

Factsheet 35

Tenancy rights - rent

June 2017

About this factsheet

This factsheet provides information about what your landlord can charge you in rent, depending on the type of tenancy you have.

For information about other aspects of tenants' rights, see the Age UK range of dedicated factsheets. We publish a range of factsheets on finding accommodation in the private rented sector and from social landlords, as well as on specialist housing for older people and park homes.

The information in this factsheet is applicable in England and Wales. If you are in Scotland or Northern Ireland, please contact Age Scotland or Age NI for information. Contact details can be found at the back of this factsheet.

Contact details for any organisation mentioned in this factsheet can be found in the Useful Organisations section.

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1 Recent developments

- In **England**, the *Housing and Planning Act 2016* made changes to the rent repayment order (RRO) regime, extending the range of circumstances in which they can be made. RROs are court orders allowing you to re-claim up to 12 months' rent from your landlord. They are covered in more detail in section 8.
- Other provisions of the *Housing and Planning Act 2016*, such as the proposal to force local authorities to set higher rents for high-income households, have been abandoned. Local authorities and other social landlords, such as housing associations, continue to have discretion over whether to charge these households more (see section 7).
- In **Wales**, different legislation applies. When the *Renting Homes (Wales) Act 2016* is implemented, a new tenancy regime comes into force. Apart from a few exceptions, all current tenancies will be replaced by two types of occupation contract (a secure contract, based on current secure tenancies issued by local authorities and a standard contract, based on current assured shorthold tenancies used in the private rented sector). The Welsh Government has not announced when this part of the Act will be implemented, so current rules on different tenancy types still apply.

2 Introduction

Different tenants have different rights around rents. You may be able to get a 'fair rent' set for your property, challenge the amount of rent you are paying, or challenge a rent increase proposed by your landlord.

Generally, your rights depend on who your landlord is, i.e. a private landlord, a housing association or the council. If you are a private or housing association tenant, your tenancy type is also important.

You can usually tell the type of tenancy you have by checking when it was granted. If unsure, use the '*tenancy checker*' tool on Shelter's website or seek further advice from a specialist housing adviser.

The law on tenants' rights is complicated and it is a good idea to seek advice if you want to take action against your landlord.

If you are having difficulty paying your rent, check whether you are entitled to Housing Benefit, which is for people on low incomes. You might be eligible for help with Council Tax too.

For more information, see factsheet 17, *Housing Benefit* and factsheet 21, *Council Tax*. In Wales, see Age Cymru factsheet 21w, *Council Tax in Wales: information about the tax and help you might get towards your bill*.

3 Private tenants

If you are a private tenant, you are likely to have one of a number of different tenancies. Today, most private lettings are made on an ‘*assured shorthold*’ basis, but private landlords can also grant ‘*assured*’ tenancies.

If your tenancy was granted a long time ago, it may be a ‘*protected*’ or ‘*statutory*’ tenancy. Together, these two tenancies are known as ‘*regulated*’ tenancies. This factsheet looks at these tenancy types in chronological order, starting with the oldest.

3.1 Regulated (protected and statutory) tenants

If you are a private tenant and your tenancy began before 15 January 1989, it is probably a regulated (protected or statutory) tenancy.

Fair rents

As a regulated tenant, you have the right to have a fair rent set (‘*registered*’) by a Rent Officer. Your landlord also has this right.

A fair rent is the maximum amount your landlord can charge you. In deciding what is fair, the Rent Officer looks at various things, including the age and condition of the property, the condition of any furniture provided by the landlord and rents for similar properties in the area.

They disregard any improvements made, or damage caused, by you. They discount from the amount you could be expected to pay any sum deemed to be attributable to scarcity of accommodation, so you should not pay more even if similar properties are in short supply.

Seek advice before making an application, as there is no guarantee the rent set by the Rent Officer will be lower than what you currently pay.

If you have not yet had a fair rent registered or want to apply for a new fair rent, you can make an application using form RR1. This can be downloaded from:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/438033/RR1-applicationforregistrationoffairrent.pdf

Alternatively, ask for a copy from your local Rent Officer service. Details of your local Rent Officer service can be found by contacting the Valuation Office Agency (in **England**) or the housing division of the Welsh Government (in **Wales**).

In most cases, if you disagree with the rent set, you can appeal in writing to the Rent Officer. The law says an appeal should be received within 28 days of the date of the Rent Officer’s decision. The general policy is that Rent Officers must automatically accept an appeal received within 35 days of their decision, to allow for postal delays.

If you miss the deadline, you must have a good reason for the delay, such as being in hospital.

If the Rent Officer accepts your appeal, they refer the case for consideration by the *First-Tier Tribunal (Property Chamber – Residential Property)*. In this factsheet, we refer to this body as ‘the Tribunal’. The Tribunal makes the final decision on the rent that should be set.

Note

In some cases, the Tribunal can set a rent that is higher than the one set by the Rent Officer. You should seek advice before appealing a Rent Officer’s decision.

Rent increases

If you have not had a fair rent registered, your landlord can only increase the rent if you agree. Alternatively, they can apply to have a fair rent registered.

If your landlord wants you to agree to a rent increase, they must draw up a written agreement for you to sign.

The agreement must advise you that refusing to sign will not affect your security of tenure. It must advise you that signing will not affect your right to have a fair rent registered. These statements must not be buried in the small print.

If your landlord does not comply with these requirements, the rent increase is not valid. Depending on the circumstances of your case, you may be able to recover up to two years’ of overpaid rent. Seek advice from Shelter if you want to know more.

If you have a fair rent registered, your landlord can increase your rent by applying for a new fair rent. They cannot make an application within two years of the last registration unless special circumstances apply, for example, if they carry out improvement works at your property.

You can appeal to the Tribunal if you disagree with a fair rent registered by a Rent Officer, but the Tribunal may set a higher rent. You should seek advice before appealing a Rent Officer’s decision.

3.2 Assured tenants

You are probably an assured tenant if your private tenancy was granted after 15 January 1989 but before 28 February 1997, provided your landlord did not give advance notice the tenancy was to be '*assured shorthold*'. Assured tenants can be charged market rent, but some assured tenants have limited protection against unreasonable rent increases.

Fixed-term tenancies

If your tenancy was granted for a fixed period of time (a '*fixed term*'), your landlord cannot increase the rent during the fixed term unless your tenancy agreement allows for this (a '*rent review clause*') or you agree to the increase.

If the fixed term of your assured tenancy ends, you may be entitled to remain in the property under a '*statutory periodic*' tenancy. This automatically comes into being when a fixed-term assured tenancy ends, you remain in occupation and the landlord does not seek to evict you.

If you are in this position, your landlord can increase your rent, but they must follow a procedure set out in the *Housing Act 1988*. You must be served a notice in the correct statutory form stating the proposed new rent, with at least one month's notice of the increase.

This notice can be given during the fixed period of the tenancy, so that the rise comes into effect when it ends. Your rent cannot go up again within one year of the last increase.

If your landlord gives you notice that they intend to increase the rent and you think the proposed increase is unreasonably high, you can try to negotiate a lower increase.

You have a right of appeal to the Tribunal if the proposed new rent exceeds the market rent for comparable properties in the area. The rent determined by the Tribunal is the maximum amount your landlord can charge you.

Seek advice if you want to challenge a rent increase and be prepared to provide evidence of market rents for similar properties in your area. Your referral must be received by the Tribunal before the proposed increase is due to take effect. Once a rent is set by the Tribunal, your landlord cannot increase it for one year.

Note

In some cases, the Tribunal can set a higher rent than the one being proposed by your landlord, so take advice before making an application for a determination.

Periodic tenancies

Some assured tenancies are periodic from the outset. This means there was never a fixed term. If you have a periodic tenancy, there may be a term in your tenancy agreement allowing for future rent increases, in which case you have no right of referral to the Tribunal. Check your agreement to see what it says.

If there is no such term, your landlord must follow the *Housing Act 1988* procedure set out above when proposing a rent increase. You can appeal to the Tribunal if you believe the proposed increase exceeds the market rent for comparable properties in the area.

3.3 Assured shorthold tenants

If you have a private tenancy granted on or after 28 February 1997, it is highly likely you have an assured shorthold tenancy. The rules on rents for assured shorthold tenants are the same as for assured tenants.

However, assured shorthold tenants also have a right to challenge the rent agreed at the outset of the tenancy if this is 'excessive'. Both fixed-term and periodic assured shorthold tenants can do this.

If your tenancy began before 28 February 1997, you can only challenge your agreed rent if the tenancy is still within a fixed term. You cannot challenge the agreed rent if you have since held a series of tenancies with the same landlord.

If your tenancy began on or after 28 February 1997, you can only challenge the agreed rent during the first six months of the tenancy. You lose this right once you have been in the property for more than six months, even if your tenancy is renewed.

To challenge your agreed rent, you must apply to the Tribunal using the correct application form, see www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber for more information.

The Tribunal only makes a decision if there are a sufficient number of comparable properties in the area and your rent is significantly higher than the market rent. If the Tribunal do make a decision about the fair rent payable, that is the maximum amount your landlord can charge.

Note

Assured shorthold tenants have limited security of tenure after six months (or after the fixed term of the tenancy comes to an end, if this is longer than six months). It is advisable to carefully consider if it is worth referring your rent or a proposed rent increase to the Tribunal and risk losing the tenancy. See factsheet 68, *Tenancy rights – security of tenure* for more information.

4 Housing association tenants

4.1 Tenancies that began before 15 January 1989

If your tenancy was granted before 15 January 1989 or you had a different tenancy prior to that date but with the same landlord, you have the right to have a fair rent fixed in the same way as regulated private tenants (see section 3.1).

4.2 Tenancies that began after 15 January 1989

Housing association tenancies that began on or after 15 January 1989 are assured or assured shorthold. See sections 3.2 and 3.3 for information on rents and rent increases.

Housing association rents are usually lower than private rents because associations' rent setting is regulated by the Homes and Communities Agency (in **England**) or a Housing Regulation Team (in **Wales**).

From 1 April 2016, housing associations in **England** have been required to reduce rents by 1 per cent each year. This applies until 2020. The reduction applies only to the rent element and not to service charges, unless you have an Affordable Rent property (see section 6).

There are exceptions for certain housing associations and certain types of housing, including temporary social housing for homeless people and residential care homes or nursing homes. Supported housing that meets certain criteria, including offering a high level of support to residents, is also exempt.

If you receive notice of a rent increase from a housing association, seek specialist advice to determine whether the rent reduction should apply.

5 Local authority tenants

Local authorities are entitled to '*make such reasonable charges as they may determine for the tenancy*' of their properties. However, this is subject to government regulations and guidance.

From 1 April 2016, local authorities in **England** have been required to reduce rents by 1 per cent each year. This applies until 2020. The reduction applies only to the rent element and not to service charges, unless you have an Affordable Rent property (see below).

There are exceptions to the rent reduction, including temporary social housing for homeless people, residential care homes or nursing homes and supported housing that meets certain criteria (including offering a high level of support to residents).

If you receive notice of a rent increase from the local authority, seek specialist advice to determine whether the rent reduction should apply.

If you are a periodic secure tenant and the authority can increase your rent, they are likely to do so on an annual basis. They are not required to consult you before doing so. However, they must serve you a '*notice of variation*' and the rent increase cannot take effect for at least four weeks from the date of the notice.

For flexible tenancies, which are granted for fixed terms, the tenancy agreement must contain a '*rent review*' clause permitting rent increases.

Rent increases must be reasonable. They can be challenged via judicial review, when a judge reviews the lawfulness of a decision or action taken by a '*public body*'. Judicial review is a complicated and lengthy process, so seek legal advice before taking action. Note, courts have been reluctant to interfere with authorities' rent setting decisions.

If you are being evicted because you are unable to pay your rent following a rent increase, you may be able to challenge the validity of the increase during possession proceedings.

6 Affordable rents – England

Registered providers of social housing in England, such as local authorities and housing associations, can charge '*affordable*' rents for certain properties. These properties are classed as social housing, but affordable rents are typically higher than social rents. They can be up to 80 per cent of local market rent.

To be able to grant affordable rent tenancies, registered providers must generally have a specific agreement with the Homes and Communities Agency. Your local authority must prepare and publish a tenancy strategy, under the *Localism Act 2011*. Registered social housing providers must consider this when preparing their own policies.

The strategy gives guidance on how affordable rent tenancies should be used. You have a right to inspect it free of charge at reasonable hours.

7 '*High-income*' social tenants – England

Local authorities are encouraged to set higher rents for households with an annual taxable income of £60,000 and above. Other registered providers of social housing, such as housing associations, can do this.

Household means the named tenants (i.e. the people whose names are on the tenancy agreement) and any named tenant's live-in spouse, civil partner or partner. If two or more people in a household meet the criteria, only the two highest incomes should be taken into account.

Landlords adopting this policy must look at the tenants' taxable income in the tax year ending in the financial year before the financial year in question. For the 2017/18 financial year, this is income received in the 2015/16 tax year. If a household experiences a '*sudden and ongoing loss of income*', the landlord is expected to re-evaluate the rent charged.

8 Rent rebates - England

You may be able to re-claim up to 12 months' rent from your landlord if they commit one of a number of specific offences.

You can do this whether they have been convicted of the offence or not, but you may be able to re-claim more money if they are convicted.

The offences are:

- using, or threatening to use, violence to secure entry to your property
- carrying out, or attempting to carry out, an illegal eviction
- harassing you with the aim of getting you to leave the property. This means acting in a way likely to interfere with your peace and comfort or persistently withdrawing or withholding necessary services
- failing to comply with certain health and safety notices issued by the local authority under the *Housing Act 2004*
- failing to obtain a licence for your property if it requires one by law or under a special scheme the local authority has set up.

You do this by applying to the Tribunal for a Rent Repayment Order (RRO). This is a court order requiring the landlord to repay you an amount decided by the court.

You can apply for a RRO even if you are no longer a tenant of the landlord who committed the offence. You must have been their tenant at the time of the offence and the offence must have been committed in relation to your home.

Your application must be made within 12 months of the offence. The offence must have been committed on or after 6 April 2017. Slightly different rules apply for licensing offences.

If you want to make an application against your current landlord, you need to think carefully about your security of tenure. Speak to an adviser if you are unsure.

The Tribunal may decide to make an order if they are satisfied, beyond reasonable doubt, that your landlord committed the offence.

In deciding how much the landlord must repay, the Tribunal deduct any Housing Benefit (HB) or Universal Credit (UC) payments you received during the 12-month period.

They take into account factors such as the way you and the landlord have behaved, the landlord's financial circumstances, and whether they have been convicted of any of the offences previously.

If the landlord has been convicted of the specific offence to which the RRO relates, the Tribunal must order them to repay the maximum amount (i.e. your rent minus any HB or UC payments). The only exceptions are if the offence was failing to obtain a licence or if exceptional circumstances apply.

Local authorities can apply for a RRO to re-claim HB or UC payments made to the landlord. They have a duty to consider making an application if they become aware a landlord letting properties in their area has been convicted of one of the offences.

They may help you to apply for a RRO to re-claim your portion of the rent, for example by helping you to make the application or offering you advice. Speak to your local authority about what help they can provide.

Contact a specialist housing organisation like Shelter if you think you have grounds to apply for a RRO.

For more information on health and safety notices and licensing, see factsheet 67, *Home improvements and repairs*. For more information on security of tenure, see factsheet 68, *Tenancy rights – security of tenure*.

Useful organisations

The law relating to rights for tenants is complicated. This factsheet aims to give you basic information about your rights but in many cases you may want to get more detailed advice from a specialist adviser.

Citizens Advice

England or Wales go to www.citizensadvice.org.uk

In England telephone 0344 411 1444

In Wales telephone 0344 477 2020

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

Department for Communities and Local Government (DCLG)

www.gov.uk/government/organisations/department-for-communities-and-local-government

Telephone 0303 444 0000

The DCLG website has useful information on planning laws, tenants' rights and environmental protection relevant to England (in Wales, see Welsh Government entry below).

Homes and Communities Agency (HCA)

www.gov.uk/government/organisations/homes-and-communities-agency

Telephone 0300 1234 500

The HCA regulates registered providers of social housing in England, including local authority landlords and housing associations. It sets a number of standards that providers are expected to meet, but will only intervene in serious cases where harm has been caused or is likely (in Wales, see Welsh Government below).

Housing advice services

The availability and quality of housing advice varies from area to area. Local councils have a legal duty to ensure that advice and information about homelessness and how to prevent homelessness are available in their local area. Contact your local authority as soon as possible if you are worried you may become homeless.

In some areas there may be a specific housing advice or housing aid centre, providing advice on a range of housing issues. Your local council or Citizens Advice should be able to tell you if there is a housing advice centre in your area.

Housing Ombudsman Service (The)

www.housing-ombudsman.org.uk

Telephone 0300 111 3000

Investigates complaints about landlords made by tenants in England. Social landlords registered with the social housing regulator, the Homes and Communities Agency, must be members of the scheme. Membership is voluntary for private landlords and very few will be members.

Legal advice

Solicitors can advise you on the law and represent you in court if necessary. If you approach a solicitor about a housing matter, check they are experienced in housing law. Your local housing advice centre or Citizens Advice may be able to refer you to an experienced solicitor. If you are on a low income, you may be able to qualify for free legal advice (legal aid).

For more information see factsheet 43, *Getting legal advice*.

Local Government Ombudsman (LGO)

www.lgo.org.uk/

Telephone 0300 061 0614

In England, the Local Government Ombudsman investigates complaints about injustice arising from poor administration by local authorities (in Wales, see entry for Public Services Ombudsman for Wales below).

Public Services Ombudsman for Wales

www.ombudsman-wales.org.uk

Telephone 0300 790 0203

The Ombudsman looks to see whether people have been treated unfairly or have received a bad service from a public body, such as a local authority.

Shelter

www.shelter.org.uk

Telephone 0808 800 4444 (free call)

A national charity providing specialist housing advice, including advice on tenancy rights, homelessness, repairs and housing benefit.

Shelter Cymru

www.sheltercymru.org.uk

Telephone 0345 075 5005

Tai Pawb

www.taipawb.org

Telephone 029 2053 7630

An organisation in Wales promoting equality and social justice in housing. They are committed to working in partnership with the providers and receivers of housing services, local authority partners, voluntary organisations and the Welsh Government.

Valuation Office Agency (VOA)

www.gov.uk/government/organisations/valuation-office-agency

Telephone 03000 501501

VOA Rent Officers assess applications for fair rents under the *Rent Act 1977*. In Wales, this function is carried out by the Housing Division of the Welsh Government (see entry for Welsh Government below).

Welsh Government

www.wales.gov.uk

Telephone 0300 060 3300 or 0300 060 4400 (Welsh)

The devolved government for Wales.

Your local authority (council)

If you are not a local authority tenant and are having problems with your landlord, the authority may have a tenancy relations officer who can help you. Whoever your landlord is, the authority must ensure that advice and information about homelessness and the prevention of homelessness is available to you free of charge. They may have a duty to help you if you become homeless or are threatened with homelessness.

Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

Age UK Advice

www.ageuk.org.uk

0800 169 65 65

Lines are open seven days a week from 8.00am to 7.00pm

In Wales contact

Age Cymru

www.agecymru.org.uk

0800 022 3444

In Northern Ireland contact

Age NI

www.ageni.org

0808 808 7575

In Scotland contact

Age Scotland

www.agescotland.org.uk

0800 124 4222

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