

A Shelter guide

Private tenancies: paying your rent

Knowing your rights
and accessing help
with your rent

Shelter



Private tenancies— paying your rent

This guide is for people who rent their homes from private landlords in England and Wales. It does not cover tenancies with councils or housing associations, agricultural tenancies, or accommodation, provided as part of your job. It tells you about the rents that different types of private tenants or licensees should pay, what rights you may have to get your rent limited, what to do if you are in arrears, and how you might get help to pay your rent from housing benefit. If you live in Scotland the law is different and you should contact Shelter Scotland (see 'Organisations' at the end of this guide).

Your landlord's right to increase your rent, and any rights you may have to challenge an increase, will depend on the type of tenancy or licence you have. If you don't know what type of tenancy you have, see the Shelter guide 'Private tenancies'.

Getting advice

You could lose your right to stay in your home if you are unable to pay your rent. Laws about tenancies and rents are complex. You should get expert advice from a housing advice centre, law centre, or citizens advice bureau (see your phone book, town hall, or civic centre for details). You can also get advice from Shelter's free national housing helpline (0808 800 4444).

If your landlord asks you to leave your home because of a rent dispute you should get advice from an advice centre or your local council, who have powers to prevent landlords harassing tenants. More information is available in the Shelter guide 'Harassment and illegal eviction'.

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Rent books and information on rent

Before you move into a privately rented home, you should ask your landlord or letting agent to confirm in writing:

- how much rent you will pay and what it includes. Check whether the rent charged includes bills and council tax and decide whether you can afford it, before you sign any agreement
- when you should pay. Rent is usually paid weekly or monthly in advance, with the first payment due when you move in
- how you should pay. Your landlord may prefer you to pay by standing order, cheque, or cash. If you pay cash, always make sure you are given a receipt
- any clauses that are in your tenancy agreement, which allow the rent to be increased, before you sign it.

If you pay a weekly rent, your landlord is legally obliged to give you a rent book, unless your rent includes a substantial proportion for food and other services. Rent books must include:

- the name and address of the landlord, and the landlord's agent if they have one
- the rent payable
- information about your rights to

protection from eviction

- information about your right to claim housing benefit
- information about agencies who can give you further advice.
- If you have a written tenancy agreement, rent details will normally be included in it.

If you have an assured shorthold tenancy that started after 28 February 1997 and you have no written agreement, or your agreement does not contain details of the terms listed below, you have a right to request a written statement of the following:

- the amount of rent payable and when it should be paid
- any arrangements for increasing the rent
- the date your tenancy began and the length of any fixed term.

It is illegal for your landlord not to provide you with a statement within 28 days of receiving your request in writing.

Rent Assessment Committees (RACs)

In some cases, tenants may have the right to challenge rent levels and increases. This may be done by applying to the RAC. RACs exist to set 'market rents' for assured and

assured shorthold tenants, and to hear 'fair rent' appeals for regulated or protected tenants. Each of these is discussed further on. The RAC is usually made up of three people; a lawyer, a property valuer, and a lay person. Always get advice before making an application to the RAC. Details about the RAC covering your area can be obtained from your local council.

Once the RAC has received an application from you or your landlord for an assessment of rent, it serves a notice on both parties giving at least seven days to reply in writing or request an oral hearing. The RAC must give you and your landlord at least ten days notice if there is to be a hearing. Hearings take place in public and both you and your landlord have the right to be represented by a barrister, solicitor, or another expert such as a housing adviser. It is worth finding someone to represent you. Both you and your landlord will have the opportunity to give evidence, call witnesses, and question the other side. The RAC should give both parties copies of any documents used as evidence at the hearing.

Decisions made by the RAC must be given in writing and sent to both you and your landlord. In some cases, appeals against a RAC's determination can be made to the County Court. If you want to appeal, get advice.

Assured shorthold tenants

Most private tenants have an assured shorthold tenancy. To check if this applies to you, see the Shelter guide 'Private tenancies'. The earliest your landlord can gain possession without proving a ground (such as rent arrears) is six months from the start of your initial tenancy.

As an assured shorthold tenant, you can apply to the rent assessment committee (RAC), at the beginning of your tenancy, if you think your rent is excessive compared to rents on similar properties in your area. You may also have rights to challenge later rent increases (see further on). However, assured shorthold tenants have very limited security. Your landlord could decide to evict you lawfully when your tenancy agreement ends, if you choose to challenge high rents or rent increase demands. Get advice and think very carefully before doing this.

At the end of the fixed term, your landlord can increase the rent you pay by asking you to sign a new agreement for a further fixed term. If you do sign a new agreement, you will not be able to apply to the RAC. If you wish to remain in the accommodation, you may have little choice but to accept the increase with the new fixed term if your landlord is not prepared to negotiate. If you have an assured shorthold

tenancy that started on or after 28 February 1997, you can apply to the RAC any time within six months of the beginning of your original tenancy. The RAC will only decide to change your rent if there are enough assured tenancies in the area with which to compare it, and they think your existing rent is considerably higher than rents for similar properties.

Assured tenants

To find out if you are an assured tenant, see the Shelter guide 'Private tenancies'.

If you moved into your home on or after 15 January 1989 and have an assured tenancy, the rent stated in your tenancy agreement, or agreed to verbally when you moved in, will be the rent you have to pay. Assured tenants have no right to challenge the initial rent, even if they think it is excessive. They may have rights to challenge later rent increases (see further on). An assured tenancy provides a high level of security and your landlord cannot legally evict you for enforcing your rights to limit rent increases.

If you have become an assured tenant following the death of a protected tenant (see further on), you do have the right to refer the initial request for rent by your landlord to the RAC. If you are in this situation, get advice.

Fixed-term assured tenancies

If your tenancy is for a specific period of time, known as a 'fixed term', the rent agreed at the start of the tenancy cannot be increased during the fixed term unless your tenancy agreement has a clause allowing for an increase, or unless you and your landlord agree to put the rent up. If there is a clause setting out future increases that are very high, seek advice. If the fixed term has come to an end and your landlord has not given you a new fixed-term agreement, you will become a 'periodic' tenant (see below).

Periodic assured tenancies

If you have an assured tenancy, which is for an indefinite period of time, with rent paid weekly or monthly (ie. it runs from week to week or month to month, rather than for a fixed period), you will have a 'periodic' tenancy. The rent agreed at the start of your tenancy cannot be increased for the first 12 months. Your landlord can only increase your rent by:

- rent review or increase arrangements stated in your tenancy agreement, or
- agreeing a higher rent with you, or
- serving 'notice of intent to increase rent', using a particular form.

If, at any time during your tenancy, your landlord asks for an increase in the rent, get advice. If you pay it, the law assumes this has been negotiated and you have accepted it. You will be bound by the increase and unable to recover any additional money paid. If your tenancy agreement does not contain information about rent increases, you do not have to accept an increase and can continue to pay the original level of rent until you and your landlord reach an agreement, or your landlord serves formal notice of intent to increase rent.

Notice of intent to increase rent

Your landlord can use the procedure specified under section 13 of the Housing Act 1988 to serve notice of intent to increase your rent:

- once a fixed-term tenancy has expired; or
- after the end of the first year of a periodic tenancy; or
- after a year has passed from a previous rent determination (ie. a rent set by the RAC).

The notice must be on a specific form. It states that your landlord intends to increase the rent to the new level. The notice must give you at least one month before the new rent applies. If you think the new rent is too high, and you are unable to negotiate a lower increase, you have the right to

apply to the RAC which can set the new rent level. This can be higher or lower than the rent proposed by the landlord. The notice served by your landlord must inform you of your right to do this, or it will not be valid.

To apply for a rent determination, you must fill in a specific form and get it to the RAC before the date that the landlord is proposing the rent increase to start. There is no right of appeal if your form arrives late, so get advice if you need help. The forms are available from the offices of the RAC, legal stationers, and advice centres.

The RAC will set a level of rent that they consider your landlord would be reasonably expected to get.

In deciding this, they will take account of:

- the terms of the tenancy
- fixed charges for services such as cleaning

but exclude:

- 'variable' service charges and water rates
- any improvements you have made to the property.

The RAC will compare the rent being asked for with other rents in the area. They may determine that the rent asked for by your landlord is too high, and set a lower rent, but they can also agree to your landlord's request or may decide to increase it above the level originally requested. Before

deciding to apply, it is worth trying to find out the levels of rents the RAC has been setting in your area. You can get these figures at your RAC office, or ask an advice centre. The rent the RAC fixes is the rent payable for a year, unless you agree to accept a higher rent.

Regulated (or protected) tenants

If your tenancy started before 15 January 1989 you will probably have a 'regulated' or 'protected' tenancy. To check this, see the Shelter guide 'Private tenancies'. Regulated or protected tenants have a high level of security and can have a 'fair' rent set. Once set, the landlord cannot charge more than the fair rent, although service charges can be increased.

If you don't have a registered fair rent, you can apply to the rent officer (RO) for them to set one. The RO is independent, sets fair rents, and also provides local councils with rent determinations for housing benefit purposes. You can find out the address and phone number of the RO from your town hall or council offices, or from the Rent Service (see 'Organisations', page 14). Fair rents tend to be lower than market rents, but the RO can put rents up as well as down, so, before applying, find out the levels of registered rents on similar properties in your area. The RO keeps a register that you have a

right to see. Landlords can also apply for a fair rent to be set, if they want to put the rent up. Fair rent applications must be made on a specific form, available from your local RO, law stationers, or local advice agencies.

If your rent has not been registered before, the RO may want to inspect your home before making a determination. If this happens:

- make sure you point out any repair problems in your home
- if you live in furnished accommodation, tell the rent officer exactly which furniture has been supplied by your landlord and which is yours
- if your landlord claims that certain services are provided, make sure you tell the RO if these services don't exist or are not satisfactory.

Your landlord is entitled to be present at the inspection.

If the RO decides that the fair rent is lower than the rent you pay, you can recover rent you have overpaid. If your rent has been registered before, you can recover money overpaid during the past two years; if your rent has not been previously registered, you can recover any overpayment made during the past year. If the fair rent is higher, your landlord must serve a notice of increase on you before they can charge you the new rent. Once a fair rent is set, it lasts indefinitely, but either the tenant or the landlord may appeal to the rent

assessment committee (see above) against the rent set by the RO. After two years, you or your landlord can apply for a new fair rent, although an application can be made sooner if there has been a significant change in the condition of the property, the terms of the tenancy, or the quantity or quality of furniture supplied.

If either party appeals the RO's decision, the RAC considers the case afresh and, in many cases, may increase the rent set by the RO, so you need to think carefully before appealing. If you or your landlord have decided to appeal to the RAC, you should seek advice about presenting your case yourself or getting specialist representation. RACs are more formal than RO hearings, and landlords are often represented by a solicitor or other specialist.

Maximum fair rents

If your rent has been registered before, and an application for re-registration is made after 1 February 1999, any increase in your rent will be subject to a maximum limit. The Rent Acts (Maximum Fair Rent) Order 1999 sets a maximum percentage that your rent can increase by. This is based on the change in the Retail Price Index (RPI) since the last registration plus 7.5 percent for the first re-registration after 1 February 1999, and the change in the RPI

plus 5 percent for subsequent re-registrations. Information about the RPI can be obtained from your local RO.

Your rent will be exempt from the Order if:

- this is the first application and your rent has not previously been registered, or
- as a result of repairs or improvements carried out by your landlord, the new fair rent determined is at least 15 per cent more than the existing registered rent.

The Order was subject to a legal challenge on 20 January 2000, but was held to be valid by the House of Lords on 7 December 2000. Some rents re-registered before 20 January 2000 were increased after that date, and rents re-registered between 20 January and 7 December 2000 were not set under the terms of the Order. These rents may be changed.

If your rent was re-registered between 1 February 1999 and 20 January 2000, and then increased by the rent officer or RAC before 7 December 2000, your rent will revert to the re-registered amount. You should receive notification of this from the rent officer. If you have overpaid rent to your landlord during this period, you will be entitled to recover the overpaid sum. You should clarify the amount you have

overpaid with your landlord and you may be able to negotiate that your landlord repays that sum in full. If your landlord refuses to repay it, you will be entitled to deduct the overpaid sum from your ongoing rent. Your landlord can be fined if s/he tries to allege, by making entries in your rent book or another document, that you are in rent arrears because you have not been paying rent while recovering the overpayment. You have two years to recover the rent in this way.

If you are concerned about withholding rent or no longer live in the property, get advice. You could take action in the County Court under the small claims track, if the sum owed to you is less than £5,000.

If your rent was re-registered between 20 January and 7 December 2000, the RO will have to recalculate the rent under the terms of the Order and will send notification to you and your landlord if it is revised at a lower figure. You and your landlord will be given 14 days to argue that the rent should be exempt from the Order for one of the reasons above. If no representation is made, or the rent is not exempt, the RO will revise the rent register and inform you and your landlord accordingly.

If the RO informs you that a lower, maximum fair rent has been set, you may be able to argue that you have overpaid rent during the period up to 7 December 2000. The law is less

clear than for tenants whose rents were registered before 20 January 2000, and you should get advice before trying to recover any rent you may have overpaid.

All rents re-registered after 7 December 2000 will be calculated with the terms of the Order being applied.

Licensees and tenants who share accommodation with their landlord

In most cases, if you are a tenant with a resident landlord, or a licensee (see the Shelter guide 'Private tenancies', if you need more information), your landlord can charge you any rent they want and you have no right to challenge this nor any subsequent rent increases, unless you are able to negotiate with your landlord. If you have a written agreement outlining how rent can be increased, and your landlord tries to increase your rent without following the procedure in your written agreement, they may be in breach of contract. However, licensees and tenants with a resident landlord have very limited rights and can be evicted easily. It is important to consider very carefully taking any action and, if you are in this position, you should get advice.

A small number of tenants of resident landlords, who moved in before 15 January 1989, may have a 'restricted contract' tenancy. If you

have such a contract, you may have the right to have a reasonable rent set by the RAC. Get advice if you think you may be in this situation.

My landlord won't accept the rent

If your landlord stops collecting, or refuses to accept, your rent because of a dispute, you should take steps to protect yourself, since the landlord may try to evict you for non-payment of rent.

- Write to your landlord stating you wish to pay the rent, and keep a copy of the letter.
- Also, set up a bank or building society account and pay your rent into it, so that you have the money to pay when the landlord eventually agrees to accept it or if s/he takes you to court on grounds of rent arrears. Do not spend the money or use the account for any other purpose.

Can I withhold my rent if my landlord won't do any repairs?

You do not have an automatic right to withhold rent if your landlord refuses to carry out repairs. To do so may put you at risk of losing your home. However, if your landlord has clearly broken his/her repairing obligations, you may have the right to get repairs carried out yourself and then deduct the cost from future rent. You should only do this after you have clearly

informed your landlord in writing about the repairs needed and given him/her the time to do the work. If s/he fails to respond, you should get three estimates for the work and send these to your landlord. If s/he still fails to get the work done, you may get the contractor with the lowest quote to do the work and send the invoice to your landlord. You will have to be able to pay the contractor yourself and recover the cost from your landlord. You will be liable for any negligent workmanship or damage caused.

You should always get advice before taking this course of action, and should be aware that your landlord may try to evict you from your home.

I am in rent arrears, what should I do?

If you fall behind with your rent you should get advice as soon as possible and explain your situation to your landlord. Don't stop paying the rent. Try to pay something extra each week or month to clear the arrears, if you can. If you cannot afford the rent, make sure you are getting all the benefits you may be entitled to (see page 12 for information on housing benefit).

Your landlord will have the right to take action to evict you if you get into arrears with your rent. The level of arrears, and any right you have to prevent eviction, will depend on the

type of tenancy you have. In all cases, you should get advice as soon as possible. If your landlord takes the matter to court, you should always attend the hearing and should try to get representation, for example, from a housing aid centre. If you are evicted it may be difficult to find other accommodation because most private landlords run credit checks, and the local council may investigate whether you made yourself 'intentionally homeless' if you have to apply to them for housing.

More information about the action you can take, if you are in arrears, can be found in the Shelter guide 'Rent arrears'.

Housing benefit

If you are having difficulty affording your rent, you may be able to claim housing benefit (HB). HB is administered by local councils and you can get more information from their housing benefit office, from an advice centre, or from the Shelter guide 'Housing benefit'.

Fair rents and housing benefit

If you are a regulated or protected tenant and have a registered fair rent, all of your rent will be covered by HB (depending on any earnings or

savings you have, and whether you share your home with anyone else).

Market rents and housing benefit

If you have a market rent, the council will refer your claim to the RO who will determine the amount of rent the council should base your housing benefit on. This will not necessarily cover the whole of your rent and you may have to make up any difference yourself.

If you have claimed from the same accommodation before 2nd January 1996, your benefit may be restricted if the RO decides your home is unreasonably large, or the rent is unreasonably high.

For claims made after 2 January 1996, there are complex rules used to calculate the amount of HB payable for a certain property. They will depend on the size of the property, number of people in your household, and rent levels of other properties in the area. If you are considering moving into a new property you should obtain a 'pre-tenancy determination' (see next page) beforehand to give you an idea how much of the rent is likely to be covered by HB.

Challenging decisions

If you think that the council is not paying you enough HB or it

has assessed your entitlement incorrectly, you should get advice. You have the right to have the council's assessment reviewed. You can also ask for the RO to review the rent your claim should be based on.

Pre-tenancy determinations

You can find out the maximum amount of housing benefit you can get before you move into a property and sign a tenancy agreement. You can apply to the council for a pre-tenancy determination (PTD). However, it may take the council at least seven working days to calculate this.

Housing benefit and council tax benefit

If you are eligible for HB, it is likely that you will also be eligible for council tax benefit (CTB), which can cover all or part of your council tax bill. CTB is generally claimed on the same form as HB, though the rules used to calculate how much benefit is payable are different.

Organisations

Advice UK, 12th Floor, New London Bridge House, 25 London Bridge Street, London SE1 9ST. 020 7407 4070. www.adviceuk.org.uk.

Citizens Advice, Myddleton House, 115-123 Pentonville Road, London N1 9LZ. 020 7833 2181. www.citizensadvice.org.uk.

Law Centres Federation, Duchess House, 18-19 Warren Street, London W1P 5DB. 020 7387 8570. www.lawcentres.org.uk.

Rent Service, Fourth Floor, 5 Welbeck Street, London, W1G 9YQ. 020 7023 6076. www.therentservice.gov.uk.

Shelter Cymru (Wales), 25 Walter Road, Swansea, West Glamorgan SA1 5NN. 01792 46900.

Shelter's free national housing advice helpline 0808 800 4444.

Shelter's housing aid centres. For details, contact Shelter, 88 Old Street, London EC1V 9HU. 020 7505 2000. www.shelter.org.uk.

Shelter Scotland, 4th Floor, Scotiabank House, 6 South Charlotte Street, Edinburgh, EH2 4AW. 0131 473 7170.

Bad housing wrecks lives

We are the fourth richest country in the world, and yet millions of people in Britain wake up every day in housing that is run-down, overcrowded, or dangerous. Many others have lost their homes altogether. Bad housing robs us of security, health, and a fair chance in life.

Shelter believes everyone should have a home.

We help 100,000 people a year fight for their rights, get back on their feet, and find and keep a home. We also tackle the root causes of Britain's housing crisis by campaigning for new laws, policies, and solutions.

We can only do this with your help. Please support us.

88 Old Street
London
EC1V 9HU

Tel: 020 7505 2000
or visit www.shelter.org.uk

Cover photo: Nick David
Published October 2004
Registered charity number 263710
SEPPUB619

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