

Example of application to recover a tenant's file from the landlord

This is an example of an application that can be submitted by a tenant who is defending their eviction in the sheriff court. Mr. A is asking the sheriff to make the council hand over any evidence they have relating to him.

WARNING: The example below shouldn't be used when defending an eviction. You must get legal advice for your particular circumstances and type of tenancy. Getting advice if you are threatened with eviction is very important – you could lose your home if you don't defend the eviction or don't understand the legal proceedings.

EXAMPLE

INCIDENTAL APPLICATION FOR THE PURSUER

Case Ref: SD1/18

in the case

STONETOWN COUNCIL, incorporated under the Local Government Etc. (Scotland) Act 1994 having its principal place of business at the Municipal Buildings, Town Square, Stonetown

against

PURSUERS

Mr. A, residing at 227 Princes Street, Stonetown

DEFENDER

The defender asks the sheriff to grant commission and diligence to recover the following documents:

1. All records, correspondence, applications, notes, files, emails, and any other documentation held by the pursuers in relation to the defender's tenancy at 227 Princes Street, Stonetown.

2. Failing principals, drafts, copies or duplicates of the above documents or any of them.

[Signed]

Notes for advisers:

- i. Reference is made to the template Defences and Counterclaim. This is an incidental application for recovery of the pursuers' file in relation to the tenancy. As is explained in the notes to the template Defences and Counterclaim, eviction proceedings are currently raised under the Summary Cause Rules in the sheriff court, which will be replaced by the Simple Procedure for eviction cases in 2019.
- ii. This application is made under rule 18 of the Summary Cause Rules, which states that: "(1) At any time after a summons has been served, a party may make an incidental application in writing to the sheriff to grant commission and diligence to recover documents. (2) A party who makes an application in accordance with paragraph (1) must list in the application the documents which he wishes to recover."
- iii. Commission and diligence is the process by which a party can recover documents which are not in his possession. If the sheriff grants the application in this case, the defender can then send a copy of the order with a certificate. See rule 18.2. This is known as the optional procedure. If the documents are not produced, the court appoints a person called a "commissioner", to hold a commission, at which parties thought to have the documents (the "havers") can be cited to attend. It is thought that a similar procedure will be available, under the Simple Procedure for eviction cases, when it comes into effect.