

Tenant's Right To Compensation For Improvements

The Housing (Scotland) Act 2001 introduced the tenant's Right to Compensation for Improvements from 30 September 2002. The legal reference is the Scottish Secure Tenants (Compensation for Improvements) Regulations 2002 (Scottish Statutory Instrument 2002/312). This gives tenant the right to receive compensation for certain works (or qualifying improvements) carried out by them during the course of the tenancy. Details of qualifying improvements are provided at Appendix 1.

Operation Of The Scheme

The following will affect the amount of compensation that can be received and staff should make sure that anyone seeking information on the scheme is aware of these.

- The Association will use the formula outlined in the legislation.
- The amount of compensation will be affected by when it was carried out – for example, older works will receive less than works completed more recently of a similar nature. After a period of time, no compensation will be due at all (this is known as the notional life and is outlined in Appendix 5).
- The amount of compensation will be reduced when the improvement has deteriorated at a greater rate than would have been anticipated.
- Tenants will have to advise the Association of their requirement for compensation ***within the period beginning 28 days before the end of tenancy and 21 days after this date***. The Association will calculate the amount and respond within 28 days of receiving the notification.
- The Association will offset any monies owed in rent or rechargeable repairs arrears against the compensation, thus reducing the award.
- The Association will assess the value of the improvement for the purposes of calculating any compensation. Where the tenant disputes this amount, there is a process by which this can be reviewed. Details of this should be provided to all tenants when they are advised of the outcome of any claim.
- Tenants must have had written permission from the Association for carrying out the repair in the first place.
- The maximum amount that will be paid is £4,000 per improvement; the minimum £100 per improvement (amounts less than £100 will not be paid at all).

Formula For Calculating Compensation

The amount of compensation payable is based on a combination of:

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| ▪ the initial cost of the improvement | C |
| ▪ the notional life | N |
| ▪ the number of years since the repair was carried out | Y |

The Association uses the following formula:

$$C \times \frac{(N - Y)}{N}$$

For example, if a qualifying improvement with

C = £2,000 cost of improvement

N = 12 year notional life

Y = Completed 7 years ago

$$\begin{aligned} & 2,000 \times \frac{(12 - 7)}{12} \\ = & 2,000 \times 5/12 \\ = & \mathbf{£840.00} \end{aligned}$$

The amount calculated by the formula outlined above the amount will normally be paid. However, this may be altered to reflect the following:

- a. the cost of the improvement work is considered excessive
- b. the improvement effected by the work has deteriorated at a rate greater than that provided for in the notional life for that improvement
- c. the improvement effected by the work is of a higher quality than it would have been had the landlord effected it

Where (a) or (b) applies, the amount of compensation may be reduced; where (c) applies, it may be increased.

Exclusions

There will be no right to compensation for improvements where the tenancy has ended because:

- the tenancy has been transferred to another registered social landlord, for example via a (voluntary) Transfer of Engagements.
- because the tenant(s) has/have exercised the Right to Buy.
- because the Court has granted the Association a Decree for repossession (for example, eviction for a breach of the tenancy conditions).
- because the tenant(s) has/have been transferred to another of the Association's properties that is substantially the same as the tenancy of the home where the improvement was carried out.

Right To Compensation For Improvements

1. The tenant must have the written consent of the Association prior to making the improvement. The Maintenance Manager has discretion, however, to grant retrospective consent.
2. The improvement must be a qualifying one in terms of the list at Annex 1.
3. Tenants applying for consent to make improvements must provide
 - a. A description of each improvement proposed.
 - b. The proposed start/end date for each improvement
 - c. An estimate of the cost of each improvement
 - d. Details of any grants applied for.
4. The Association will examine the improvements proposed, and will consent subject to an assessment of the quality of the work, once completed.
5. Tenants will be required to provide receipts for completed work.
6. Compensation can only be paid at the end of a tenancy.
7. Compensation will not be paid if the calculated amount is less than £100.
8. The maximum compensation payable will be £4,000.
9. A qualifying tenant must be:
 - a. The tenant of the house and the person for whom the qualifying improvement was carried out, or
 - b. A tenant of a joint tenant which existed at the time when the qualifying improvement was carried out, or
 - c. A tenant who succeeded to the tenancy, which existed when the qualifying improvement was carried out.
10. It is assumed that, in the case of a joint tenant, the right to compensation will be resolved between those who jointly qualify for compensation, at the time they join or leave the joint tenancy. If one joint tenant cannot be traced when compensation falls to be paid, the full amount of compensation will be paid to the remaining joint tenants. It is for the missing tenant to recover his/her share from those to whom it was paid.
11. A tenancy is treated as ending if there is a change of landlord, e.g. if there is a transfer of houses to any other landlord.
12. Tenants will not qualify for compensation under the scheme if:
 - a. They exercise their Right to Buy, or
 - b. The house is repossessed by the Association
 - c. The Association grants a new tenancy for the same property to the qualifying tenant, whether or not with anyone else.
 - d. The qualifying tenant or successor has already received compensation for the improvement.

13. At the end of a tenancy, the Association will check the tenancy files for details of any qualifying improvements, and will remind the tenant of their right to compensation if appropriate.
14. To qualify, a tenant must submit a claim on the appropriate form from 28 days before until 21 days after the tenancy end. The Association will respond to the claimant within 28 days of the date of the claim.
15. VAT will be excluded from any calculation for compensation.
16. Compensation will be calculated on ONLY the real cost to the tenant. It will exclude
 - a. Any costs attributed to the tenant's own labour.
 - b. Any grants received by the tenant towards the cost of the improvement.
 - c. VAT paid.
 - d. The cost of any professional fees paid.
 - e. The cost of obtaining planning consent or consent under building regulations.
17. The basis for calculating compensation will be the tenant's original cost, discounted over the notional life of the improvement that has elapsed since the improvement was completed. The Association can also deduct a notional amount for excessive wear and tear or can increase compensation if the condition of the improvement is noticeably better than could be expected.
18. Depreciation for the elapsed time since installation of the improvement will be calculated as:

$$C \times 1 - (Y/N)$$

C = the cost of the improvement work from which shall be deducted the amount of any grant received for the works

N = the notional life of the improvement

Y = the number of years that have elapsed from the date of the improvement to the date of end of tenancy (part of year shall be counted as one year)
19. If the result of this process is less than £100, compensation is not payable.
20. If the amount payable after the calculation exceeds £4,000, the Association is not required to pay in excess of this, although it retains the discretion to do so.
21. In making an offer of compensation, the Association will state how the figure was calculated, including details of any deductions or supplements made, and how the offer may have been affected by the upper or lower limits.
22. Having calculated the compensation payable, the Association reserves the right to apply this to any amounts owing by the tenant, e.g. rent arrears.
23. If the tenant is dissatisfied with the compensation calculation, he/she may apply to have this reviewed by the HMMC or BoM. The Management Board may seek the advice of an independent valuer or surveyor appointed for this purpose.

Qualifying Improvements – Right To Compensation For Improvements

ITEM	IMPROVEMENT	NOTIONAL LIFE (Years)
1	Bath or shower	12
2	Sound insulation	20
3	Wash hand basin	12
4	Toilet (WC complete)	12
5	Kitchen sink (including base unit)	10
6	Storage cupboard in bathroom/kitchen	10
7	Worktops	10
8	Space/water heating	12
9	Thermostatic radiator valves	7
10	Insulation of pipes, water tank or cylinder	10
11	Loft insulation	20
12	Cavity wall insulation	20
13	Draught proofing of external doors/windows	8
14	Double glazing/other window replacement/secondary glazing	20
15	Installation of mechanical ventilation in bathrooms	7
16	Rewiring/provision of power and lighting/other electrical improvements (including mains wired smoke detectors)	15
17	Security measures, excluding burglar alarm systems	10