



Briefing Note Recovery of Rented Domestic Property

Section 11 Homelessness etc (Scotland) Act 2003

As many landlords will be aware the Scottish Government has made tackling homelessness one of its priorities. As part of this aim a number of measures have been, and will be, introduced in an attempt to reduce the number of individuals who are made homeless. Included in the measures introduced, is section 11 of the Homelessness etc (Scotland) Act 2003.

At present, when a landlord wishes to remove a tenant from a let property, the landlord must serve notice on the tenant in accordance with current housing legislation. If the tenant refuses to remove from the property, the landlord must then obtain an order from the court before the tenant can be ejected from the property.

From 1st April 2009, landlords will also require to notify local authorities of any court proceedings which are raised for recovery of possession of a domestic property, whether at the expiry of the contractual term of the lease or prior to the end of the lease for a breach of a condition of let. The purpose of this notification is to put the local authority on notice that a particular individual may face eviction and will potentially require to be re-housed.

The Government guidance on the legislation also envisages that local authorities will become involved at an early stage in any eviction proceedings with a view to providing the tenant with advice on their rights and obligations and in an attempt to resolve any dispute between landlord and tenant.

The Government has produced draft guidance for landlords which provides more detail on the roles of the parties involved. The guidance has yet to be finalised by the Government, however, landlords should take note of the scope of the guidance. As the guidance notes presently stand it is suggested that landlords are under a number of duties to assist the tenant in connection with any eviction dispute which arises or to provide advice in connection with rent arrears. However, landlords are under no statutory duty to do so and in fact should be wary of providing advice to tenants which may later be relied on by the tenant, should it prove necessary to proceed with the eviction process. Landlords should also take care to ensure that any contact which is made direct with the tenant cannot be construed as harassment.

Landlords should also be aware of any alternative dispute resolution procedures which may be recommended by the local authority. While the tenant's managed removal from a property is always desirable, and can indeed be a cost effective and expedient process, landlords should bear in mind the limits of this form of dispute resolution. A tenant may agree to remove from a property within a particular timescale, however, if the tenant fails to do so, the landlord cannot take vacant possession of a property without an order of the court, despite any previous agreement by the tenant. It may therefore ultimately still be necessary to seek such an order from the court.

The current guidance notes deal in general terms with eviction proceedings but mainly focus on the situation in which recovery of possession is sought as a result of a breach of a term of the lease. In certain circumstances the landlord may, of course, seek recovery of the property prior to the natural end of the tenant's lease, for example, where the tenant is in arrears. However, notification must also be given to the local authority where the landlord seeks to recover the property at the expiry of the term of the lease and simply does not wish to renew the lease. The guidance contains no specific information in this respect and landlords should be aware of the fact that, provided the appropriate notices have been served correctly, the landlord is entitled to recover the property, regardless of the tenant's circumstances.

Notice to the Local Authority needs to be given if court proceedings are to be raised. The Local Authority does not need to be notified on service of notice to quit.

For further information on Recovery of Rented Domestic Property please contact Lynn Richmond (lynn.richmond@turcanconnell.com) or Paul Forrester Smith (paul.forrester-smith@turcanconnell.com), alternatively call 0131 228 8111.

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This note is intended to provide only an overview of some of the issues arising from section 11 of the Homelessness etc (Scotland) Act. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. © Turcan Connell 2010

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