

Shelter Scotland

Illegal eviction: know your rights

Campaign briefing

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Introduction

Shelter Scotland is regularly contacted by tenants whose landlord unlawfully evicts them. **Between April 2013 and March 2014 Shelter Scotland's helpline received 142 calls in relation to alleged illegal evictions.** Illegal evictions often go unreported as tenants are not confident enough to report issues with their landlord to the police, making it hard to quantify the real extent of the issue. This briefing outlines the issues relating to illegal eviction in Scotland's private rented sector and how we – alongside Police Scotland and Crimestoppers – can best tackle this.

What is an illegal eviction?

Illegal evictions are criminal offences which occur when a tenant is 'unlawfully deprived' of the occupation of their home. This can happen in a number of ways: by evicting without following the correct legal processes; by a landlord changing the locks when the tenant is away from the property; by threatening violence or intimidation. The harassment of tenants is also a criminal offence. Landlords can be found guilty of harassment if they behave in such a way that intends to force the tenant to move out of their home. For example: acting in an intimidating manner towards the tenant, or cutting off essential services such as gas, electricity and water.¹

Case study: the Walker family

A family were being harassed by their landlord because the landlord wanted to live in the property himself after experiencing financial difficulties. There was sustained harassment by text message, then the landlord placed "eviction notices" on the doors of the property. When this didn't work the landlord then cut off the gas supply to the property. People then visited the property to ask when they were going to move out, and the landlord did slow drive-bys of the property. A brick was also thrown through the window.

For a landlord to be charged with illegal eviction tenants must be aware that their landlord's behaviour is criminal and be confident enough to report this to the police. The police can then prepare a report to send to the procurator fiscal who will decide whether to pursue a prosecution. As many illegal evictions go unchallenged convictions are rare – this work seeks to raise awareness of the offence and highlight preventative measures.

How can we prevent illegal evictions?

The best way to tackle illegal evictions is to stop them happening in the first place. We hope this work will raise awareness amongst private tenants, landlords and the police force that illegal evictions are a criminal offence. By raising awareness of these issues, tenants will know where to go for help and advice, and police officers will be able to offer support and protection to tenants threatened with illegal eviction. Local authorities also have a role to play here

¹ Sections 22, 23 and 23A of the Rent (Scotland) Act 1984 as amended by provisions of the Housing (Scotland) Act 1988

through homelessness prevention, and police forces should aim to link up with homelessness teams in local authorities wherever this is necessary.

Following the correct procedure

Landlords must follow the correct legal processes if they wish to evict a tenant. If they evict a tenant without following these procedures, or act in such a way to harass a tenant to make them leave the property, they will be committing a criminal offence under the Rent (Scotland) Act 1984. For private landlords the procedures they must follow to correctly regain possession of a property occupied by a tenant are contained in the Housing (Scotland) Act 1988.

In summary, private landlords must:

- serve a notice to quit
- seek a possession order from the sheriff court and,
- if the tenant does not leave the property voluntarily they must seek an eviction order from the sheriff court and have the eviction carried out by Sheriff Officers.

Should they fail to follow this process and attempt to carry out an eviction themselves, for example by changing the locks or forcibly removing a tenant from the property, they will be committing the criminal offence of illegal eviction. If a private landlord is in any doubt about what action to take they can seek information online, speak to their local authority and get advice from a solicitor.

Conclusion

From our casework we know that illegal evictions are still a problem in Scotland's private rented sector. Joint action between Shelter Scotland, Police Scotland and Crimestoppers will raise awareness among landlords, tenants and the police force of the offences of illegal eviction and harassment. Tenants will feel empowered and able to take action against unscrupulous private landlords who put households at risk of homelessness. Private landlords will be better-informed about the correct procedures to follow should they need to regain possession of a property they have rented out. Scotland's police force will be well-placed to handle reports of illegal eviction and harassment. We hope this preventative approach will lead to a reduction in the number of private tenants who need to contact our helpline each year for help and advice about illegal evictions.

Tenants can phone the police on 101 in the case of a non-emergency, and 999 if the issue is urgent.

For housing advice Shelter Scotland's free housing advice service is available on 0808 800 4444 and is open Monday to Friday, 9am-5pm.

You can also contact the independent charity Crimestoppers anonymously with information about crime on 0800 555 111.

Case studies

Case study 1

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Case study 2

A young professional was harassed by their landlord. The landlord had given notice but the tenant did not want to move out until a week later because they were having trouble finding alternative accommodation. The landlord threatened to change the locks, cut off the power supply and have the tenant’s possessions thrown out onto the street. If the landlord pursued this course of action they would have been illegally evicting the tenant, as they should go to court to secure a possession and eviction order to legally evict the tenant. Due to an intervention by an adviser the landlord agreed that the tenant could stay an extra few days and they found a new flat.

Case study 3

A client phoned our helpline saying that their landlord was threatening to evict them. Our client does have rent arrears, but the landlord has not served any of the correct notices. We advised our client to go to the police station to warn that they were being threatened with illegal eviction. Our client was later evicted by their landlord and called the police who treated it as a civil matter as the client had not paid their rent. This resulted in our client being street homeless and having to apply to their local authority for emergency accommodation.

Contact:

James Battye, Policy Officer

Email: james_battye@shelter.org.uk

Tel: 0344 515 2463