

Example response to eviction application in the First-tier Tribunal for a private tenant

In this example, the David Jay rents a flat from a private landlord, John Dickson. John is applying to the Tribunal for an order to evict David for antisocial behaviour. David has a Private Residential Tenancy which is a type of tenancy created by the Private Housing (Tenancies) (Scotland) Act 2016.

David defends his eviction using both housing law arguments under the Private Housing (Tenancies) (Scotland) Act 2016 and discrimination law arguments under the Equality Act 2010. It's common to use discrimination law as well as housing law arguments.

Eviction proceedings for private tenants are decided in the First Tier Tribunal (housing and property chamber), not the sheriff court. Counterclaims for compensation can only be made in the sheriff court. David might want to take a claim for compensation for discrimination in the court but that's not dealt with here.

This example shows what a response to an eviction application looks like. There are explanations in blue throughout. 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 defending an eviction. It only gives an indication of the form of an eviction response for private tenants. You must get legal advice for your particular circumstances and type of tenancy. 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

First-tier Tribunal Housing and Property Chamber

Case Reference: xxxxx

Written Representations for the Tenant

in the case

John Dickson [*Address*]

Applicant Landlord

against

David Jay

Respondent Tenant

Property: 27/1 Queen Ann Street, Anytown

These are the representations for the respondent in response to the application made by Mr Dickson for an eviction order.

It is accepted that:

- the parties entered into a tenancy on 10 January 2018
- the tenancy is a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016
- that the respondent took entry to the property on 15 January 2018
- that there were occasions, between 1st October and 30th November 2018, when the respondent shouted loudly for sustained periods, banged doors and played loud music at the property
- that this caused alarm, distress, nuisance or annoyance to neighbours in the building, particularly to Mr Jones, who lives directly above the tenancy property
- that residents in the building, including Mr Jones, complained both to the applicant
- that by letters dated 15th October, 2nd November, and 16th November, the applicant asked the respondent to stop shouting loudly, banging doors and playing loud music at the tenancy property
- that on 10 January 2019, the applicant served a notice to leave on the respondent, under section 62 of the 2016 Act
- that the applicant seeks an eviction order under paragraph 14 (Anti-social behaviour) of schedule 3 to the 2016 Act.

The respondent asks the Tribunal to take the following points into consideration.

1. That the respondent has a disability under section 6 of the Equality Act 2010. He suffers from paranoid schizophrenia. This is a chronic condition, which is treated by medication. The respondent is aware of his condition. The respondent has periods of stability interspersed with relapses. He becomes agitated and anxious when unwell. At these times, he experiences paranoid ideas and auditory hallucinations. He is apt to become unwell if he does not take his medication or if the dose is adjusted. In the past, he has been hospitalized, as a result of his condition. Since 2012, the respondent has built up good relationships with the team of persons who assist in his care. They are based at [address]. They are: AB, a Community Psychiatric Nurse, Dr CD, a Specialty Doctor in Psychiatry and EF, a Psychologist. The respondent also has a good relationship with his GP, Dr GH, [address]. He also has support from his

brother, Michael Jay. The respondent has not required hospitalization for several years. However, he suffered relapses in 2015, and in October and November 2018. During those relapses, he had periods of shouting loudly for sustained periods, particularly during the night. He has also banged doors and played loud music. Following the relapse in 2018, the respondent was reviewed by Dr CD. His medication was changed. This has been effective at controlling his symptoms, which have settled. [David argues that he has paranoid schizophrenia and this is a disability as defined by the Equality Act 2010. His behaviour is directly related to his disability.]

2. After receipt of the applicant's letter of 16 November, the respondent sought help from his care team. His brother also assisted him in drafting a letter to the applicant, dated 23 November. The letter explained the respondent's condition, and its role in his apparent antisocial behaviour. The applicant therefore became aware of the respondent's disability. A copy of the letter is attached to this response. [David argues that his landlord knew about his disability from 23rd November].

3. On 10 January 2019, the applicant served a notice to leave on the applicant. This was despite his receipt of the letter of 23 November, and the fact that the respondent's condition had settled by then.

4. A copy letter from Dr CD is attached to this response. It explains: the respondent's condition; that his antisocial behaviour is caused by his disability; and that eviction would have an adverse affect on his condition. The respondent needs settled arrangements in respect of his accommodation. He is happy at the tenancy property. It would be distressing for him to be required to leave. [David has medical evidence to support his disability and how it's linked to his behaviour. The doctor has also gone further to explain how a stable living situation is important for his disability].

5. The respondent contends that it would not be reasonable, in all the circumstances of the case, to issue an eviction order, given the nature of the antisocial behaviour, being caused by the respondent's disability. Reference is made to sub-paragraph (5) of paragraph 14 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. [David argues that it's not reasonable to evict him – this is a housing law argument rather than a discrimination argument. The Act says the Tribunal has to be satisfied that evicting a tenant is reasonable given the nature of the behavior, who it was in relation to and where it occurred. David might argue that the behavior was limited to his flat and not directed at other tenants, so it's not reasonable to evict him.]

6. Furthermore, the respondent contends that, in issuing a notice to leave against him, and by making this application, the applicant has unlawfully discriminated against the respondent, under sections 15 and 35 of the Equality Act 2010. In particular, the service of the notice is unfavourable treatment, because of something (the antisocial behaviour) arising in consequence of the respondent's disability,

under section 15(1). Given the settlement of the respondent's condition, this application is not a proportionate means of achieving a legitimate aim, under section 15(2). The applicant is aware of the respondent's disability. The applicant, being the owner and landlord of the tenancy property, is the manager of premises for the purposes of section 35 of the 2010 Act. His discrimination against the respondent is unlawful under section 35(1)(b). The Tribunal cannot give effect to his unlawful conduct, by granting an order. [David argues that evicting him is discrimination because of something arising from his disability which is unlawful under the Equality Act 2010.]

Notes for advisers:

- i. Reference is made to the notes to the template Initial Writ and the template Defences and Counterclaim.
- ii. In this case, the respondent is the tenant of a Private Residential Tenancy, under the Private Housing (Tenancies) (Scotland) Act 2016. Eviction proceedings have been raised against him, under section 51 of the Act, on ground 14 of schedule 3 (antisocial behaviour).
- iii. The respondent relies upon section 15 and 35 of the Act, as establishing that the landlord's decision to serve a notice to leave, and make the application to the Tribunal, is unlawful under sections 15 and 35 of the 2010 Act. If that is correct, the Tribunal cannot grant an order for eviction. 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]. The same principle applies to Tribunal proceedings. He also argues (in paragraph 5) that the statutory ground is not established, because it is not reasonable to issue an eviction order in consequence of his behaviour.
- iv. Notice that in this response, the tenant does not counterclaim for damages for unlawful discrimination, in contrast to the template Defences and Counterclaim. That is because, under sections 114(1) and 119 of the 2010 Act, it is the sheriff court that has jurisdiction to determine claims for damages for a violation of the 2010 Act. That does not prevent the respondent from relying upon the 2010 Act, as a *defence* in the Tribunal proceedings. However, it is suggested that the Tribunal does not have jurisdiction to determine a claim for damages for a contravention of the Act. In contrast, where eviction proceedings are raised against a tenant under the 2001 Act, in the sheriff court, a counterclaim for damages can be made, under the existing summary cause rules. As explained in the template Defences and Counterclaim, that may change, when the new Simple Procedure for eviction cases comes into effect.