until the four weeks is up.

As soon as you receive a notice you should ask for help to check benefits and to negotiate with the landlord (see the end of this leaflet for organisations that can help). Although you can approach the landlord yourself, it is a good idea to get advice, especially if your case is complex and there are various debt and benefits problems. Benefits are very complex and mistakes occur.

The Summons

The Summons is a document which starts the court action.

The landlord lodges the Summons at the local sheriff court and a date is fixed for the case to go to court (First Calling). You will usually get at least 21 days notice of the First Calling.

The landlord must give you (serve) a copy of the Summons. It will be delivered either by recorded delivery (post) or by sheriff officers.

The Summons will ask the court to let the landlord evict you. It may also ask the court to order you to pay any rent arrears.

As soon as you get a Summons, you should seek legal advice (see the end of this leaflet). A legal adviser will help you negotiate with the landlord to see whether things can be sorted out. They can also help you write to the court to explain your position (a written note of your defence should preferably be given to the sheriff court 7 days before the first calling).

In a combined eviction/payment action, you should NOT fill in the Time to Pay Order application form attached to the Summons without getting legal advice. You should, however, be sure to be represented at the first calling, or attend yourself. Note that the procedure for a court action seeking payment alone but not eviction is different. Get advice!

The First Calling

The First Calling is the first time the case is heard in court.

You or your solicitor must go to the first calling even if everything is sorted out beforehand. It is obviously better to arrange representation well before hand, however in some courts, such as Glasgow and Greenock, advice and representation is available through an advice desk immediately outside the relevant court room. LSA's lawyers are available outside the court room around half an hour before 'First Callings' in Glasgow and Greenock Sheriff Courts. If you are seeking help for the first time in this way be sure to arrive early!

At the first calling you can ask for the case to be continued. This means asking to come back to the court at a later date to give extra time to allow you, for example, to negotiate or to pay rent arrears or sort out housing benefit.

You can also ask for the case to be suspended (sisted) so you can get legal advice or apply for legal aid or to allow you to pay rent arrears.

If you do not need more time, or the court does not agree, it will set a date for a Proof. This is when all the information about the case is heard in court. The court will ask you why you are defending the eviction. Be prepared to give full details of your defence.

Continued Callings

Continued Callings are heard in court. If you have been given extra time to pay rent arrears, the court will check whether you have done so. If you have, the court may to suspend (or "sist") the case to allow you to carry on paying off the arrears. If you have not, the court will ask you or your solicitor for the reasons. If there is a good explanation then the court may agree to continue the case for longer. The court

will weigh up your explanation against the landlord's point of view, and so may not agree to a continuation. This means you need to be prepared to give full details of your defence.

Proofs

The Proof is when the case is heard in full by the court. The court will hear evidence from both sides - tenant and landlord. This includes:

- How much the rent arrears are
- Your payment history
- Your explanation of how the rent arrears built up
- Your defence i.e. that it is not reasonable to grant decree
- What action the landlord has taken to deal with the problem
- What action you have taken to resolve matters.

The court will either decide there and then, or will give a decision in writing after taking more time to think about it. This decision is final and can only be questioned over a point of law.

In practice it is essential to have a lawyer for a proof. They will need as much time as possible to prepare: ideally a number of weeks if not months.

Expenses

The normal rule is that the loser pays the winner's court expenses. This means that if you lose you may have to pay both the rent arrears and the landlord's court expenses. These costs can be very high. If you get Legal Aid, it is possible to limit this amount. Check this with your

solicitor. The best way to avoid legal expenses is to avoid court action in the first place or try to get it delayed (sisted). This is because a “sist” involves the case being taken out of the court process for an indefinite period. The fewer the callings the lower the expenses.

Preventing Eviction

The best way to prevent eviction for rent arrears is to negotiate as soon as you can with your landlord. This may mean that things can be sorted out, avoiding the stress and possible expense of a court case. There are many organisations that can help you negotiate with your landlord (see the end of this leaflet for details). It is important that you come to an agreement that is fair to both parties and realistic for you. This means an arrangement that balances your duty to pay rent and arrears with your personal and family circumstances.

If you show that you are prepared to go to court to defend your case, it can encourage your landlord to negotiate with you. Getting legal advice can also show the landlord that you are serious about preventing eviction. Remember that you will only be able to defend a case successfully if you show you are getting all relevant help if necessary and acting on the advice given. It is also important that when you make an arrangement either with the landlord direct or through the court, that you stick to it!

You can set up a “debt payment plan” through a money adviser for any rent arrears. This will not necessarily stop a landlord asking the court to evict you for rent arrears, but they will not be able to get your wages stopped or possessions seized. Get advice about how to set up a plan.

If you end up in court because of rent arrears there are various defences that you can use. These defences are complicated, so it is important to get legal advice. See the end of the leaflet for information about how to get help and advice.

Possible defences are:

Denying the ground (reason) for the eviction

In rent arrears cases it is comparatively unusual for tenants to deny that rent arrears exist. It may however be possible that the amount claimed (sum sued for) is erroneous because the landlord simply made a mistake when adding up the amount. Sometimes a cheque has been lost or money allocated to the wrong account.

In some situations mistakes with housing benefit may mean the sum sued for is wrong or mistakes with housing benefit may be a “reasonableness defence” - see below.

There are other more complex reasons to argue that rent arrears do not exist. They may be that the landlord owes you money. Get advice on this if you think this may apply to you.

Pre court notices are not valid or have not been served

Arrange for any notices you receive to be checked. Mistakes are quite common, If they are incorrect in any way, this could end or delay the case. You can use any delays to sort things out.

It is not reasonable to evict

You may be able to argue that it is not reasonable for you to be evicted. A common ‘reasonableness’ defence is that you have applied for housing benefit and that delays in processing this are the main reason for the arrears. Another example of a reasonableness defence is that you may be in a debt payment plan or you may be willing to repay the arrears at a reasonable rate. The rent arrears may have built up because of illness or redundancy. You may have young children, and an eviction might mean that the family would be homeless. The core of any reasonableness case is a recognition of the problems combined with a clear commitment to sort them out.

What to do if the court decides you should be evicted

Do not ignore official letters!

Sometimes people ignore all the official letters and find that the court has decided that they should be evicted without them ever appearing in court. If this happens, it is possible to ask for the matter to go back to court. This is called a Minute for Recall of Decree.

Even if you have gone to court, with or without a solicitor, and the court has decided you should be evicted it may still be possible to appeal against the decision.

If either of these things has happened to you, please get legal advice immediately.

Another qualifying occupier (for example husband/wife/partner) can probably ask for a Minute for Recall of Decree and also may be able to appeal against the decision.

Repaying Rent Arrears

The court may decide that you should be evicted and that you should pay the rent arrears. It is always possible to negotiate, even after a court order, but much may depend at this stage on the landlord.

The landlord may try to get your wages stopped or your possessions seized. This sounds very alarming but there are legal limits to what can be taken from you. A portion of your wages and many household items cannot be touched. It is very important to get advice.

What to do if you are evicted, or lose your home

If you have been evicted, or lose your home the council (local authority) may still have to house you, for example under homelessness law.

It is important to get help immediately. You may need help from more than one source. This might include the local authority homelessness section, social work department, or a voluntary agency if for instance you have a disability or mental health problem. Legal advice and assistance can often be helpful. See the end of this leaflet for organisations that can help.

Legal Services Agency publishes a popular leaflet, a booklet as well as a legal text on homelessness law.

Applying for a new home

Even if you have difficulties in getting a home through homelessness rights, remember that you can apply to a local authority and/or registered social landlord through their usual allocation system. A local authority or RSL cannot take into account any outstanding rent arrears if you have arranged a repayment plan with the landlords, have made payments for at least three months and are still making them. See LSA's leaflet on Housing Lists and Allocation.

Sources of Help

Help, advice and sometimes representation in court is available to all tenants from their RSL landlords and local authorities as well as from:

- **Law Centres** (in Glasgow, Dundee, Dumbarton and Paisley for general cases and in Edinburgh for mental health and dementia: see below)
- **Solicitors:** you can get names of local solicitors from The Law Society of Scotland, Client Relations Office, 26 Drumsheugh Gardens, Edinburgh. Tel: 0131 226 7411
- **Shelter Housing Aid Centres** (in Glasgow, Edinburgh and Dundee: though they will cover cases in surrounding areas)
- **Citizens Advice Bureaux** or independent advice centres
- **Glasgow: Legal Services Agency** runs a Wednesday 11.00-12.30 and 2.00-4.00 free drop-in surgery at LSA's Fleming House Glasgow office; an advice service; and a duty solicitor scheme at Glasgow Sheriff Court which deals with evictions. This project provides free representation. In emergency go to meet LSA's lawyers outside the relevant court room half an hour before hand. LSA's advice desk is in place outside each regular eviction court (most Tuesdays). Alternatively phone for an appointment These services provide advice and representation. Phone LSA on 0141 353 3354 or call at 3rd Floor Fleming House, 134 Renfrew Street, Glasgow G3 6ST.
- **Glasgow:** there are a number of community based law centres in Glasgow which may be able to help you depending whether you live in their "catchment" areas. These law centres will generally give you money and benefits advice as well as help defend any eviction action or pursue a homelessness case. Contact Castlemilk

Law Centre, on 0141 634 0313; Govan Law Centre on 0141 440 1687; East End Community Law Centre (Ladywell) on 0141 564 8887 and Drumchapel Law & Money Advice Centre on 0141 944 0507. See the SALC website for further information.

- **Greenock: Legal Services Agency** has an advice service and duty solicitor scheme in Greenock Sheriff Court which deals with evictions. This provides free representation. This links with LSA's Inverclyde Housing Rights Project, Westburn Centre, 175 Dalrymple Street, Greenock, PA15 1JZ, 01475 553 309 which is free to the residents of Inverclyde. Contact LSA on 0141 353 3354 for further information.
- **Paisley: Paisley Law Centre** undertakes advice and representation at Paisley Sheriff Court. Phone: 0141 561 7266.
- **Dumbarton:** contact West Dumbarton Community Law Service on 0141 952 7070.
- **Dundee:** Contact Dundee North Law Centre on 01382 432458 or the local Citizens Advice Bureau or Shelter Housing Aid Centre.
- **There are in-court advice projects in the following sheriff courts:** Aberdeen, Airdrie, Dundee, Edinburgh, Hamilton and Kilmarnock. These advisers will give initial advice and assistance to tenants faced with eviction and will advise as to appropriate referrals for representation. Of course LSA's In-court advice project at Glasgow and Greenock Sheriff Courts also provide representation in defended eviction cases as does Paisley Law Centre at Paisley Sheriff Court.

Remember:
It is very important to get legal help as soon as possible.

Useful websites

Citizens Advice Bureau: www.adviceguide.org.uk

Law Society: www.lawsoc.co.uk

Legal Services Agency Ltd: www.lsa.org.uk

Scottish Association of Law Centres: www.salc.info

Scottish Executive: www.scotland.gov.uk

Shelter: www.shelternet.org.uk

Help with legal costs

You may be eligible for legal aid to ensure that you are legally represented in court. Any solicitor can tell you about claiming this.

About Legal Services Agency (LSA)

LSA is one of Scotland's leading law centres. We undertake a wide range of casework in all courts and tribunals, organise seminars and publish leaflets on many topics. See also www.lsa.org.uk for full details of our work and how we can help you.

We specialise in social welfare law including asylum, landlord and tenant disputes, homelessness, criminal injuries compensation, children's rights, mental health, community care, disability discrimination and dementia.

LSA's Legal work is undertaken by a team of solicitors in the firm of Brown & Co.

Legal Services Agency Glasgow

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Legal Services Agency Greenock

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