

# West Lothian Council Landlord Forum

## First-Tier Tribunal Process and procedures

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# First-tier Tribunal Housing and Property Chamber

- Brought into existence on 1 December 2016
- Replaced Homeowner Housing Panel and Private Rented Housing Panel

# First-tier Tribunal Jurisdiction

- **FTT-HPC replaced sheriff court in all civil matters/disputes arising from PRS**
- **Won't deal with prosecution of a criminal offence**
- **FTT has a duty to report to the local authority if they learn or suspect that the landlord is not registered in the Landlord Register**

# FTT-HPC jurisdiction

Housing (Scotland) Act 2014 transfers jurisdiction from sheriff court to FTT-HPC in respect of “actions arising from tenancies and occupancy agreements ” under:

- Regulated tenancies
- Part VII contracts
- Assured tenancies

# FTT-HPC jurisdiction

- **FTT-HPC has sole jurisdiction in all civil proceedings arising from private residential tenancies under Private Housing (Tenancies) (Scotland) Act 2016**
- **Jurisdiction includes payment actions in all tenancy regimes**

# Making an application to FTT-HPC

- Application form to be prepared
- Lodge with FTT-HPC office
- Separate application for eviction and arrears
- Include required attachments
- No fee payable

# Application forms

- Eviction actions must be raised as a Form E
- Payment actions must be raised as a Form F
- You cannot claim expenses unless exceptional circumstances apply
- No upper limit on arrears
- Lodge form(s) with Tribunal office (no fee)

# Required Attachments for PRT Application

- Name, address and registration number (if any) of the landlord/  
name, address and profession of any representative of the landlord
- Name and address of the tenant
- The ground(s) for eviction
- Evidence showing that the eviction ground or grounds has been met;
- Notice to Leave (inc evidence of service)
- The tenancy agreement (if available) or, if this is not available, as much information about the tenancy as the landlord can give;
- Section 11 notice of the Homelessness (Scotland) Act 2003 (inc evidence of service)

# Application process

- Application received by tribunal
- Checked by staff
- Passed to President/tribunal member
- Decision made as to whether complaint should proceed made by President
- Either dismissed or referred to tribunal

# Why would an application be rejected?

- Frivolous or vexatious
- Dispute has been resolved
- “not appropriate” to accept application
- Application is for a purpose other than that specified in application
- Identical to previous application

# “Frivolous” Applications

- ALL applications are now checked by a legal member before proceeding to tribunal
- Much more stringent than sheriff court
- Application will be dismissed at sift if they are “futile, misconceived, hopeless or academic”
- Application has no prospects of succeeding

# Post-sift Application process

- Notice given to all parties that application accepted
- Written representations requested from other party
- May issue “directions”
- Fix case management discussion

# “overriding objective”

- FTT-HPC must give effect to “overriding objective”
- Must manage proceedings in accordance with this objective
- Parties must assist tribunal
- “deal with the proceedings justly”

# “deal with the proceedings justly”

- Proportionate to the complexity of the issues and the resources of the parties;
- Seeking informality and flexibility in proceedings;
- Ensuring parties are on equal footing procedurally;
- Using the special expertise of the First-tier Tribunal effectively; and
- Avoiding delay, so far as compatible with the proper consideration of the issues

# Case Management Discussion

- Can be heard by legal member alone
- Identify issues to be resolved
- Identify agreed facts
- Discuss what witnesses/documents required
- Discuss whether “evidential” hearing is required
- Can make “final” decision at CMD

# Hearing

- Held in “public”
- Held on weekdays during normal business hours
- currently by telephone case conference
- Tribunal will consist of legal member (chair) and at least one “ordinary” member
- Can proceed in absence of party
- At least 14 days’ notice given to parties by FTT

# Evidence at hearings

- Documents to be lodged 7 days in advance
- Can lodge late with permission of FTT
- Witnesses should be listed in advance

# Decisions at hearings

- Majority vote but chair has casting vote
- Decisions must be in writing
- Statement of reasons to be given if requested in eviction cases
- If decision not unanimous chair must also give a note on minority view

# Appeals

- Appeal to Upper Tribunal
- On point of law only
- Requires leave of the FTT
- Must seek leave within 30 days of receiving decision
- If leave refused, applicant can ask for leave from Upper Tribunal
- Also a “review” process

# HPC “jurisdictions

- **Repairing Standard cases**
- **Eviction cases**
- **Payment actions (arrears)**
- **Unlawful evictions**
- **Rent setting**

# HPC “jurisdictions

- Tenancy deposit cases
- Wrongful termination orders
- Property factors
- Letting agent
- Landlord Access applications
- Landlord registration appeals

# Repairing Standard

- Wind and watertight
- Structure and exterior
- Installations/appliances/fixtures/fittings
- “Reasonable state of repair and in proper working order”
- Furniture “capable of being used safely”
- Smoke alarms/CO detectors

# Eviction/Payment Cases

- Largest number of cases
- Thousands of orders granted
- Need separate applications (unlike sheriff court)
- However... beware... nothing is certain!!!

# Covid pandemic changes

- **Notice periods generally increased to six months in all regimes for many grounds**
- **Mandatory eviction grounds in new PRT all removed...now all discretionary**
- **Only applies where notices served on/after 7 April 2020**
- **Pre Action Requirements introduced for arrears cases**

# Relevant legislation/guidance

- **Coronavirus (S) (No2) Act 2020**
- **The Rent Arrears Pre-Action Requirements (Coronavirus)(Scotland) Regulations 2020**
- **Coronavirus (Extension and Expiry) (Scotland) Act 2021**
- **Scot Govt guidance - <https://www.gov.scot/publications/coronavirus-covid-19-guidance-for-private-landlords-on-seeking-repossession-of-private-rented-housing-on-rent-arrears-grounds/pages/managing-rent-arrears/>**

# PRT amended Notice Periods

- 6 months for all grounds with the exception of 3 months for:
  - Landlord intends to live in the let property,
  - A member of the landlord's family intends to live in the let property,
  - The landlord is not registered by the relevant local authority
  - The let property is in multiple occupation and not licensed

## **28 DAYS NOTICE FOR**

- **Not occupying the let property**
- **The tenant has a relevant conviction**
  - **The tenant has engaged in relevant anti-social behaviour**
  - **The tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour**

# “Six Months” Periods

- References to “six months” periods is to a period which ends in the month which falls six months after the month in which it began either
- On the same day of the month as it began (e.g. Feb 22 – Aug 22) or
- If that month has no such day, on the final day of the month (e.g. Dec 31 – June 30)

# When do PARs apply?

- Apply to Assured Tenancies (inc SATs) and Private Residential Tenancies
- Only apply where the ground(s) include rent arrears
- Applies where a notice based on arrears has been served on or after 7 April 2020 AND all or part of the rent in arrears relates to a period on or after 27 May 2020
- Applications for eviction raised by the landlord on or after 6 October 2020
- PARs to be complied with before raising proceedings

# Purpose

- **Minimises the need for eviction during pandemic**
- **Formalises practices**
- **Sustains tenancies**
- **Informs tenants of where they can get financial and other support**

# Eviction “ban”

- **The Health Protection (Coronavirus) (Protection from Eviction) (Scotland) Regulations 2020 (SSI 2020 /425)**
- **The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (SSI 2020 / 270)**

# Eviction “ban”

Cannot attend at a house in level 3 or level 4 area to:

- serve a charge for eviction
- carry out an eviction

unless ground is ASB/Criminal conviction

# Tenancy Deposit Cases

- **The Tenancy Deposit Schemes (Scotland) Regulations 2011**
- **Must lodge deposit with an approved Scheme within 30 days of start of tenancy**
- **Must provide information to the tenant re deposit amount, date paid, details of Scheme and circumstances in which deposit can be retained**
- **Currently 3 approved Schemes in Scotland**

# Tenancy Deposit Cases

- Numerous published decisions on HPC website
- If Regs breached, award “must” be made
- Almost all make awards against landlords
- Most seem to be 1 or 2 times the deposit
- Very few have the full possible sanction!!

# Wrongful Termination Orders

- Introduces possible claims to FTT-HPC by former tenants
- Where FTT-HPC has made an eviction order through being misled by the landlord
- Where a tenant was misled into leaving the property
- WTO may order a payment to the ex-tenant of a sum not exceeding 6 months rent

# Letting Agent Regulation

## Letting Agent Code of Practice

- **The Letting Agent Code of Practice (Scotland) Regulations 2016**
- **Effective date: 31 January 2018**
- **Emphasis on written terms and procedures**
- **Enforcement via FTT-HPC**

# Questions??

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