



Keeping Your Home Information for social tenants

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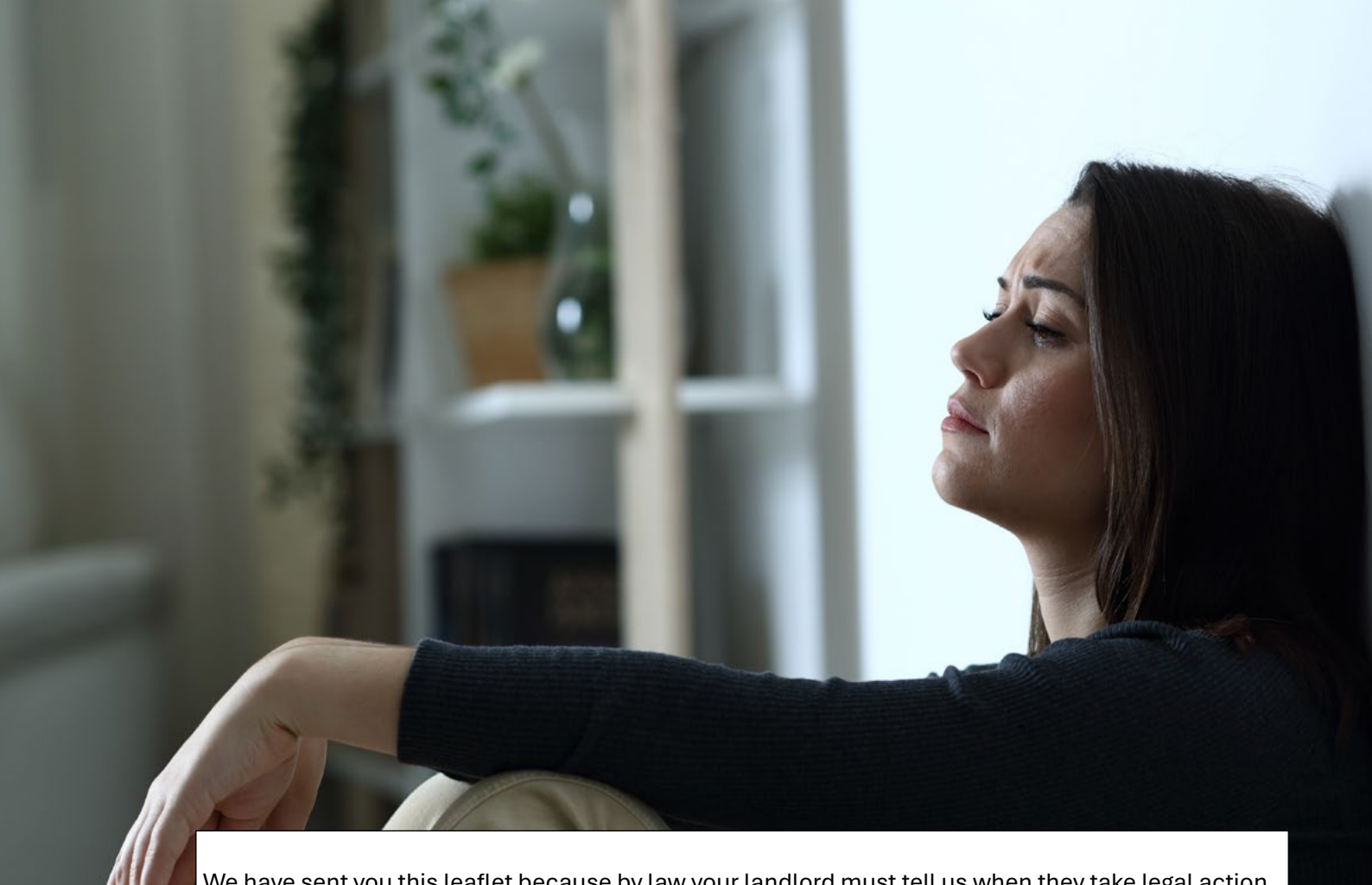
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✉️ **Moray Council**, High Street Elgin, IV30 1BX

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We have sent you this leaflet because by law your landlord must tell us when they take legal action to repossess your house. Your home is at risk. We want to help you keep your home. The quicker you act, the more likely you are to keep your home and avoid becoming homeless.

This leaflet explains what you need to do and where you can get free information and confidential advice.

Whatever you decide, please do something and **act now**. If you ignore legal papers, your landlord can get a judgement against you. This may mean that you lose your home and become homeless.



Act now

The possibility of becoming homeless often makes people feel anxious, frightened, depressed and unable to cope. You may feel that your world is crashing in on you. Remember, everyone facing homelessness feels like that. The first step is asking for help.

You can get free legal and money advice to help you access your rights, take control of your life, and save your home. This leaflet tells you what you can do to prevent homelessness and where you can get free legal advice and assistance and support for any other problems you might have.

Types of tenancies and eviction

Landlords must follow specific legal procedures to evict tenants. You can only be evicted once your landlord has an order for possession (eviction order) from the sheriff court. Whether you can be evicted and how, depends on the type of tenancy agreement you have. If you are the tenant of a social landlord, you will either have a Scottish secure tenancy (SST), or a short Scottish secure tenancy (SSST). If you are not sure, you can ask your landlord or check with an advisor.

Short Scottish secure tenancies

If you have a short Scottish secure tenancy (SSST), your landlord can ask for an order for possession when your tenancy runs out without having to provide a good reason. They can only do this if they have brought your tenancy to an end and have given prior written notice that they want the property back once the tenancy has come to an end. To legally end your tenancy, they must have served you with a valid 'notice to quit'.

If your landlord does this correctly, the court may grant an order for possession.

Scottish secure tenancies

If you have a Scottish secure tenancy and your landlord is trying to evict you, they will have to get a court order. In all eviction actions against Scottish secure tenants the court must decide on at least 1 of 15 grounds for eviction. Eviction is not automatic and, in most cases, the court must be satisfied whether it is reasonable to grant an order for possession. Some of the reasons are:

- The level and circumstances of any rent arrears
- An illegal act or criminal offence
- Damaging or neglecting the property or furniture (if provided)
- You are not living in the property as your main home
- You gave false information on your housing application
- If you or someone living with you, has caused alarm, distress, nuisance or annoyance to the people around you by being noisy, destructive or verbally abusive, or by failing to control pets. The behaviour need not have happened in your home but could have happened in your neighbourhood.
- Overcrowding in your home

What is the eviction process?

The eviction process is:

- Your landlord will send a 'notice of proceedings' to you and anyone living in your house who is over the age of 16. This is like a final warning, which allows them to apply to court, within six months of sending you the notice, to evict you. It will have reasons why the landlord wants you evicted.
- Your landlord will start legal action against you, and you will be sent a summons. Further information about a summons is on page 9.
- Your case will come to court.
- If the court grants your landlord permission to end your tenancy, they will evict you and your household. You may also have to pay your landlords court costs.

What rights do I have if my landlord takes court action?

You have the right to defend yourself against eviction. It is important to make sure that you have a solicitor or advisor to represent you in court.

Will I definitely need a solicitor?

You should have a solicitor to speak for you although you can have a lay representative instead. You can access one through the agencies listed at the end of this leaflet. You will need to meet with a solicitor or advisor prior to your case calling in court, so remember to bring the following paperwork with you:

- The court papers served on you;
- Proof of your income; and
- Letters from your landlord or Sheriff Officers

Can I get help to cover the cost of a solicitor or lay representative?

A lay representative is not allowed to charge but they are not a solicitor. If you have a low income or savings, you may get free or cheap legal advice and help. You might be entitled to civil legal aid or advice and assistance which can pay for whatever needs to be done to defend you. For more information contact the Civil Legal Advice Office (Highlands and Islands), which covers the Moray area. Their contact details are at the end of this leaflet.

How will I know my landlord is taking court action to evict me and repossess my home?

If your landlord is taking court action against you to evict you and recover your home, you will get court papers. These are called a 'summons'.

What is on the summons?

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

- Your name and address
- Your landlords name and address
- The name and address of your landlords' solicitors
- The claim: why your landlord is 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 'responding to a summons' at the Scottish Courts website:

www.scotcourts.gov.uk

What should I do if I get a summons?

Do not ignore it! If you don't do anything, you may be evicted.

Replying to the summons

If you are not sure of what to do, you can ask for independent advice on your legal rights from one of the advice agencies listed at the end of this leaflet. 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. This may also happen if you don't go to court on the calling date.

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 at www.scotcourts.gov.uk.

The claim

The claim is the section where your landlord will ask for an order for possession and say why they want it (for example, because you owe them rent or you or someone living with you has 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 for your landlord 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 (The sheriff will tell you the date of the next hearing at the end of this hearing). This is usual to allow time for you to:

- Make a payment (or for a cheque to clear if you owe rent)
- Make a claim for Universal Credit or Housing Benefit and for it to be processed, and:
- Get more evidence to support your side of the case.

OR

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:

- Your landlord has asked for the case to be dismissed, for example if you have paid in full any rent that you owe: or
- The sheriff has decided that your landlord has not followed the proper procedures to take you to court.

OR

Suspend (sist) the case

If the sheriff suspends your case, they can call you back to court at a later date. This is called 'sisting' 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 rent: or
- Show continuous good behaviour if your landlord has taken you to court because of antisocial behaviour.
- If you do not keep to the arrangement you have made, your landlord can bring your case back to court.

OR

Grant a decree

If the sheriff grants a decree, it means that they have decided to grant the order your landlord asked for. This means that they have given your landlord permission to end your legal right to live in the property and 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.



What will happen if the court grants a decree?

If the court grants a decree, your landlord can legally evict you. However, you will have 14 days to appeal against the court's decision after the decree has been granted. If you want to appeal against the decision, you should get independent legal advice.

Your tenancy will end on the date on the decree. You no longer have a legal right to live in the property. 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.

What should I do if my landlord is taking court action against me because of rent arrears?

You will have to pay your rent and repay arrears. Start paying your rent and as much as you can realistically afford to the arrears until you get independent advice on a repayment plan.

The court will make the final decision if a repayment plan is reasonable or not. If the sheriff agrees your payment plan this will stop your landlord from getting an order for possession. When you have paid all the rent arrears you can ask for the case against you to be dismissed.

Can I get any financial help?

If your wages are low or you get benefits you might get help to pay your rent. It could be part of a payment of Universal Credit or under some circumstances, it could be Housing Benefit. The amount of money you will get depends on your financial and personal circumstances.

The most important thing to remember is that you need to claim as soon as possible. If you have delayed applying, you might still be able to get it backdated so you don't lose out if you have a good reason for the delay (known as good cause). For example, you could not apply straight away as you were ill or waiting on the outcome of another benefit claim. Your solicitor or advisor can help you with this.

If you are already getting benefits but it doesn't cover all of your rent this might be because an overpayment of housing benefit is being deducted. It's worth checking with your advisor whether this could be challenged.

Or, it might be worth applying to the Council for a discretionary payment to help with housing costs. If successful, this could result in a small one-off payment or a regular payment that could help reduce your rent arrears.

Importantly, it's up to you to make a claim. You can get free help to do so from one of the agencies, such as Moray Citizens Advice Bureau, listed at the end of this leaflet.

Can you increase your regular weekly income or get a one-off extra sum of money?

This could help pay your rent arrears. The checklist below has some suggestions. Remember there could be other possibilities and you can discuss all of these with one of the agencies listed at the end of this leaflet.

- Are you receiving all the welfare benefits, or the correct levels of welfare benefits, you are entitled to?
- Do you have any insurance policies you might be able to claim on? For example, payment protection insurance, or loss of earnings insurance?
- If you are not working, can you or your partner get a part-time job? Support might be available to help you re-train for work and develop new skills.
- If you have children and are separated, are you getting all the maintenance you are entitled to?
- Are you paying too much tax? (including income tax and council tax).
- Do you own anything you could sell to raise some cash? (don't sell something you owe money on).
- If you have a spare room, can you take in a lodger? (ask your landlord for permission first).
- Have you had credit card or bank charges added to your account(s)? Your advisor might be able to reclaim these.
- If you are a student, can you get a larger student loan or an emergency payment?

Can you find ways of spending less money?

You could put any money saved towards your rent and arrears. The checklist below contains some examples:

- If you are repaying other debts and bills it might be possible to agree a lower repayment to free up some money to put towards your rent arrears. If you don't pay your rent or arrears, you could be evicted, so this needs to be treated as a priority debt.
- Are you struggling to pay the interest and charges added to other debts? Your advisor might be able to get the interest delayed or frozen and charges stopped.
- Can you refinance and get a cheaper rate of interest on loan(s)?
- Can you save some money by spending less on entertainment?
- Are you buying anything on credit that you could return?
- Can you cut back on non-essential items?
- Have you got the cheapest tariff for your mobile phone, landline phone, gas, electricity, internet or insurances? It might be worth shopping around for better deals.

What should I do if a date for eviction is set?

Once your home has been repossessed it will be too late to do anything about this but, even if an order for possession (decree) has been agreed it might still be possible to save your home before the locks are changed.

A solicitor or advisor could lodge a minute for recall of decree. Once this is lodged at the sheriff court and served on your landlord it cancels the eviction until the case is reconsidered by the court.

You will not be able to apply for a minute for recall of decree if you have already defended the case or previously applied for a minute for recall of decree in the same case.

Do I have any other housing options?

Yes. If you cannot save your home or become homeless, the Council has a duty to provide you with temporary accommodation and possibly permanent accommodation. Our Housing Options Team can give more information and help. You can also get independent advice on your legal rights from one of the advice agencies at the end of this leaflet.

Advice agencies that can help you

Money Advice Service

Moray Council Offices, High Street,
Elgin, IV30 1BX

@ moneyadvice@moray.gov.uk

☎ 0300 123 4561

🌐 www.moray.gov.uk

Moray Council

Housing and Property, PO Box 6760,
Elgin, IV30 1BX

@ housing@moray.gov.uk

☎ 0300 123 4566

🌐 www.moray.gov.uk

Moray Citizens Advice Bureau

6 Moss Street, Elgin, IV30 1LU

@ bureau@moraycab.casonline.org.uk

☎ 01343 550088

🌐 www.moraycab.org.uk

Civil Legal Advice Office

2 Castle Wynd, Inverness, IV2 3EB

@ inverness@clao.org.uk

☎ 01463 641770

🌐 www.clao.org.uk

Legal Aid Helpline

☎ 0131 240 1960

SHELTER

4th floor, Scotiabank House, 6 South Charlotte
Street, Edinburgh, EH2 4AW

☎ 0808 800 4444 (Free from landlines and
mobile)

🌐 www.shelter.org.uk

Scottish Legal Aid Board

Thistle House, 91 Haymarket Terrace,
Edinburgh, EH12 5HE

@ general@slab.org.uk


☎ 0131 226 7061

🌐 www.slab.org.uk

If your lender wants to evict you, get advice immediately. If you ignore court papers your lender can get a judgement against you automatically and you may lose your home.

For more information about housing options in Moray:

 www.moray.gov.uk/HousingOptionsGuide

 0300 123 4566



We try to review our leaflets regularly to make sure you have the most up-to-date information; however, the contents of this leaflet are only correct at the time the leaflet is published.

For more information or advice contact us on 0300 123 4566 or visit our website at www.moray.gov.uk.