Housing Rights

https://www.housingrights.org.uk/landlords/preparing-rent/protected-tenancies

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Protected tenancies

This information is for private landlords of properties in Northern Ireland.

If you are a tenant, you can find advice here.

If you are a landlord or letting agent in Northern Ireland seeking advice, you can:

- send a message to Landlord Advice, or
- call 028 90 245 640 (Option 1)

Protected tenancies are a particular type of private rented tenancy. They have certain characteristics that set them apart from other private tenancies. For example:

- you will be restricted in the amount of rent you can charge
- a protected tenant may be able to pass on their tenancy when they die
- the law has set out how and when a protected tenancy can be ended

Finding out if a tenancy is protected

Your property may have a protected tenancy if:

- the current tenancy began before 2007
- the property was built or converted for letting before 1956
- the property was first rented out before 1978
- a tenant was living in the property in October 1978

The property does not need to have been rented to the same tenant since 1978. If it meets the above criteria, it can still be considered a protected tenancy, even

if:

- it has been vacant, or
- the owner has lived there

You can check the rent register to see if your property has a protected tenancy. But a tenancy can still be protected even if it is not included on this list.

A tenancy cannot be protected if the property:

- was let with a large amount of land before 1978
- was owned by the Crown, Housing Executive or the government in October 1978
- was let as a condition of the tenant's job (such as a resident caretaker) in October 1978

Protected tenancies are rare. It has not been possible to start a new one since 2007. This means that the number of protected tenancies will continue to reduce.

If there is any doubt, you must supply evidence to show that the tenancy is not protected.

Buying a property with a sitting tenant

Landlords of protected tenancies have extra legal responsibilities. If you take on a protected tenancy, you will be accepting these legal obligations.

Before you buy a property with a tenant already in it, your solicitor should check if it is a protected tenancy. If it is a protected tenancy, you will have limited rights to increase rent or evict the sitting tenant. You will also have extra legal responsibilities.

Rights in protected tenancies

Protected tenants have more rights than other private tenants.

As well as basic private tenants' rights, a protected tenant:

- will only have to pay a fixed amount of rent as it is a rent-controlled tenancy
- may be able to pass on their tenancy when they die
- cannot be evicted unless you have legal 'grounds' to end the tenancy

Rent control in protected tenancies

Protected tenancies are subject to rent control. This means that you cannot charge whatever rent you want. Only the Rent Officer for Northern Ireland can decide what rent can be charged.

Rent amounts for rent-controlled tenancies do not automatically increase. But the Rent Officer can review rents to decide whether to increase them.

You can apply to the Rent Officer for a rent assessment if you think your rent is too low.

Passing on a protected tenancy

A protected tenant may have the right to pass on their tenancy when they die. This is also known as ‘succession’.

A protected tenancy can be passed on to a:

- spouse or
- civil partner

If there is no surviving spouse or civil partner, a family member may inherit the tenancy.

In all cases, they must have been living at the property with the tenant for at least six months before they died.

You’ll first need to find out:

- if the current tenant is the original tenant
- when they became a tenant – if they are not the original tenant

This area of law is complex. You may need to ask a solicitor for assistance.

Eviction in protected tenancies

Unlike other tenancies, you can only evict a protected tenant under certain circumstances.

You must prove to a court that you have legitimate ‘grounds’, or reasons, to evict the tenant.

Repairs in protected tenancies

Your tenancy agreement should outline who is responsible for which repairs. If there is no written tenancy agreement, the law sets out what you and your tenant are responsible for. These are known as 'default repair obligations'.

You must maintain:

- the structure of the property
- the interior and exterior of the property
- all water, gas, electricity, heating and sanitation systems
- all fixtures and furnishings you provide
- all appliances you provide

Your tenant must:

- report disrepair to you
- take proper care of the property
- get your permission before making changes
- repair any damage they (or their guests) cause

These obligations only apply if the property has had a regulated rent certificate. Contact the Rent Officer to find this out if you are not sure.

Evicting a protected tenant

Protected tenants have additional legal protections against eviction. You can only evict a protected tenant under certain strict circumstances.

You must prove that you have genuine ‘grounds’, or good reason, to evict the tenant.

The Department for Communities' guide lists the grounds for evicting a protected tenant.

Some of these will be mandatory grounds. If a mandatory ground is proven, the court will have no option but to order an eviction.

Others are discretionary grounds. In this case, the court can only order an eviction if it is reasonable to do so.

As well as stating the grounds for eviction, you will need to follow the normal due process:

1. give the correct written notice to quit and
2. go to court if your tenant does not leave at the end of the notice period

Giving your tenant written notice

You must write to your tenant if you want to evict them.

You must:

- give the tenant this written notice a set amount of time before you want them to leave
- explain which grounds you're relying on to evict them

Your tenant must get a minimum amount of notice of the date their tenancy ends.

For protected tenants, this is:

- 8 weeks if they've rented the property for between 1 and 10 years
- 12 weeks if they've rented the property for more than 10 years
- 12 weeks if you gave them notice between 5 May 2020 and 4 May 2022

Going to court to evict a protected tenant

If your tenant does not leave when the written notice ends, you'll need to go to court to get a possession order. You will need to ask a solicitor for help with this.

The court will only give you a possession order if:

- the legal mandatory grounds for possession apply, or
- the discretionary grounds apply, and it is reasonable to evict the tenant

Grounds for repossessing a protected tenancy

There are eight **mandatory** grounds, or reasons, for evicting a protected tenant. The court must give you a possession order if you prove that these grounds apply.

There are ten **discretionary** grounds for evicting a protected tenant. The court will give you a possession order if:

- you can show that one (or more) of these grounds applies, and

- the court believes it is reasonable to grant the order

The court will look at whether the tenant has other suitable accommodation. It does this as part of deciding if the order is reasonable.

It will help your case if you:

- can rent another property to the tenant on similar terms, or
- have helped your tenant to find somewhere else suitable to live

Remember, you cannot evict your tenant without a court order. The tenant has a right to stay in the property until the court evicts them.

More advice

- Rent control
- Landlord Advice