

Factsheet 35

Tenancy rights - rent

July 2022

About this factsheet

This factsheet has information about what your landlord can charge you in rent, depending on the type of tenancy you have. It briefly covers rent arrears and rights against eviction, with more detailed information available in factsheet 68, *Preventing evictions*.

The following resources may also be helpful:

- FS8 *Council and housing association housing*
- FS63 *Finding private rented accommodation*
- IG08 *Housing options*

The information in this factsheet is applicable in England. If you are in Wales, Scotland or Northern Ireland, please contact Age Cymru, Age Scotland or Age NI for applicable 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 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, housing association, or the council. If you are a private or housing association tenant, your tenancy type is also important.

You can usually work out your tenancy type by checking your tenancy agreement. 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 Universal Credit (under State Pension age) or Housing Benefit (over State Pension age). These are benefits for people on low incomes. You might also be eligible for help with Council Tax.

For more information, see factsheet 92, *Universal Credit*, factsheet 17, *Housing Benefit*, and factsheet 21, *Council Tax*.

2 Private tenants

If you are a private tenant, you are likely to have one of three different tenancy types.

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 '*regulated*' (often called '*protected*') tenancy.

This factsheet looks at these tenancy types in chronological order, starting with the oldest.

2.1 Regulated (often called '*protected*') tenants

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

If you are a regulated tenant, you can ask a Rent Officer to decide what a '*fair rent*' for your property is. Your landlord also has this right.

Rent increases

Once a fair rent has been decided ('*registered*'), your landlord can only 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, they improve the condition of your property to the extent that the current fair rent is no longer appropriate.

There is usually a maximum amount the rent can be increased by, which takes account of inflation (the Retail Price Index). This cap does not apply if the rent is being registered for the first time, or if the landlord has carried out repairs or improvements causing an increase of 15 per cent or more in the existing registered rent.

If you disagree with a fair rent registered by a Rent Officer, you can appeal to the *First-Tier Tribunal (Property Chamber – Residential Property)*, referred to as '*the Tribunal*' in this factsheet. The Tribunal may set a higher rent than that set by the Rent Officer. You should seek advice before appealing a Rent Officer's decision.

If you have not had a fair rent registered, there are complicated rules on how your rent can be increased. In most cases, the landlord must apply to have a fair rent set for the first time. However, it may be possible for them to increase the rent by serving a formal notice or drawing up a written agreement for you to sign. This is rare, so seek advice if your landlord tries to do this.

Fair rents

If you have a fair rent registered, this is the maximum amount your landlord can charge. 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 any sum deemed to be attributable to scarcity of accommodation, so you should not pay more if similar properties are in short supply locally.

If you have not had a fair rent set ('*registered*') or want to apply for a new fair rent, you can apply using form RR1, which can be downloaded at: www.gov.uk/government/publications/fair-rent-forms

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. 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.

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 on the Rent Officer's decision notice, but Officers have been advised to accept appeals received within 35 days 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 Tribunal. The Tribunal makes the final decision on the rent that should be set. As with rent increases, the Tribunal can set a higher rent than the Rent Officer, so seek advice before appealing.

2.2 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*'.

If you are an assured tenant, you can be charged market rent. This means your rent is likely to be higher in areas of high demand. Unlike a regulated tenant, you do not have the right to seek a fairer rent than the one you agreed with your landlord. However, you may 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 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 and you remain in occupation without another tenancy being granted.

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 legal 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. Once your rent has been increased in this way, the landlord cannot increase it more than once a year without your consent.

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. 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 a year without consent.

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. They cannot increase the rent within the first year of the tenancy and cannot increase the rent more than once a year without your consent. You can appeal to the Tribunal if you believe a proposed increase exceeds the market rent for comparable properties in the area.

2.3 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 can also 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.

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 does make a decision, what it decides 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 ends, assuming no further tenancy is granted).

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, *Preventing evictions* for more information.

3 Housing association tenants

3.1 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 a similar way to regulated private tenants (see section 2.1).

If there is a clause in your tenancy agreement allowing your landlord to increase the rent, they can do this without making an application for a new fair rent. However, you can challenge the proposed increase by asking a Rent Officer to decide whether the new rent is fair. Whatever they decide will be the maximum rent that can be charged.

If your agreement does not contain such a clause, the landlord can only unilaterally increase the rent by making an application for a new fair rent.

Your landlord is not able to increase your rent by more than inflation (the Consumer Price Index) plus one per cent in any year (even if the Rent Officer sets a higher rent than this).

3.2 Tenancies that began after 15 January 1989

Housing association tenancies that began on or after 15 January 1989 are likely to be assured or assured shorthold. See sections 2.2 and 2.3 for general information on rents and rent increases.

Most housing associations are registered with the Regulator of Social Housing, which means there are additional restrictions on their rent setting. As a result, their rents are usually cheaper than local market rents.

At present, the Regulator prohibits registered housing associations from increasing their rents by more than inflation (the Consumer Price Index) plus one per cent each year. This applies until 2025. Note, some housing association tenancies are not covered by this policy, including in certain supported housing schemes where a high level of care and support is provided.

4 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.

At present, authorities are prevented from increasing their rents by more than inflation (the Consumer Price Index) plus one per cent each year. This applies until 2025, but certain tenancies are excluded, including tenancies granted on a temporary basis to homeless people.

To increase your rent, the local authority must first serve you a '*notice of variation*' and the 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. This is a complicated and lengthy process, with potential to incur significant costs, 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.

5 Affordable rents

Social landlords (local authorities and regulated housing associations) can charge '*affordable*' rents for certain properties.

These are classed as social housing, but the rent is typically higher than in traditional social housing. It can be up to 80 per cent of the estimated market rent for the property (inclusive of service charges).

The landlord must have an agreement with the Regulator of Social Housing to do this. It must have policies on the criteria it uses to allocate its properties, which should include information on when it grants tenancies at affordable rent levels.

6 '*High-income*' social tenants

Social landlords can set higher rents for households with an annual taxable income of £60,000 and above.

Household means the named tenant (or tenants) and their spouse, civil partner or live-in partner. If there are two or more people in your household with taxable income, 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 2022/23 financial year, this is income received in the 2020/21 tax year. If a household experiences a '*sudden and ongoing loss of income*', the landlord is expected to re-evaluate the rent charged.

7 Rent arrears

If you fall behind on your rent, contact a local advice agency or debt charity as soon as possible. Let your landlord know you are doing this and will try to make up the payments as soon as possible. If your landlord is a council or housing association, ask what support they offer with arrears.

For debt management purposes, rent arrears are treated as a priority debt. This is because falling into arrears puts you at risk of eviction. In most cases, you cannot be evicted unless your landlord can prove a '*ground for possession*' (a legal reason for evicting) in court, but all the tenancy types mentioned in this factsheet have grounds for possession relating to rent arrears.

This does not mean there is no hope of remaining in your property if you fall into arrears. You may be able to avoid court action if you engage with your landlord and explore options for repayment. In some cases, paying down the arrears before your court date restricts your landlord's ability to get the property back. More information on avoiding and challenging evictions is in FS68 *Preventing evictions*.

You can look to maximise your income by claiming all the benefits you are entitled to, including Housing Benefit (HB) or the housing costs element of Universal Credit (UC). A local advice agency like your local Age UK can carry out a full benefits check, or use the Age UK online calculator: www.ageuk.org.uk/information-advice/money-legal/benefits-entitlements/benefits-calculator/

If your HB or UC award does not cover your full rent, you may be able to get a Discretionary Housing Payment (DHP) from the local authority. These can be paid if you need extra financial assistance, for example with a rent shortfall, and are entirely discretionary. They are also time limited, so you must reapply if you continue to need help with paying the rent.

DHPs cannot cover certain costs, such as rent payments that have been increased for the purposes of repaying arrears. More information is in section 5.5 of FS17 *Housing Benefit* and section 10.6 of FS92 *Universal Credit*.

For debt advice, contact a service authorised by the Financial Conduct Authority, such as StepChange Debt Charity or National Debtline, or your local authority if they offer this type of help. A debt adviser can help you to budget, manage your debts and negotiate with your landlord and other creditors.

They can also assess whether you are eligible for a '*breathing space*', a respite period during which your landlord is prevented from taking certain steps. These include demanding payment of the arrears, charging interest, starting court proceedings to get the property back, or taking steps to '*enforce*' a court order, for example by evicting you.

A breathing space can last up to 60 days, or longer if you are receiving treatment from a specialist mental health service in relation to a serious disorder. You must continue to pay any rent that falls due during the breathing space period.

If your landlord informs you they want the property back due to rent arrears, seek specialist housing advice as soon as possible. Legal aid is available for challenging a landlord's '*possession claim*', so you may be able to get free legal advice and representation if you are on a low income and your case is considered strong enough. Check if there is a law centre in your area and, if not, speak to an advice agency such as the local Citizens Advice about sources of free legal help.

8 Rent rebates

You may be able to reclaim 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 reclaim more money if they are convicted. The relevant offences are:

- operating as a landlord when they have been banned from doing so
- 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.

Applying for an RRO

You can reclaim rent 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.

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.

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.

Tribunal decision

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 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, *Preventing evictions*.

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

www.citizensadvice.org.uk

Telephone 0800 144 8848

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

Housing Ombudsman Service (The)

www.housing-ombudsman.org.uk

Telephone 0300 111 3000

Investigates complaints about landlords. Membership is mandatory for social landlords registered with the Regulator of Social Housing and voluntary for private landlords.

Law Centres Network

www.lawcentres.org.uk

Telephone 020 3637 1330

Find if there is a Law Centre near you via the website.

Local Government and Social Care Ombudsman (LGSCO)

www.lgo.org.uk/

Telephone 0300 061 0614

Investigates complaints about injustice arising from poor administration by local authorities.

National Debtline

www.nationaldebtline.org

Telephone 0808 808 4000

National telephone helpline for people with debt problems.

Regulator of Social Housing

www.gov.uk/guidance/about-the-regulator-of-social-housing

Telephone 0300 124 5225

Regulates registered providers of social housing, including local authority landlords and housing associations.

StepChange Debt Charity

www.stepchange.org/

Telephone 0800 138 1111

Offers free and independent debt advice and can help explore your options including setting up a debt management plan.

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.

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*.

Your local authority (council)

www.gov.uk/find-local-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 information and advice about homelessness and 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 Advice

www.agecymru.org.uk

0300 303 4498

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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The evidence sources used to create this factsheet are available on request. Contact resources@ageuk.org.uk

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