



Rent (Scotland) Act 1984

1984 CHAPTER 58

PART II

SECURITY OF TENURE

11 Grounds for possession of certain dwelling-houses

- (1) Subject to the following provisions of this Part of this Act, a court shall not make an order for possession of a dwelling-house which is for the time being let on a protected tenancy or subject to a statutory tenancy unless the court considers it reasonable to make such an order and either—
 - (a) the court is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order in question takes effect, or
 - (b) the circumstances are as specified in any of the Cases in Part I of Schedule 2 to this Act.
- (2) If, apart from the provisions of subsection (1) above, the landlord would be entitled to recover possession of a dwelling-house which is for the time being let on or subject to a regulated tenancy, the court shall make an order for possession if the circumstances of the case are as specified in any of the Cases in Part II of Schedule 2 to this Act.
- (3) The provisions of Part III of Schedule 2 to this Act shall have effect in relation to Case 8 in that Schedule and for determining the relevant date for the purposes of the Cases in Part II of that Schedule.
- (4) The provisions of Part IV of Schedule 2 to this Act shall have effect for determining whether, for the purposes of subsection (1)(a) above, suitable alternative accommodation is or will be available for a tenant.

12 Extended discretion of court in claims for possession of certain dwelling-houses

- (1) Subject to subsection (5) below, a court may adjourn, for such period or periods as it thinks fit, proceedings for possession of a dwelling-house which is let on a protected tenancy or subject to a statutory tenancy.

Status: This is the original version (as it was originally enacted).

- (2) On the making of an order for possession of such a dwelling-house, or at any time before the execution of such an order (whether made before or after the commencement of this Act), the court, subject to subsection (5) below, may—
 - (a) sist or suspend execution of the order, or
 - (b) postpone the date of possession,for such period or periods as the court thinks fit.
- (3) Any such adjournment as is referred to in subsection (1) above and any such sist, suspension or postponement as is referred to in subsection (2) above may be made subject to such conditions with regard to payment by the tenant of arrears of rent, rent or compensation to the owner for loss of possession and otherwise as the court thinks fit.
- (4) If any such conditions as are referred to in subsection (3) above are complied with, the court may, if it thinks fit, discharge or rescind any such order as is referred to in subsection (2) above.
- (5) The preceding provisions of this section shall not apply if the circumstances are as specified in any of the Cases in Part II of Schedule 2 to this Act.

13 Effect of tenancy being short tenancy

- (1) At the expiry of the period of a short tenancy as specified in the tenancy agreement, the landlord shall, subject to section 14 below, be entitled to recover possession of the dwelling-house.
- (2) The tenant under a short tenancy may terminate it by giving to the landlord—
 - (a) where the period of the tenancy specified in the tenancy agreement is two years or less, one month's notice ;
 - (b) in any other case, three months' notice.
- (3) Notwithstanding anything contained in any enactment or rule of law, but subject to subsection (5) below, a landlord under a short tenancy who becomes entitled to recover possession of the dwelling-house which is the subject of the short tenancy shall be entitled to enforce his right to recover possession against any assignee or sub-tenant or against any statutory tenant who has succeeded to the tenancy.
- (4) Notwithstanding anything contained in the tenancy agreement, a tenant under a short tenancy shall not be liable to pay to the landlord on termination of the tenancy any sum greater than the outstanding rent (if any) together with any sum due by the tenant to the landlord in respect of damage to the dwelling-house or its contents or in respect of any household accounts incurred by the tenant for which the landlord is or has become responsible.
- (5)
 - (a) Where a short tenancy is terminated by the death of the tenant before the expiry of the period specified in the tenancy agreement any statutory tenant by succession within the meaning of Schedule 1 to this Act shall be entitled to retain possession of the premises until the expiry of that period only.
 - (b) Where a short tenancy is terminated for any reason before the expiry of the period specified in the tenancy agreement, any subtenant of the dwelling-house shall be entitled to retain possession of the premises until the expiry of that period only.

- (6) For the purposes of subsection (5) above " subtenant" means any person deriving title from the original tenant or from a subtenant, provided that his title has not been granted in contravention of the tenancy agreement.

14 Conditions applying to landlord's right to recovery of possession

- (1) A landlord under a short tenancy who seeks recovery of possession of the dwelling-house on or after termination of the tenancy, subject to subsection (2) below, may recover possession of the dwelling-house in accordance with Case 15 of Schedule 2 to this Act.
- (2) A landlord who at any time seeks an order under the said Case 15 shall, either before or not later than three months after the expiry of the period specified in the tenancy agreement, or, in a case to which subsection (3) below applies, not later than three months after the expiry of any period of 12 months for which the tenancy is continued under that subsection, serve on the tenant a notice in writing of his intention to apply for the order, and the relative application shall be made not less than three nor more than six months after service of the said notice.
- (3) Where a landlord fails timeously to serve a notice in compliance with subsection (2) above, the tenancy shall be continued as a short tenancy for a period of 12 months beginning with the expiry of the period specified in the tenancy agreement or with the expiry of any period of 12 months for which the tenancy is continued under this subsection.

15 Terms and conditions of statutory tenancies

- (1) So long as he retains possession, a statutory tenant of a dwelling-house shall observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as they are consistent with the provisions of this Act.
- (2) It shall be a condition of a statutory tenancy of a dwelling-house that the statutory tenant shall afford to the landlord access to the dwelling-house and all reasonable facilities for executing therein any repairs which the landlord is entitled to execute.
- (3) A statutory tenant of a dwelling-house shall be entitled to give up possession of the dwelling-house if, and only if, he gives such notice as would have been required under the provisions of the original contract of tenancy, or, if no notice would have been so required, on giving not less than three months' notice.
- (4) Nothing in subsection (3) above shall be construed as affecting section 112 below (under which at least four weeks' notice to quit is required in respect of premises used as a dwelling-house).
- (5) Notwithstanding anything in the contract of tenancy, a landlord who obtains an order for possession of a dwelling-house as against a statutory tenant shall not be required to give to the statutory tenant any notice to quit.

16 Payments demanded by statutory tenants as a condition of giving up possession

- (1) A statutory tenant of a dwelling-house who, as a condition of giving up possession of the dwelling-house, asks or receives the payment of any sum, or the giving of any other consideration, by any person other than the landlord, shall be guilty of an offence.

Status: This is the original version (as it was originally enacted).

- (2) Where a statutory tenant of a dwelling-house requires that furniture or other articles shall be purchased as a condition of his giving up possession of the dwelling-house, the price demanded shall, at the request of the person on whom the demand is made, be stated in writing, and if the price exceeds the reasonable price of the articles the excess shall be treated, for the purposes of subsection (1) above, as a sum asked to be paid as a condition of giving up possession.
- (3) A person guilty of an offence under this section shall be liable to a fine not exceeding level 3 on the standard scale.
- (4) The court by which a person is convicted of an offence under this section may order the payment—
 - (a) to the person who made any such payment, or gave any such consideration, as is referred to in subsection (1) above, of the amount of that payment or the value of that consideration, or
 - (b) to the person who paid any such price as is referred to in subsection (2) above, of the amount by which the price paid exceeds the reasonable price.

17 Change of statutory tenant by agreement

- (1) Where it is so agreed in writing between a statutory tenant (in this section referred to as " the outgoing tenant") and a person proposing to occupy the dwelling-house (in this section referred to as " the incoming tenant"), the incoming tenant shall, subject to the following provisions of this section, be deemed to be the statutory tenant of the dwelling-house as from such date as may be specified in the agreement (in this section referred to as " the transfer date ").
- (2) Such an agreement as is referred to in subsection (1) above shall not have effect unless the landlord is a party thereto, and, if the consent of any superior landlord would have been required to an assignation of the previous contractual tenancy, the agreement shall not have effect unless the superior landlord is a party thereto.
- (3) If the outgoing tenant is the statutory tenant by virtue of his previous protected tenancy, then, subject to subsection (6) below, the provisions of this Act shall have effect, on and after the transfer date, as if the incoming tenant had been a protected tenant and had become the statutory tenant by virtue of his previous protected tenancy.
- (4) Subject to subsections (5) and (6) below, if the outgoing tenant is a statutory tenant by succession, then, on and after the transfer date,—
 - (a) the provisions of this Act shall have effect as if the incoming tenant were a statutory tenant by succession, and
 - (b) the incoming tenant shall be deemed to have become a statutory tenant by virtue of that paragraph of Schedule 1 to this Act by virtue of which the outgoing tenant became (or is deemed to have become) a statutory tenant.
- (5) If the outgoing tenant is a statutory tenant by succession, the agreement referred to in subsection (1) above may provide that, notwithstanding anything in subsection (4) above, on and after the transfer date, the provisions of this Act shall have effect, subject to subsection (6) below, as if the incoming tenant had been a protected tenant and had become the statutory tenant by virtue of his previous protected tenancy.
- (6) Unless the incoming tenant is deemed, by virtue of subsection (4)(b) above, to have become a statutory tenant by virtue of paragraph 6 or 7 of Schedule 1 to this Act,

paragraphs 5 to 7 of that Schedule shall not apply where a person has become a statutory tenant by virtue of this section.

- (7) In this section " the dwelling-house " means the aggregate of the premises comprised in the statutory tenancy of the outgoing tenant.

18 No pecuniary consideration to be required on change of tenant under s. 17

- (1) Any person who requires the payment of any pecuniary consideration for entering into such an agreement as is referred to in section 17(1) above shall be liable to a fine not exceeding level 3 on the standard scale.
- (2) The court by which a person is convicted of an offence under subsection (1) above may order the amount of the payment to be repaid by the person to whom it was paid.
- (3) Without prejudice to subsection (2) above, the amount of any such payment as is referred to in subsection (1) above shall be recoverable by the person by whom it was made either by proceedings for its recovery or, if it was made to the landlord by a person liable to pay rent to the landlord, by deduction from any rent so payable.
- (4) Notwithstanding anything in subsection (1) above, if apart from this section he would be entitled to do so, the outgoing tenant may require the payment by the incoming tenant—
- (a) of so much of any outgoings discharged by the outgoing tenant as is referable to any period after the transfer date;
 - (b) of a sum not exceeding the amount of any expenditure reasonably incurred by the outgoing tenant in carrying out any structural alteration of the dwelling-house or in providing or improving fixtures therein, being fixtures which, as against the landlord, the outgoing tenant is not entitled to remove;
 - (c) where the outgoing tenant became a tenant of the dwelling-house by virtue of an assignation of the previous protected tenancy, of a sum not exceeding any reasonable amount paid by him to his assignor in respect of expenditure incurred by the assignor, or by any previous assignor of the tenancy, in carrying out any such alteration or in providing or improving any such fixtures as are mentioned in paragraph (b) above; or
 - (d) where part of the dwelling-house is used as a shop or office, or for business, trade or professional purposes, of a reasonable amount in respect of any goodwill of the business, trade or profession, being goodwill transferred to the incoming tenant in connection with his becoming a statutory tenant of the dwelling-house or accruing to him in consequence thereof.
- (5) In this section "outgoing tenant", "incoming tenant", " the transfer date " and " the dwelling-house " have the same meanings as in section 17 above.

19 Effect on sub-tenancies of determination of tenancy

- (1) If a court makes an order for possession of a dwelling-house from a tenant and the order is made by virtue of paragraph (a) or paragraph (b) of section 11(1) above, nothing in the order shall affect the right of any sub-tenant to whom the dwelling-house or any part of it has been lawfully sublet before the commencement of the proceedings to retain possession by virtue of this Part of this Act, nor shall the order operate to give a right to possession as against any such sub-tenant.

Status: This is the original version (as it was originally enacted).

- (2) Where a protected or statutory tenancy of a dwelling-house is determined, either as a result of an order for possession or for any other reason (apart from a determination by virtue of section 5 above), any sub-tenant to whom the dwelling-house or any part of it has been lawfully sublet shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenant's protected or statutory tenancy had continued.
- (3) A tenancy at a low rent which, had it not been a tenancy at a low rent, would have been a protected tenancy of a dwelling-house shall be treated for the purposes of subsection (2) above as a protected tenancy.

20 Effect on furnished sub-tenancy of determination of superior unfurnished tenancy

- (1) If, in a case where section 19(2) above applies, the relevant conditions are fulfilled, the terms on which the subtenant is, by virtue of that subsection, deemed to become the tenant of the landlord shall not include any terms as to the provision by the landlord of furniture or services.
- (2) The relevant conditions referred to in subsection (1) above are—
 - (a) that the tenancy or statutory tenancy which is determined as mentioned in the said section 19(2) was neither a protected furnished tenancy nor a statutory furnished tenancy;
 - (b) that, immediately before the determination of that tenancy or statutory tenancy, the sub-tenant referred to in that section was the tenant under a protected furnished tenancy or a statutory furnished tenancy; and
 - (c) that the landlord, within the period of six weeks beginning with the day on which the tenancy or statutory tenancy referred to in that section is determined, serves notice on the sub-tenant that this section is to apply to his tenancy or statutory tenancy.
- (3) In this section, " services " has the same meaning as in section 81(1) below.

21 Compensation for misrepresentation or concealment in Cases 7 and 8

Where, in such circumstances as are specified in Case 7 or Case 8 in Schedule 2 to this Act, a landlord obtains an order for possession of a dwelling-house let on a protected tenancy or subject to a statutory tenancy and it is subsequently made to appear to the court that the order was obtained by misrepresentation or concealment of material facts, the court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as a result of the order.