

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### Landlord's Application for Assistance to The First-tier Tribunal for Scotland (Housing and Property Chamber)

This guidance has been prepared by the Housing and Property Chamber for the assistance of landlords and tenants wishing to know more about the Housing and Property Chamber application process. This guidance is not, and is not meant to be, a comprehensive description of all aspects of the Housing (Scotland) Act 2006, and the subsequent amendments, in relation to exercising right of entry to a rented property. The First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2016 ("the 2016 Regulations") gives further details about the process.

## BACKGROUND

### Where can I get advice?

Please note that staff in the Scottish Courts and Tribunals Service cannot give you legal advice on your situation, although they can explain and help you to understand the Tribunal procedure that an application will follow.

If you wish legal advice that is available from a solicitor, and a list of solicitors is available on the Law Society of Scotland website. Legal Advice relating to housing issues may also be available from Shelter, Citizens Advice Scotland, or a University Law Clinic. Citizen's Advice Scotland also provide advice relating to benefits, debt and money matters. The websites for these and other organisations are available on our website, and some have been copied below:

[Law Society of Scotland: http://www.lawscot.org.uk/](http://www.lawscot.org.uk/)

[Shelter Scotland: http://scotland.shelter.org.uk/](http://scotland.shelter.org.uk/)

[Citizens Advice Scotland: http://www.cas.org.uk/](http://www.cas.org.uk/)

### What rights does a landlord have to enter a rented property?

In the Housing (Scotland) Act 2006 ("the 2006 Act"), the landlord of a tenancy to which the repairing standard applies, or any person authorised by the landlord, is given rights to enter the tenanted property for the purpose of—

(a) viewing its state and condition for the purpose of determining whether the house meets the repairing standard, or,

(b) carrying out any work necessary to comply with the repairing standard duty or a repairing standard enforcement order.

### What additional rights has a landlord been given?

The Private Rented Housing (Scotland) Act 2011 amended the 2006 Act to give the landlord an avenue to apply to the Housing and Property Chamber for assistance in exercising his right of entry if he is unable to gain access to the property. The Housing

and Property Chamber can assist in arranging a suitable date for access and where required fix a date and time for access if a tenant and landlord cannot agree a date.

### **What types of landlord are excluded from making right of entry applications?**

An application cannot be accepted where the landlord is:-

a local authority

a registered social landlord (such as a Housing Association), or

Scottish Water

### **In what types of tenancy is the landlord excluded from making right of entry applications?**

Properties which are held under an occupancy arrangement are excluded.

Tenancies excluded from the repairing standard are also excluded, such as:-

a Scottish secure tenancy or a short Scottish secure tenancy. (These tenancies are different from a Short Assured Tenancy. If a tenant has a Short Assured Tenancy, then an application may be made);

a tenancy of a house retained or purchased by a local authority for use as housing accommodation as an alternative to demolition;

an agricultural tenancy

**definition:** "a tenancy of a house which is—

(i) on land comprised in a lease constituting—

(A) a 1991 Act tenancy (within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11)).

(B) a short limited duration tenancy (within the meaning of that Act), or

(C) a limited duration tenancy (within the meaning of that Act), and

(ii) occupied by the tenant of the relevant lease"

or a registered croft

**definition:** "a tenancy of a house on a croft (within the meaning of the Crofters(Scotland) Act 1993 (c. 44))"

a tenancy of a house on holdings to which the Small Landholders (Scotland) Acts 1886 to 1931 apply.

### **Is there a cost for this service?**

Applying to Housing and Property Chamber is free of charge and landlords and tenants cannot be held liable for expenses incurred by the other party during the proceedings before the Housing and Property Chamber.

Decisions made by the Chamber member on applications for assistance with exercising right of access are final and cannot be appealed.

## **CASE PROCESS**

### **Who can make an application?**

Only a qualifying landlord or landlords (if more than one) can apply, or a representative on their behalf. A landlord must also be registered or have an application for registration pending (in accordance with section 83 of the Antisocial Behaviour etc. (Scotland) Act 2004) which has not been determined. The landlord should generally be the owner or owners of the house. If landlords jointly own the property then names of all landlords and their relevant registration numbers should be stated on the application form.

### **What action must the landlord take prior to making an application?**

In every case, the landlord, or landlord's representative, must notify the tenant that access to the property is required, and they must state the reason for which access is required. This is because the landlord will need to attach to the application a copy of the notification sent to the tenant requesting access, and any subsequent correspondence relating to the notification.

### **What could be used as evidence of notification of an access request?**

It is best to e-mail or send a letter by recorded delivery post to the tenant and/or their representative, and keep a copy of the letter sent (landlords can download a sample letter from the Housing and Property Chamber website or obtain a copy from the Housing and Property Chamber).

The tenant must receive at least 24 hours written notice of the access request. The notification **must** set out for what reason access to the property is required, whether it is (a) for viewing its state and condition for the purpose of determining whether the house meets the repairing standard;  
(b) carrying out any work necessary to comply with the repairing standard duty or a repairing standard enforcement order; or both.

It is important to carry out this notification requirement as it is only then that an application can be treated as valid and referred to a Chamber member for a decision.

If the request for access is to complete works it should detail the work the landlord intends to carry out so that the tenant is advised of this and can make appropriate arrangements.

### **Is there a specific form the application must take?**

There is an application form which is available from our website or by contacting our office. The application form guides landlords through the information required. It is important to provide all the information asked for in the application form as this information is required to form a valid application.

In addition to completing all sections of the application form, in order for the application to be valid it must contain the following:

1. A copy of the **lease, or tenancy agreement**, if available. Otherwise as much information about the tenancy as possible so that we can ensure that the tenancy comes within our jurisdiction. A landlord is responsible for issuing a written tenancy agreement at no charge to the tenant (Housing (Scotland) Act 1988 section 30) and the landlord making an application may be asked to provide further information if there is no tenancy agreement.
2. A copy of the notification to the tenant requesting access, and any subsequent correspondence relating to the notification

A landlord may be asked to send further notification to the tenant if evidence of the tenant's receipt of the notification is unclear.

### **What happens to any original documents submitted by a party?**

All documentation sent to Housing and Property Chamber in these applications will be returned normal post to the sender after it has been added to the electronic case management system, as we do not keep paper copies of the submissions. Please therefore do not send originals of any documentation (for example tenancy agreements) unless you are happy for us to return them by normal post.

### **Can the Chamber member reject an application?**

The Chamber member has to decide whether to assist the landlord or reject the application. A valid application will only be rejected if:

the Chamber member considers that the application is frivolous or vexatious;

the dispute to which the application relates has been resolved or the landlord has been able to enter the house for the purpose specified in the application;

the Chamber member has good reason to believe that it would not be appropriate to assist either the landlord or any person the landlord intends to authorise to enter the house, or both, to gain entry to the house;

the Chamber member considers that the application is being made for a purpose other than a purpose specified in section 181(4) of the Act; or

the landlord has previously made an identical or substantially similar application in relation to the same house and in the Chamber member's opinion there has been no significant change in any material considerations since the identical or substantially similar application was determined.

If an incomplete application without the proper evidence is received, and the applicant does not respond to requests to provide the information, then the Chamber member may assume the dispute is resolved and consequently reject the application. Alternatively, if the application is not valid, it can be rejected on "frivolous" grounds as it does not meet the legal test of an application.

### **What happens if the Chamber member decides to assist the landlord?**

The Chamber member will notify the administration of the decision, and Housing and Property Chamber will send a notice to the tenant and to the landlord, asking them to

confirm suitable dates and times when they will be available for access to be exercised. The tenant also has the chance to comment on the application by the landlord.

**Does a tenant have a right to respond to the landlord's application before access is arranged?**

Yes, the tenant is entitled to make representations to the Chamber member as to why it is **inappropriate** or **unnecessary** for the landlord to exercise the landlord's right of entry under section 181(4) at that time. Any such representation will be considered by the Chamber member who may continue to arrange access, stop assisting the landlord, or seek further information from the parties either by written communication or by telephone conference call.

**Can any dispute relating to access be resolved informally through Housing and Property Chamber?**

The Chamber member can attempt to agree a suitable date for access with both parties by way of hosting a conference call between the parties, and only if this is not successful would the Chamber member need to formally fix a date and time for access without having an agreed arrangement between the landlord and tenant.

**What does a telephone conference call involve?**

In cases where the written responses from the parties do not give mutually suitable dates, or where the tenant has indicated in writing that the landlord's application is inappropriate or unnecessary, the Chamber member may arrange a conference call. The conference call would be held at a scheduled time and parties would be given a telephone number to dial and a unique code to enter to join the call at the scheduled time. The Chamber member would act as the Chairperson of the conference call and would explain the reason for the call, what is expected of the parties and how the call will be conducted.

After the call the Chamber member will inform the administration of the outcome, which could be that a date for access has been agreed or fixed, or that they will be stopping assistance.

**A date for access has been arranged, what happens next?**

The Housing and Property Chamber will write to the parties to confirm the date and time for access and the letter will contain information on what can happen if access is not granted. At the request of either party the Chamber member, or a person authorised by the Chamber member, may observe that access has been provided. Otherwise the administration would contact the parties after the scheduled access time to confirm if access was provided and also to confirm that the purpose for which the access was required has been fulfilled.

**Can the landlord authorise a person to enter the house on the date arranged (for example a contractor to assess the work required or carry out repairs)?**

Yes, the landlord is entitled to specify the name and address of a person they intend to authorise to enter the house, and there is a space for this information on the application

form. The tenant would therefore be informed of this when they receive a copy of the application after the Chamber member has made their decision to assist the landlord.

**What happens if the Chamber member feels the person the landlord intends to authorise is unsuitable?**

The Chamber member has to consider the suitability of the person the landlord has indicated they intend to authorise to enter the house. If the Chamber member does not consider the named person to be suitable, then the landlord may be allowed to amend the application in this regard. Any change to the named person would be notified to the tenant.

**What happens at the scheduled time for access?**

At the arranged time, the landlord (or any named person previously notified) will arrive at the property and request access from the tenant. Identification may be requested by the tenant and the parties attending must provide this on request. They will carry out the inspection or works notified in their application and then leave. If the Chamber member is there they will only observe that access has been given. The Chamber member will not remain at the house while the inspection is conducted or works are completed.

**What happens if access is refused by the tenant at the scheduled time?**

If the Chamber member is present, they will be able to issue a written confirmation of the outcome to both parties. If the Chamber member is not present, the landlord will be expected to contact the Housing and Property Chamber administration in writing to confirm the outcome, and if access was denied, provide details of the circumstances which applied. If notification is received that access is denied, the tenant will be contacted to give their account of events before a decision is made. The Chamber member will then decide if written confirmation of refusal/lack of access should be issued.

**The application has resulted in a refusal/lack of access and written confirmation of to that effect was issued by the Chamber member. What happens next?**

The Chamber member has been given powers to seek a warrant for access to assist the Chamber member, or any other person authorised by the Chamber member, to enter the house. This could include the landlord or the named person nominated by the landlord following upon a decision to provide assistance to the landlord. The Chamber member will consider every case that reaches the refusal/lack of access stage and decide if it is appropriate to seek a warrant. It is not automatic that the Chamber member will decide to seek a warrant and the Chamber member may need to be persuaded that this is the correct action to take rather than leave it with the landlord to raise proceedings in court and, if the landlord considers it appropriate, use the written confirmation issued confirming the Chamber member's involvement and the result of the application. If the Chamber member applies for a warrant and this is granted, then the parties will receive notice of the warrant and the tenant will have to comply with the notification of required access or face entry being forced by Sheriff Officers at the scheduled time if access is still refused.

## **FURTHER INFORMATION**

**If a landlord applies for assistance in executing his right of entry how will that affect an ongoing Repairing Standard application or RSEO made against the property?**

The applications are under separate jurisdictions and the Housing and Property Chamber cannot influence the process of either type of application by notifying the Chamber member that a separate application exists. A landlord/tenant can inform a repairs tribunal of a right of entry application as part of any submission he/she wishes to make, and the Tribunal would consider the submission in the same manner as any other written representations received. Similarly a landlord can inform the Chamber Member of an existing RSEO and the compliance date when making a Right of Entry application.

**Can I appeal against a decision if it is not in my favour?**

The Act states decisions by Chamber members are final.

**Does Landlord Registration Services know of these applications?**

It is a requirement for landlords to be registered in order to submit an application for assistance in providing access, and the Housing and Property Chamber would correspond with the relevant local authority to confirm registration. The landlord may also be asked to provide evidence of ownership of the house to which access is sought.