

## Example of defence to eviction from a public sector tenancy in the sheriff court

In this example, the defender (Mr. A) rents a flat from a council (the pursuer). The council is evicting Mr. A because he owes £1000 in rent. Mr. A has a Scottish secure tenancy, meaning he is a public tenant.

The reasons the landlord is using to evict Mr. A are listed in the Statement of Claim. Mr. A is defending his eviction by arguing that the eviction is unreasonable, they haven't followed the correct procedure to evict him and they have discriminated against him. He defends his eviction in the Response to Statement of Claim.

Mr. A is also making a counterclaim for compensation (damages) for indirect discrimination and a failure to make reasonable adjustments. If he wins the case, he could use this money to pay his rent arrears.

At the time this was written, October 2018, eviction proceedings for public sector tenants are brought and defended in the sheriff court. Private tenant evictions go to the First Tier Tribunal (housing and property chamber) instead. Counterclaims can only be made in the sheriff court. This is likely to change in 2019.

This example shows what a defence to an eviction claim looks like and there are explanations in blue throughout the example. Legal language is used – [check this glossary of Scots law terms if you're not sure](#). There are more detailed notes for advisers below the example.

**WARNING:** The example below shouldn't be used when taking legal action. It only gives an indication of the form of an eviction defence and counterclaim. You must get legal advice for your particular circumstances. Getting advice if you are threatened with eviction is very important – you could lose your home if you don't defend the eviction or don't understand the legal proceedings.

### **EXAMPLE**

[The Statement of Claim sets out why the landlord wants the court to grant them an eviction order to evict Mr A. The council says Mr. A hasn't paid his rent and they have followed the correct procedures. They are also asking for Mr. A to be ordered to pay their legal costs.]

The details of the landlords' claim are:

#### STATEMENT OF CLAIM

1. The pursuers are heritable proprietors of the subjects situated at and known as 227 Princes Street, Stonetown.
2. The defender resides at 227 Princes Street, Stonetown. The Defender is domiciled there. This court accordingly has jurisdiction.
3. The pursuers on 26 January 2011 let to the defender the dwelling house known as 227 Princes Street, Stonetown, for the period from 26 January 2011 to 1<sup>st</sup> February 2011 and weekly thereafter. The rent is at present £78.00 per week. The defender's tenancy of the said dwelling house is a Scottish Secure Tenancy in terms of the Housing (Scotland) Act 2001.

4. As at 19 June 2018 the defender was in arrears with his payments of rent to the extent of £1,000.00. The pursuers on 26 June 2018 served on the defender a notice complying with section 14(2) of the said Act, a copy of which notice is produced.
5. The Pursuer has complied with the pre-action requirements in section 14A of the Housing (Scotland) Act 2001.
6. This action has been rendered necessary as a result of the defender not having paid to the pursuers rent lawfully due. It is reasonable for this Court to grant decree as craved under section 16(2) of the said Act.
7. The defender should be found liable for the expenses of the action.

[In the response form below, Mr. A sets out whether he admits or denies each of the landlord's arguments. The answers correspond to these numbered paragraphs.]

### RESPONSE TO STATEMENT OF CLAIM

1. Admitted. [Mr. A admits the council own the flat]
2. Admitted. [Mr. A admits the case is being heard at the right court]
3. Admitted. The defender lives at the tenancy alone. He has a learning disability, namely severe dyslexia. His dyslexia is a mental impairment that has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities. He has difficulty reading and writing. In particular, he finds it hard to understand written instructions, and complete forms. He is a person with a disability, for the purposes of section 6 of the Equality Act 2010. The pursuers are aware of his disability. When he became a tenant in 2011, the pursuers' staff assisted the defender, at his request, in completing certain forms, associated with the grant of the tenancy. [Mr. A admits he lives alone but introduces an argument that he has a disability under the Equality Act 2010. He'll need to show evidence later to prove to the court that his learning disability has a substantial and long-term adverse effect on him so that it meets the definition of disability under the Equality Act].
4. Admitted. The defender works as a cleaner. He has a zero hours contract with Tiptop Cleaners. He began to have problems paying his rent when his shifts were reduced, and Tiptop Cleaners changed the way he was paid from weekly to monthly. This had the effect of decreasing the defender's income, and making it difficult for him to budget. [Mr. A admits he hasn't paid his rent but there was a non-malicious reason for this].

5. Denied. The Pursuers have not complied with the pre-action requirements. In April 2018, the defender visited his local housing office to discuss the rent arrears with the pursuers' staff. He explained to the person at reception that he wanted to make a payment of £50 per month towards the arrears. He was advised that he must complete a paper or online copy of the pursuers' income and expenditure form. Without completion of the form, the pursuers would not consider his proposal. He asked for help in completing the form, given his disability. The receptionist said that due to understaffing and other issues, no one could assist him. The defender took the form away, and attempted to complete it. He was unable to do so. Consequently, he concluded that he was unable to commence making payments to clear his arrears. [\[Mr. A argues that the council hasn't followed the proper procedures\]](#).
  
6. Denied. The defender is still willing and able to begin making payments of £50 per month to his arrears, if the pursuers are willing to accept those payments. In these circumstances, it is not reasonable that an order for recovery of possession is granted. Further and in any event, in serving a notice of proceedings under section 14 of the 2001 Act, and raising proceedings seeking an order for recovery of possession under section 16, the pursuers have unlawfully discriminated against the defender under section 35 of the Equality Act 2010. Reference is made to the defender's counterclaim. Accordingly, court cannot grant a decree for recovery of possession under section 16 of the 2001 Act. [\[Mr. A argues that he's willing to pay what he can afford and it's not reasonable to evict him. He also argues that they have discriminated against him.\]](#)
  
7. Denied. [\[Mr. A says he should not have to pay for the legal costs if he loses\]](#).

## COUNTERCLAIM

[Mr.A is asking the court to order the council to pay him compensation of £5000 with interest and to pay his legal costs if he wins.]

The defender craves the court:

1. To grant decree for payment by the pursuers to the defender in the sum of FIVE THOUSAND POUNDS (£5,000) STERLING with interest at the rate of eight per cent per annum from the date of lodging this response form until payment.
2. To find the pursuer liable to the defender in the expenses of this counterclaim.

## STATEMENT OF FACTS

1. The pursuers are domiciled in Scotland. This court has jurisdiction. These proceedings are a counterclaim in an existing action before the present court, at the instance of the present pursuers.
2. Reference is made to paragraphs 3 to 6 of the defender's response to the pursuers' statement of claim.
3. The pursuers' insistence that tenants in arrears must complete a paper or online copy of the pursuers' income and expenditure form, before an offer of payment of arrears is considered, is a "provision, criterion or practice" for the purposes of section 19 of the Equality Act 2010. It places disabled persons such as the defender, who have difficulties reading and writing, at a particular disadvantage, in comparison with persons who are not disabled. It makes it more difficult for such persons to make arrangements with the pursuers for the payment of their arrears. Without such arrangements being made, a person such as the defender is in danger of losing his home following eviction proceedings. The defender suffered from that particular disadvantage, when the pursuers refused to consider his proposal without a completed form. The pursuers' provision, criterion or practice is not a proportionate means of meeting a legitimate aim. Accordingly, its application to the defender amounts to indirect discrimination under section 19 of the 2010 Act. [Mr. A is arguing the council has indirectly discriminated against him.]

4. Separately, the pursuers' insistence that tenants in arrears must complete a paper or online copy of the pursuers' income and expenditure form, before an offer of payment of arrears is considered, is a "provision, criterion or practice" for the purposes of section 20 of the 2010 Act. It places disabled persons such as the defender, who have difficulties reading and writing, at a substantial disadvantage, in comparison with persons who are not disabled, for the reasons stated in paragraph 3. Accordingly, under section 20(3) and 36, the pursuers, being the controllers of let premises, are under an obligation to take such steps as it is reasonable to have to take to avoid that disadvantage. Under section 38(8), schedule 4 of the Act has effect, in relation to the obligation to make reasonable adjustments, as regards let premises. The ability to agree with the landlord a reasonable plan for future payments of arrears, under section 14A(5) of the Housing (Scotland) Act 2001, is a "benefit or facility" for the purposes of schedule 4 paragraph 2(5)(b) of the 2010 Act. As already described, the defender was placed at a substantial disadvantage in accessing that benefit or facility, due to the pursuers' provision, criterion or practice. The defender asked for assistance from the pursuers in completing the form. They accordingly received a request from him, to take steps to avoid the disadvantage. They refused. The pursuers failed to comply with their duty to make reasonable adjustments, and thereby discriminated against the defender under sections 20, 21, 36 and schedule 4 of the 2010 Act. [\[Mr. A is arguing the council has discriminated against him by failing to make reasonable adjustments for his learning disability.\]](#)

5. The pursuers, being the owners and landlords of the tenancy property, are the managers of premises for the purposes of section 35 of that Act. Their indirect discrimination against the defender, and their failure to make reasonable adjustments, was unlawful under section 35(1)(a), (b) and (c).

6. In consequence of the pursuers' unlawful discrimination, the defender suffered loss, injury and damage. He felt upset and humiliated after his visit the housing office in April 2018, and following his inability to complete the income and expenditure form. He became concerned and anxious that he would not be able to pay his arrears, and would lose his home. Following the service of the notice of proceedings for recovery of possession, he felt frustrated and hopeless. He seeks compensation for injured feelings under section 119(4) of the Act. He reasonably estimates his loss to be £5,000, the sum sued for. [\[This is how Mr. A was affected by the discrimination and why he's claiming compensation\].](#)

## Notes for advisers:

- i. At the time of writing, an eviction action, with a claim for rent arrears of no more than £5,000, is raised under the Summary Cause Rules 2002. Under rule 8.1, the defender can defend the action, and state a counterclaim, by completing and lodging the response form which is attached to the copy of the summons that is served on the defender. In this case, the defender wishes to defend the action. He does so by responding to each of the paragraphs in the pursuers' statement of claim. The defender also wishes to counterclaim. This is treated separately in the template, so that there is a clear distinction between the defence and the counterclaim. The counterclaim begins with a statement of the orders that are being sought by the defender.
- ii. It is anticipated that, at some point in 2019, the Summary Cause Rules will be repealed. Eviction actions will be raised using a special form of the Simple Procedure. The Simple Procedure is already in use by the courts, for claims for payment of money of no more than £5,000. The Simple Procedure does not allow counterclaims. Instead, the defender makes his own separate claim. If that is claim for no more than £5,000, as in this case, that would also be a Simple Procedure claim. The defender can then ask the court to order that his claim, and the pursuers' eviction case, run together and be heard at the same time.
- iii. *Defences.* The paragraphs of the response correspond to the paragraphs in the pursuers' statement of claim. Note that the defender begins by saying whether he admits or denies what is said by the pursuers. This helps the sheriff to work out what is agreed, and what is disputed. If the defender agrees with only part of the corresponding paragraph in the pursuers' statement of claim, he should say what he admits, and what he denies. As shorthand, lawyers sometimes use the expression "*Quoad ultra denied*", which means "Everything else is denied."
- iv. The defender has three defences in this case. His first defence is that the pursuers have not complied with the pre-action requirements in section 14A of the Housing (Scotland) Act 2001. Under section 14A(5): "The landlord must make reasonable efforts to agree with the tenant a reasonable plan for future payments to the landlord, such plan to include proposals in respect of (a) future payments of rent, and (b) outstanding rent...". The defender says that the pursuers have not done this. If the court agrees, the action will be dismissed: if the pursuers have not complied with the pre-action requirements, they were not entitled to start the eviction process by serving a notice of proceedings for recovery of possession. See section 14(2) and (2A) of the 2001 Act.
- v. The defender's next defence is that it would not be reasonable for the court to order his eviction, in all the circumstances of the case, in particular his offer to pay the arrears by installments. This is a standard defence in an arrears case. The court cannot grant an order for eviction on the ground of rent arrears, under the 2001 Act, unless it is reasonable to do so: see section 16(2)(a).

- vi. The third defence is that, in serving a notice of proceedings under section 14 of the 2001 Act, and raising proceedings seeking an order for recovery of possession under section 16, the pursuers have unlawfully discriminated against the defender under section 35 of the Equality Act 2010. If that is correct, the court cannot grant an order for eviction, because the courts cannot be required to give legal effect to acts proscribed as unlawful. See *Aster Communities Ltd v Akerman-Livingstone* [2015] UKSC 15; [2015] AC 1399 at paragraph [17].
- vii. The defences are legally distinct, but also interrelated. If the defender shows that the pursuers have breached section 35 of the 2010 Act, the court would be unlikely to hold that the pursuers had made “reasonable efforts” under section 14A(5) of the 2001 Act, or that it would be reasonable to grant the order under section 16(2).
- viii. *Counterclaim.* For a discussion of claims made under the 2010 Act, see the notes to the template initial writ. In this case, the protected characteristic is again disability. However, the prohibited conduct is indirect discrimination, and failure to make reasonable adjustments. The discrimination is unlawful under section 35. The defender seeks to make his claim under section 114 of the 2010 Act, by way of a counterclaim.