



A guide for tenants threatened with eviction

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Threatened with Eviction?

Eviction is always a last resort. We will work with you and your household wherever possible to try and sustain your tenancy and avoid any eviction action. If we do take eviction action, we must be able to prove to the court that it is reasonable and/or proportionate for us to evict you. For example, if you are not paying your rent and will not work with us to pay your rent, or, if you or your household and/or visitors behave antisocially on a regular basis.

This leaflet includes information about the summons from the court, what happens in court, the decisions the court can make and what will happen on the day of eviction.

The legal process

As a landlord, we have to follow specific legal processes to recover our property and evict you and your household. To help you understand the eviction process we have broken it down into the following steps:

- We will either hand deliver or send a 'Notice of Proceedings for Recovery of Possession' to you and anyone living in your house who is over the age of 16 (referred to as qualified occupiers). This is like a final warning, which allows us to apply to the court (after four weeks but within six months of sending you the notice) to evict you.
- We will start legal action against you, and you will be sent a summons. A summons is a letter from the sheriff court to tell you that we have asked for a court order to end your tenancy and evict you and your household.
- The reason for evicting you will be included in the 'notice of proceedings' and in the summons.
- The summons will give you the date when your case will be heard at court.
- Your case will come to court.
- If the court grants us permission to end your tenancy, we will make arrangements to evict you and your household. You will also have to pay our court costs. We will also claim the costs of changing locks and, if necessary, storing your belongings.

What we have to prove

In court, we have to prove to the sheriff that we have:

- acted reasonably in our decision to take you to court and ask to evict you; and/or
- that our decision to request eviction action is proportionate, for example your rights are balanced against the rights of your neighbours and the community around you.

We will ask the court to send you a summons.

If we are taking legal action against you, what you will receive is a document called a 'copy summons'. This is a legal document which says you must appear in court. The summons can be sent by recorded delivery post but may be delivered by a Sheriff Officer. A Sheriff Officer is authorised by the court to deliver the copy to you personally, or leave it with someone in your household or place of business.

What should I do if I receive a summons?

Do not ignore it. If you do nothing, you may be evicted. If you are not sure what to do, you can:

- contact us immediately to see if there is anything you can do to avoid the case going to court. For example, if you owe us money, you may be able to pay this back in full or we may be able to come to an agreement with you about paying the debt off in instalments.
- get independent advice from Moray Citizens Advice Bureau, Shelter Scotland, or a solicitor.



Moray Citizens Advice Bureau
01343 550088



Shelter Scotland
0808 800 4444

You must let the court know in writing why you think you should not be evicted, or why you want the eviction stopped. This is called 'replying to the summons'.

Replying to the summons

If you do not respond to the summons, or do not reply properly, it's likely that the court will grant an order for your eviction.

You will find instructions about how to reply to the summons on the summons itself. You will also find a guide to replying to the summons on the sheriff court website.

What is on the summons?

The summons comes on a special form, which includes the following information:

- your name and address
- your landlord's name and address
- the name and address of your landlord's solicitors
- the claim – why we are taking you to court
- the return date – the date you must reply to the court by if you do not want to be evicted or you want the eviction delayed
- the calling date – the date your case will be heard in court
- the reply section – the section for you to write in if you want to reply to the court



You can find more information on the Scottish Courts website:

www.scotcourts.gov.uk/rules-and-practice/guidance-notes/summary-cause-guidance-notes

The claim

The claim is the section where we ask for a possession order and say why we want it (for example, because you owe us rent or you have behaved antisocially).

Return date

The return date is the date that you should reply to the court by if you do not want to be evicted. If you do not agree with the reasons why we are taking you to court or you do not want to be evicted, you should reply to the court by the return date. If the return date has passed and you have not replied, you will still be able to go to court on the calling date to explain to the sheriff why you shouldn't be evicted.

Calling date

This is the date and time when your case will be heard in court. It's very important that you go to court on this date. If you do not go to court, or someone else does not go on your behalf, the sheriff is more likely to grant an order to evict you.

What decisions can the sheriff make?

The sheriff can do any of the following.

Continue the case

The sheriff may decide not to make a decision at the hearing and arrange another hearing. This is usually to allow time for you to:

- make a payment if you owe us rent;
- make a claim for Housing Benefit and/or Universal Credit and for it to be processed; and
- get more evidence to support your side of the case.

The sheriff will tell you the date of the next hearing.

Dismiss the case

If the sheriff dismisses the case it means that they have decided there is no case to hear. This could be because:

- we have asked for the case to be dismissed, for example if you have paid in full any rent that you owed us; or
- the sheriff has decided that we have not followed the proper procedures to take you to court.

Suspend (sist) the case

If the sheriff suspends your case, they can call you back to court at a later date. This is called 'sist' the case. For example, they may suspend your case to give you time to show:

- that you can keep to a repayment arrangement if you owe us rent; or
- show that certain behaviour has stopped if we have brought you to court because of antisocial behaviour.

If you fail to keep to the arrangement you have made, we can bring your case back to court again.

Short Scottish secure tenancy

If you have a short Scottish secure tenancy (SSST) it is likely that you have had a history of rent arrears, or, someone visiting or residing in your home has been acting in an antisocial manner. The process for ending your SSST is similar and the court can grant a decree for your eviction from the property.

Granting a decree

If the sheriff grants a decree, it means that they have made a decision to grant the eviction order we asked for. This means that they have given us permission to end your legal right to live in our property, evict you and order you to pay the costs of taking you to court. If you do not understand, you can ask the sheriff to explain this to you.

In all of the above situations, if we take legal action, you may have to pay our court costs. This is likely to add over £110 to the amount that you owe us.

What will happen if the court grants a decree?

If the court has granted us a decree, your tenancy will be ended and we can now legally evict you up to six months of the decree being granted. However, you will have 14 days after the decree has been granted to appeal against the court's decision. If you want to appeal against the decision you should get independent legal advice. The legal advisor will be able to judge whether an appeal may be successful as any appeal can only be considered on a point of law.

After the 14 days, the court will grant an extract decree to us which lets us continue with the eviction and the Sheriff Officer will serve a 'Form of Charge for Removing'. This explains that the decree is now being enforced, meaning you must move out. This usually allows 14 days before an eviction will take place. A 'Notice of the date of removal' will be issued to you not less than 48 hours before the eviction. After this, Sheriff Officers can then force entry, change locks and remove you and your belongings from the property.

When the decree is granted, you will no longer have the rights that you previously had under your Scottish secure tenancy. For example, you will no longer have the right of succession or the right to exchange your home.

Will you evict me?

If there has been no change in your circumstances since the court hearing, we will evict you. There may be some situations where we will not evict you. For example, if you owe us rent arrears and you repay all of the money that you owe us in full before the date of eviction, or where there has been antisocial behaviour and we are satisfied that this has now stopped. In these circumstances, we can stop the eviction. There may be circumstances when we will put off the date of your eviction if you are taking action to try to address the problem. If this happens, we will tell you.

If there is no way of preventing your eviction, you should try to find other accommodation. Our [Housing Options Team](#) may be able to help you. If you cannot find other accommodation, you should fill in a homeless application form. In some circumstances, you may be entitled to temporary accommodation. We will treat your enquiry in confidence and give you advice and help.

How will I know if you are going to evict me?

In line with our policy, we will tell you the date we are going to evict you and give you at least four weeks' notice. Our legal team will send you a letter confirming we have been granted the decree and that the eviction will go ahead unless all monies due are paid and/or any antisocial behaviour stops. Once a date has been agreed for the eviction you will get a hand delivered letter from your Area Housing Officer or Manager who will explain the contents of the letter, the date of the eviction and will make sure you understand everything you must do to prepare for the eviction and avoid any further charges. Your tenancy will end on the date of the decree although you will be allowed to stay in the property until the eviction. During the time between the date of decree and the eviction, you will have to pay an amount equivalent to the rental charge.

What should I do before the date of the eviction?

Before you leave the property, you should do the following:

- Pack and remove all your belongings.
- Arrange for transport to move your belongings. We will only store your belongings if you are entitled to temporary accommodation.
- Leave the house in a clean and tidy condition.
- Make sure that all of the members of your household leave with you, including any lodgers or subtenants.
- Take your pets with you.
- Remove any fixtures and fittings you have installed without our written permission and put right any damage you have caused.
- Leave the house and any decor in good repair.
- Carry out any repairs which are your responsibility.
- Give us your new address.
- Tell your phone, gas and electricity suppliers that you are moving.

If you do not do these, we will recharge you for any costs that we have to meet.

What happens on the day of the eviction?

On the day of the eviction, relevant members of the Housing Service will meet the sheriff officer at your property. If you have not already packed your belongings, they will give you reasonable time to do this. If you have not already left the property, the sheriff officers will evict you. They are allowed to use necessary, reasonable force to enter your home and remove:

- you;
- anyone else living in the accommodation; and
- your belongings.

Will you store my belongings?

In most circumstances, we do not have a legal responsibility to store your belongings. We will only store your belongings if we assess you as being homeless or threatened with homelessness and you are entitled to temporary accommodation. In all other cases, we will dispose of anything that you leave in the property.

Can I appeal against an eviction decision?

We have a review process for tenants who are not satisfied with the way that we have dealt with the eviction process. In the first instance, you should ask for an explanation from your Area Housing Manager. If you are not satisfied, you should write to the Housing Services Manager (at the following address) and they will review your case.



Housing Services Manager
Council Offices
High Street
Elgin
IV30 1BX

Information hubs and advice agencies

The following all provide a free and confidential service.

Moray Council Housing Options Team



Housing Options Team
Council Offices, High Street
Elgin, IV30 1BX



by email:
housing.options@moray.gov.uk



by phone:
0300 123 4566 [Monday to Friday 08:45am till 5pm]
03457 56 56 56 [Emergency Out of Hours]

Moray Council Money Advice Service



by email:
money.advice@moray.gov.uk



by phone, to make an appointment with a Money Advisor:
0300 123 4561

Moray Citizens Advice Bureau



6 Moss Street
Elgin, IV30 1LU



by email:
bureau@moraycab.casonline.org.uk



by phone:
01343 550088
01343 559004 [Emergency appointments Monday and Friday afternoons]

Shelter Scotland



by phone:

0808 800 4444



website:

<https://scotland.shelter.org.uk>

Information hubs

Please note: information hubs are for general enquiries about Council services. You can also access online services, free phone the contact centre, get help filling in council forms, and drop off forms or evidence. Information hubs can be found in any library. You can find the opening times for individual libraries on our website



Moray Council Library Service:

<http://www.moray.gov.uk/library>

Your Notes



We review our leaflets regularly to make sure you have the most up-to-date information. However, the content of this leaflet is only correct at the time it is published.