

PE1447/A

Petition PE1447 by Gerry McLellan - protection for landlords

Shelter Scotland recognises the issues caused by the wilful non payment of rent; however we would also like to draw the committee's attention to the rights of tenants with reference to this petition. For example there may be a valid reason for tenants to withhold all or part of their rent if the landlord has not provided an agreed service or carried out necessary repairs. This situation would not be covered by this petition proposal. In addition there are clear legal procedures already in place which a landlord must follow to evict a tenant. Please see the information below regarding withholding rent which is taken from our advice website for tenants.

Should this petition progress to the next stage we would be keen to see the committee consider how it will impact on tenants.

From the Shelter Scotland website:

Withholding rent

In some circumstances you may wish to withhold your rent to try and force your landlord to do something, or because you have paid out money that the landlord hasn't reimbursed. However, this can be a risky strategy.

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Is withholding rent an option?

You may wish to withhold rent to try to force your landlord to take action about something, such as [repairs](#). Or you might have paid for repairs out of your own money and want to be reimbursed.

If your landlord is failing to provide a service that you are paying for as part of your rent (for example, cleaning, gardening or meals) you should only withhold the money covering that service.

Will I risk eviction if I withhold rent?

Before deciding to withhold rent, consider the risk of being evicted. Most tenants can be evicted if rent arrears have built up, regardless of the reason why the rent arrears exist. The exceptions to this are:

- Scottish secure and short Scottish secure tenants
- regulated tenants
- assured or short assured tenants who owe less than three months' rent.

In these cases, the sheriff will only evict a tenant if they think it is reasonable to do so.

How do I go about withholding rent?

Keep your landlord informed

Before you start withholding rent, you must inform your landlord in writing. You need to tell them:

- that you intend to withhold rent
- what the problem is
- what you want your landlord to do and by when (you have to include estimates of the costs involved if repairs are needed)
- when you will start withholding rent
- how long you will withhold rent for.

You must allow your landlord time to sort out the problem before you start withholding rent. It is very important to keep a copy of the letter in case there are problems later on.

Keep the rent money separate

If you are withholding rent, keep the money you should have been paying as rent in a separate bank account, because:

- it shows that you are withholding the rent deliberately because you're not happy with the service you're receiving from your landlord
- it proves you're not using the problem as an excuse because you can't afford the rent or have spent the money on something else
- it ensures that you can pay off the arrears immediately if you have to, for instance if your landlord starts court action to evict you or puts the problem right
- it will help you keep track of how much rent you have withheld.

It's a good idea to provide your landlord with a statement of this separate account every time you would normally have paid your rent.

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What can my landlord do?

If you build up rent arrears, your landlord has the right to try to evict you. This applies regardless of your tenancy type, although the rules your landlord must follow depend on the kind of tenancy you have. The [page on rent arrears](#) explains what your landlord has to do to evict you for non-payment of rent.

If you have evidence of problems that you have experienced during your tenancy, you may be able to make a counterclaim at court. If this is successful, the sheriff will reduce the amount of money you owe your landlord to compensate for the problems you have had. This process is complicated, so make sure you talk to an adviser or [solicitor](#) before taking action.

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What if my landlord puts the problem right?

If your landlord decides to put the problem right, for example by improving services or carrying out repairs, then you will have to pay back the withheld rent. You should be able to keep some of the withheld rent to cover your costs if you have paid for something which is your landlord's responsibility, for example repairs to the exterior structure of your home.

Debbie King, Public Affairs officer.