



LETTING MANSES AND OTHER HOUSES

(Amended October 2022)

The following notes cover matters which congregations should consider if they are contemplating letting out their Manse (or any residential property) during a period of vacancy or for any other reason.

1. **Ecclesiastical consents**

In all cases, Presbytery consent will be required to permit the let of the Manse. If title to the house is held in the name of the General Trustees, their consent is also needed. If you are unsure how title is held, you should make contact with either the General Trustees at GTLeasing@churchofscotland.org.uk or the Law Department at Lawdept@churchofscotland.org.uk.

2. **Letting Procedures**

Where the house is held in name of the General Trustees, their staff will handle the leasing arrangements and early contact should be made with them on GTLeasing@churchofscotland.org.uk. In other cases, it is recommended that contact be made with the Law Department Lawdept@churchofscotland.org.uk who can provide legal advice and prepare the necessary documentation as required.

There is only one type of Tenancy available in Scotland for new residential lets. This is the Private Residential Tenancy ("PRT") and its terms are in part prescribed by the Private Housing (Tenancies)(Scotland) Act 2016 as amended by subsequent legislation. A PRT must contain certain statutory provisions and both the General Trustees and the Law Department have style leases available. We recommend that, even when using a letting agent, congregations insist on the lease itself being drawn up by either the General Trustees or the Law Department. This will ensure that any special conditions which are required as a consequence of the ecclesiastical nature of the properties are contained in the tenancy agreement. It is also important that the landlords are correctly named and that the landlords are the trustees who hold the property as they will be the party who should be registered as landlords on the Local Authority's records.

This is an open-ended tenancy with no end date. In order to end the tenancy, there has to be a ground specified in the Act and it has to be reasonable to do so.

There are three grounds that are most often used to recover vacant possession of manses, and if the tenants do not remove voluntarily then a case requires to be taken to the First-tier Tribunal on one of these grounds, namely:-

a) **The manse is required for a minister.**

For this ground to be available, the property will need to have been previously (i.e. prior to the current let) occupied by someone as a residence from which they performed duties on behalf of the Church. If not, then this ground is not available. Even if this test is met, the Tribunal will not grant an Order to evict the tenant unless it considers that it is reasonable to do so.

b) The property is no longer required as a manse and is to be sold.

The Tribunal must still be satisfied, under this ground, that it is reasonable to grant an Order to evict. Exactly what will be required to establish this is uncertain but an argument can be made that the proceeds of the sale are needed for the work of the Congregation.

c) Rent Arrears of at least three months

Again, there are various matters that the Tribunal will take into account including the extent of the arrears, whether the arrears have arisen as a result of benefits claimed but not yet processed and whether in the round it is reasonable for the Order to be granted.

Reasonableness

Tribunals will determine the “reasonableness” of the grant of an eviction Order on a case by case basis, depending on the specific circumstances of each landlord and each tenant. Our experience has been that relevant factors are the availability of alternative accommodation for the tenant in the area, whether the minister can be housed in alternative accommodation and whether rent arrears have been caused by slow benefits payments. A Tribunal can also delay granting the Order to allow time for the tenant to find suitable alternative accommodation.

Note that at present under emergency legislation that is in place until at least 31 March 2023 (but may be extended for two further periods of six months) no evictions can be carried out. This does not mean we cannot serve Notice to Leave and take the matter to a Tribunal and get the necessary Order to evict: it means that the Sheriff Officers cannot enforce the Order until after 31 March 2023 (or any extended period).

3. The tenancies which were in place prior to 1 December 2017 were Assured Tenancies or Short Assured Tenancies which are in a different style and have different rules applying to them. If your congregation has one of these and you wish to discuss what can and can't be done with them, please contact us at Lawdept@churchofscotland.org.uk.
4. It is possible to offer a short term occupancy arrangement called a Caretaker arrangement. A caretaker arrangement is not a tenancy and the normal rules applying to residential tenancies will not apply to it. Some statutory provisions do apply such as the provisions with respect to the need for a House in Multiple Occupancy (HMO) licence where a house is occupied by three or more people from three different families. No rent is charged under a caretaker arrangement but the caretaker will pay Council Tax and the cost of electricity, gas and other services used. The Law Department can provide a style of a suitable agreement where this arrangement is appropriate. which is not a tenancy and is therefore exempt from much of the legislation. In this case no rent can be charged. **This may still be caught by the ban on evictions in the winter months, should an occupier refuse to leave at the end of the granted occupation.**

5. **Rent Increase**

The emergency legislation at present in force also prohibits rent increases in Private Residential Tenancies, again to 31 March 2023 and if you consider the rent being obtained for a property is too low you should consult with the Law Department for advice to see what, if anything, can be done. Careful consideration should be given before letting any property under the market rent and advice should be sought on this.

6. **Tenant References**

It is essential that in all cases, rigorous checks should be made as to the financial standing and previous rental history of potential tenants, with at least two references from previous landlords being obtained along with a bank reference confirming that the tenants should be in a position to meet the monthly rental. If this is not done, there is a significant risk to the congregation as it can be time-consuming and costly to remove tenants who default in their obligations. If the property is locally vested, the Law Department can assist in obtaining references.

7. **Registration of Landlord**

In all cases where a residential property is to be let - with the exception of a caretaker arrangement - and title is held in the name of local trustees, the trustees as owners will require to register as landlords. This should be done at an early stage as the registration number is now required for any advertisement offering the property for let. If the property is to be managed by Management Agents rather than by the Financial Board of the congregation, the Agents will also require to be registered. If the property is in the name of the General Trustees, they are already registered and the congregation will not require to register separately but will need to ask the General Trustees to add the particular property to their registration for that Local Authority area.

Congregations receive a 100% charitable discount on the fees which would otherwise be payable for landlord registration. Registration lasts for 3 years. Landlords who fail to register are guilty of a criminal offence and liable to a fine of up to £50,000 and suspension of rent payments.

8. **Multiple Occupancy**

In any case where a property is to be occupied by 3 or more unrelated persons, it is necessary to apply to the Local Authority for an HMO Licence. There are strict conditions as to room sizes and the facilities – particularly safety features - which must be available. The property requires to be inspected by the Local Authority and there is a fee for the licence. The General Trustees' policy is not to approve HMO leases.

9. **The Standard of the Property**

There is considerable statutory regulation not only of the way in which tenancies are conducted and what must be provided by the landlord but also of the condition of the property. Failing to comply could result in a landlord losing registration. The following matters require to be addressed:-

- (a) An Energy Performance Certificate must be obtained and placed on display within the property;
- (b) If there is gas central heating or any gas appliance, a gas safety check must be carried out every 12 months by a Gas Safe registered engineer. A record of the check has to be delivered to the tenant within 28 days of being carried out and the records require to be kept for 2 years. A gas safety certificate must be given to the tenants by the time the tenancy commences;
- (c) It is **mandatory** that at the start of each new tenancy (where an electrical check has not been carried out in the previous five years), and at least once every five years during the course of a tenancy, an Electrical Installation Condition Report Certificate and a Portable Appliance Test Certificate is obtained. The certificates require to be signed by a qualified and accredited electrician;
- (d) A fire and smoke detector and alarms require to be fitted:
- ✓ In the room which is most frequently used by the occupants for general daytime living purposes
 - ✓ In every circulation space
 - ✓ On each floor where there is more than one floor
 - ✓ In every kitchen
- All alarms must be mains powered and interlinked;
- (e) A Carbon Monoxide detector must be installed where there is a gas boiler or other gas appliance within the property;
- (f) The house must meet what is known as the “Repairing Standard” prior to and throughout the period of the tenancy. The landlord is obliged carry out all necessary work prior to the start of the tenancy and if any work becomes necessary the landlord must carry out the work. The landlord is responsible for keeping the following parts of the property in reasonable repair and working order:-
- the structure and exterior of the house
 - the water supply, gas and electricity etc
 - the fixtures and fittings supplied with the tenancy

In addition:-

- the property must be kept in a wind and water tight condition reasonably fit for human habitation
- any furnishings within the property, supplied by the landlord, must be capable of being used safely for the purpose for which they are designed
- satisfactory provision must be made for detecting and giving warnings of fires

It is a criminal offence if the Landlord fails to comply with a Repairing Standards Enforcement Order issued by the Tribunal.

Landlord/tenant disputes with respect to repairing standards are resolved before the First-tier Tribunal (Housing and Property Chamber).

10. **Deposits**

It is an offence to charge a tenant additional sums (“key money”) either to secure the tenancy or in connection with items such as preparation of the lease. A deposit of a sum of not more than two months’ rent can be collected at the start of the tenancy to cover damage done, rent arrears etc that occur during the tenancy.

Any landlord receiving a deposit has a period of 30 days within which to pay that deposit to the scheme administrator of a deposit scheme approved by the Scottish Ministers and provide the tenant with written information about the operation of the scheme. At the end of the tenancy, the landlord will require to apply to the scheme administrator for repayment of all or part of the deposit. The tenant can also apply for the return of the deposit. Where the amount to be repaid cannot be agreed the matter will be adjudicated by a dispute resolution process provided by the scheme free of charge. No interest will be paid on the deposit monies.

Where a dispute arises as to whether or not deductions should be made before the deposit is repaid, there will be an adjudication. It will be necessary to submit evidence to show why an amount should be deducted. If the issue is unpaid rent this is relatively straightforward but if the issue is the state of the property it will be necessary to provide evidence as to the condition of the property at the start of the tenancy and then again at the end. The landlords only get one shot at this which means that a full condition survey should be carried out at the start of the tenancy, especially where the property has been recently refurbished or new equipment such as a boiler or cooker installed. A written record of the condition should be made before the tenancy commences and it may help to take photographs.

11. **Insurance, Council Tax etc**

Property insurance should be in place and the insurers should be advised that the property is being let. The tenant should be made aware that they will be responsible for insuring any contents belonging to them.

<http://www.cosic.co.uk/component/content/article/37-news/156-the-church-insurance-scheme-is-commended-at-the-general-assembly-of-2014>

The Financial Board of the congregation is responsible for ensuring that the Local Authority is advised of the tenant’s occupancy for the purpose of Council Tax Assessment. *It is important to keep the Authority advised of any periods of vacancy between Tenants, failing which the congregation may lose its right to a Council Tax rebate.*

At the start of any tenancy, gas and electricity meters should be read and the suppliers advised of the change in the person responsible for payment for the service. The telephone

provider, if there is one, must be advised of the position. At the end of the tenancy it is important that meter readings are taken and all service providers advised of the change in the circumstances.

At the start of the tenancy someone from the congregation should be appointed to show the tenant round the property and in particular to show them where stopcocks and meters are located and how to operate any alarm system installed. The tenant should also be told about how any necessary repairs should be reported.

Conclusion

The letting of a property can be a complex matter and this circular is only a brief outline of some of the considerations which have to be borne in mind. If you are thinking of letting a residential property and wish to discuss any matter further, you should contact the Law Department or, if the property is held in the name of the General Trustees, the General Trustees, who will be able to provide further guidance.
