

Joint Industry Guidance on Late Payment of Rent

published jointly by the
**National Farmers Union of Scotland
Scottish Land and Estates
Scottish Tenant Farmers Association**

in association with
The Scottish Government's Independent Adviser on Tenant Farming

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Introduction

No owner of let property can be expected to operate without an effective remedy to deal with the late payment of rent. Landlords are entitled to expect reliable cash flow from rental income, and the deliberate late payment of rent should have serious consequences. There are, however, some situations where there may be genuine mitigating factors that justify a more supportive response.

Most landlords are fully alive to this, and if a rent payment is not made on time they will take immediate steps to understand what has gone wrong and ensure that the tenant is given every opportunity to rectify the matter. Some tenants may need help from a third party, and someone who is ill or confused for example may need specific support. That does not mean that the late payment of rent should have consequences other than are provided for by legislation, but it is reasonable to expect that the landlord will do what he can to encourage the tenant to seek support when required.

The concept of a vulnerable tenant is often employed in relation to rented housing, but the definition used in that context is of limited value in relation to an agricultural tenancy. Nonetheless the underlying principle of asking landlords to take care with respect to potential vulnerability is a good one that this guidance fully endorses. Landlords should ensure that each case is considered on its merits in a sensitive manner, taking special care if there is known to be a recent history of mental or physical ill-health, including substance misuse.

This guidance sets out a process that should be followed in all cases of late payment of rent. It applies only to secure 1991 Act tenancies, and the industry bodies believe that it may provide a helpful model for an incoming Tenant Farming Commissioner establishing new codes of practice in 2017.

Core Principles

The guidance on late payment of rent is underpinned by four core principles –

1. The tenant should always budget so that he can pay his rent on or before the date on which payment is due.
2. The landlord should always invoice the tenant for the rent due not less than one month and not more than three months before the date on which payment is due (*but tenants should be aware that in law the rent is payable whether an invoice has been issued or not*).
3. Late rent payments should only be by prior written agreement between the landlord and the tenant. If the tenant becomes aware that he is not going to be able to pay rent on the due date he should notify the landlord immediately.
4. Where a rent payment is late without prior agreement, the landlord should take all reasonable steps to ensure that the tenant fully understands the potential consequences of non-payment, and he should actively encourage the tenant to seek independent advice and support.

Basis of the Guidance

The guidance is built on an assumption of reasonableness among all involved. The industry bodies recognise that some landlords routinely deal with short term rent arrears through informal dialogue, and that these arrears are usually quickly settled. This guidance is not intended to intervene in the working of such relationships where they exist, but in any circumstances where the landlord decides

that a formal notice is to be issued requiring payment of arrears within two months then the landlord should adhere fully to this guidance.

Process for Addressing Late Payment of Rent

The guidance asks the landlord to undertake a process when a rent payment becomes overdue that is designed to preserve the landlord's right to terminate the tenancy if appropriate while ensuring that the tenant and his family are not inadvertently deprived of a tenancy in circumstances that might reasonably have been avoided.

Step 1 – Initial Informal Discussions

Immediately following the date on which rent has fallen due and not been paid, the landlord should make informal contact with the tenant and seek an explanation. This conversation should include a clear verbal warning of the risk that the tenant is now subject to, and may also include explicit encouragement to the tenant to discuss the matter with his immediate family and professional advisers. Normally this will be sufficient to elicit payment within a matter of days.

Step 2 – Formal Notice of Arrears

If payment is not forthcoming within a few days, or if the landlord is satisfied that it will probably not be, the landlord should issue the tenant with a formal written notice of arrears. This notice should be unambiguous in making it clear that the tenant is likely to lose his tenancy if the arrears are not paid within two months of the service of the notice. A copy of the leaflet "Late Payment of Rent – Important Advice to Tenants" (appendix A) should be enclosed with the letter.

Step 3 – Final Written Warning

Although current legislation does not require the issuing of any further formal notice prior to the landlord issuing a notice to quit, the industry bodies are of the view that it is reasonable that the landlord should issue a final written warning, referring to the formal notice of arrears, one month after that notice has been issued and one month before a notice to quit could potentially be issued.

The final written warning should be unambiguous in making it clear that the next step available to the landlord is that of issuing a formal notice to quit, and again a copy of the leaflet "Late Payment of Rent – Important Advice to Tenants" (appendix A) should be enclosed with the letter.

Step 4 – Notice to Quit

Where the tenant fails to settle the arrears within the two months following the service of the formal notice (see step 2), the landlord may issue a notice to quit. In doing so the landlord should be able to evidence that steps 1 to 3 above have been fulfilled (appendix C). The effect of the notice to quit (provided the legal requirements are met) will be termination of the lease.

Maintaining a Record of Process

The industry bodies are aware that under the terms of the Land Reform (Scotland) Act 2016 there will be established a position of Tenant Farming Commissioner with a remit to prepare codes of practice providing practical guidance to landlords and tenants of agricultural holdings and their agents. The industry bodies see their guidance on late payment of rent as potentially providing a basis for such a code, and they are anxious that it operates in an equivalent manner.

All landlords, tenants and professional intermediaries are therefore asked, while following this guidance, to maintain a concise written record of key dates and associated notes for stages 1 – 4, and to be willing on request and in confidence to make this record available to the Scottish Government's Independent Adviser on Tenant Farming should the industry bodies collectively ask him to do so. A pro-forma Record of Procedure is given in appendix C.

In Summary

The guidance sets out a simple process to be followed by landlords and tenants in the event of late payment of rent. Its purpose is to protect the landlord's legal right to redress as set out in law while at the same time protecting the tenant from potentially losing a valuable asset (his tenancy) as a result of illness, oversight or misunderstanding. The guidance is based on current legislation.

Statutory arrangements continue to apply. Landlords' and tenants' statutory rights are unaffected. The guidance seeks simply to provide robust encouragement and an effective framework to minimise any risk to the industry that may arise from conflict relating to the issuing of notices to quit on late payment of rent.

Late Payment of Rent

Important Advice to Tenants

Warning - Failure to pay your rent may result in termination of your lease, eviction from your home, and the possibility of significant financial loss. If you are not sure what to do please take immediate advice. Do not delay and risk losing your tenancy through inaction. Help is available from the sources listed below.

The law allows your landlord to serve you with a notice to quit if you do not pay your rent within two months of being told in writing that you are in arrears. That means that your landlord could thereafter raise an action in the Sherriff Court to have you and your family removed from the farm.

If you have a professional adviser such as a lawyer or land agent you should consult them immediately for urgent advice. Alternatively, one of the organisations listed below may be able to help you, or you can contact any reputable firm of agricultural lawyers or land agents and ask them to advise you.

National Farmers Union of Scotland
<http://www.nfus.org.uk/>
Tel 0131 472 4000

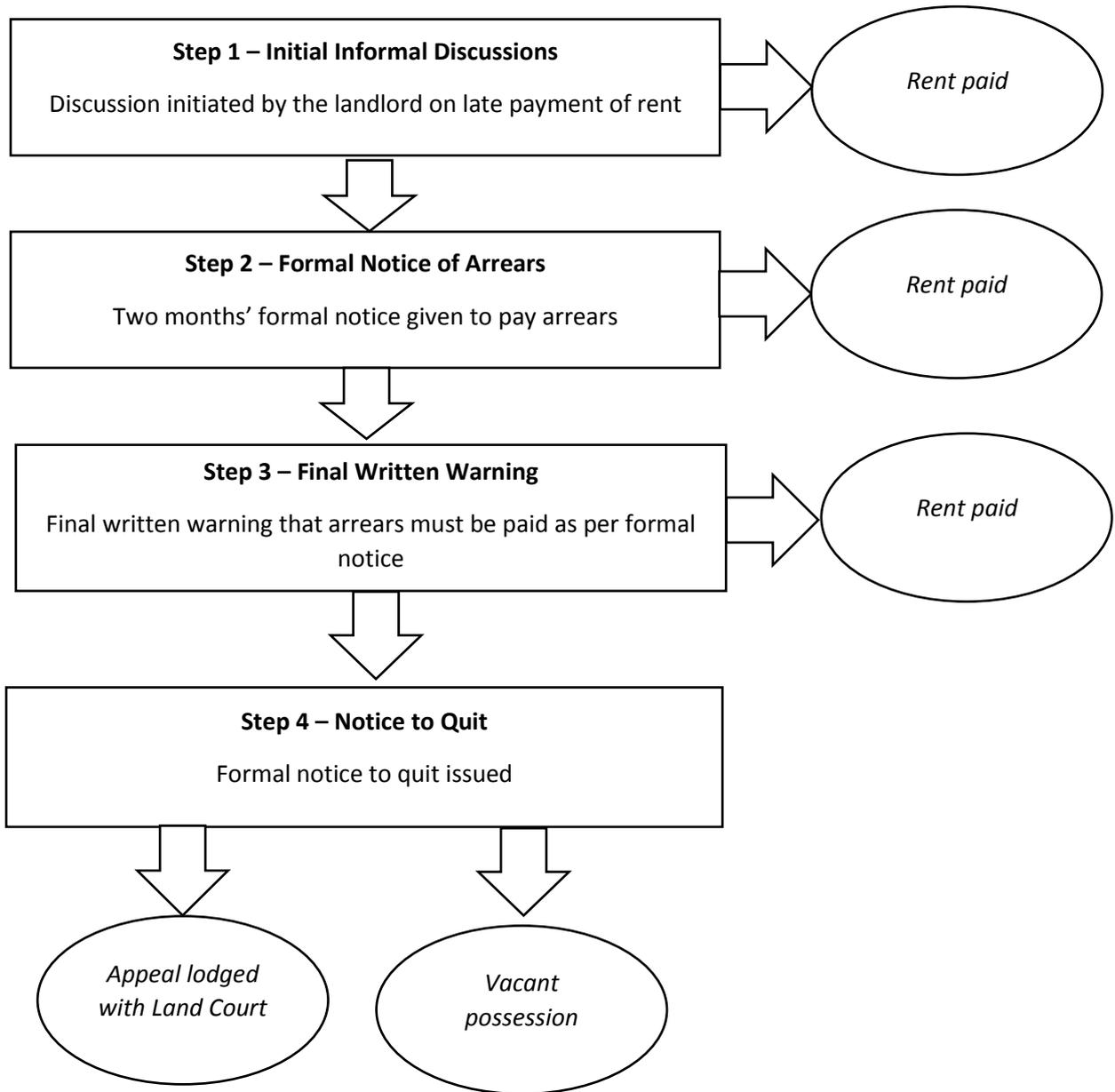
Scottish Land and Estates
<http://www.scottishlandandestates.co.uk/>
Tel 0131 653 5400

Scottish Tenant Farming Association
<http://www.tfascotland.org.uk/>
Tel 01408 633275

Scottish Government Independent Adviser
<http://www.gov.scot/Topics/farmingrural/Agriculture/agricultural-holdings/Tenant-Farming-Adviser>
Tel 0131 244 2293

Royal Scottish Agricultural Benevolent Institution
<http://www.rsabi.org.uk>
Tel 0131 472 4166

Appendix B – Flow Chart Showing Procedure for Dealing with Late Payment of Rent



Appendix C – Pro-Forma Record of Procedure

Step 1 – Initial Informal Discussions

- Date of informal discussions?
- Rent paid?

Step 2 – Formal Notice of Arrears

- Date formal notice sent to tenant?
- Copy on file?
- Copy of appendix A enclosed?
- Rent paid?

Step 3 – Final Written Warning

- Date final written warning sent to tenant?
- Copy on file?
- Copy of appendix A enclosed?
- Rent paid?

Step 4 – Notice to Quit

- Date notice to quit issued?