



## Evictions Policy

We know that sometimes a policy can be hard to read. We have made a question and answer version of our draft Evictions Policy below. If you have any more questions or if there is something that you do not understand, please contact us and we will try to help.

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### **1. What is the purpose of the Evictions Policy?**

The Evictions Policy sets out the legal framework that we must follow when ending a tenancy due to an eviction. Eviction means recovering accommodation that we own or manage, using the correct legal process. We will make sure that we take all steps available to us to try and avoid an eviction. Eviction action will always be a last resort.

### **2. How does the Evictions Policy fit with other strategies?**

The Evictions Policy helps us meet the aims and objectives of the Council's Local Outcome Improvement Plan – Moray 2027, the Local Housing Strategy and the Housing Service Improvement Plan.

### **3. What are the objectives and principles of the Evictions Policy?**

The objectives are:

- to prevent homelessness by making sure all other steps have been taken to address the issue;
- to use early intervention to try and stop the need for an eviction;
- to set out the stages we follow which lead to an eviction and how it is authorised;
- to deal with evictions in a consistent way;
- to stop any criminal activity taking place within a tenancy, such as the illegal supply of drugs;
- to make sure any action taken is in line with agreed procedures;
- to look after the interests of other household members, the neighbourhood and wider community; and
- where necessary, to take action to protect our assets and income.

The principles are that we will:

- explain clearly to tenants, at the start of and during their tenancy:
  - what actions and behaviours can lead to eviction; and
  - what their responsibilities are under their tenancy agreement to try and avoid eviction;

- give information, advice and help to tenants on Universal Credit and other welfare benefits to help them improve their ability to pay their rent. This may include sharing information with our housing support team to try and help keep the tenancy;
- provide training to make sure staff can carry out their duties; and
- provide information in plain language.

#### **4. What law relates to eviction from Council housing?**

The main law relating to evictions from council housing is set out in the Housing (Scotland) Act 2001, as amended by the Housing (Scotland) Act 2010 and the Housing (Scotland) Act 2014.

The full list of grounds we can use to take back a Council property is set out in [Housing \(Scotland\) Act 2001, Schedule 2, Part 1](#), as amended by the Housing (Scotland) Act 2010. The main grounds used for eviction are:

##### **Ground 1**

This ground applies where rent is owed to us but has not been paid, or any other requirement of the tenancy has been broken.

##### **Ground 2 – criminal convictions**

Where the tenant, joint tenant, household member or person staying in the property has been convicted of:

- using (or letting the house be used) for immoral or illegal purposes, or
- an offence that can be punished by prison that has been committed in, or around, the property.

##### **Ground 7 – antisocial behaviour**

Where the tenant, joint tenant, household member or person staying in or visiting the property has:

- acted antisocially to another person who is staying there or visiting the area and is acting lawfully; or

- carried out a course of antisocial conduct, including harassment and it is reasonable for us to provide other accommodation available to the tenant.

We must:

- prove to the Court, where necessary, that we have considered all reasonable alternatives to repossession. This does not apply where Ground 2 is being used and a criminal conviction already exists. We will have to show that the action is proportionate;
- carry out any steps needed to try and avoid the action; and
- make sure the correct process is followed when serving a legal notice of proceedings for recovery of possession (which is a legal document which allows us to start the eviction process). This must be served on the tenant and any household member, subtenant, lodger or assignee aged 16 or over living with the tenant and the house is their main/only home.

Only a Sherriff can grant a decree for eviction. This will only be granted where they are satisfied that it is reasonable to do so. The Sherriff will consider:

- what has happened, how often it has happened and how long it has continued for;
- whether the behaviour was carried out by someone other than the tenant;
- whether any late payments of Universal Credit or Housing Benefit have caused the rent arrears;
- how the behaviour has affected the neighbours or others; and
- any other actions that have been taken to stop the behaviour.

We are committed to promoting equality and will make sure that we do not discriminate between individuals on any protected characteristic under the Equality 2010 Act. We will also make sure that any information given to us as part of the application process will be used in line with the General Data Protection Regulations (GDPR) and the Data Protection Act 2018.

## **5. What responsibilities does a tenant have?**

The term 'tenant' refers to any main and/or joint tenant. All tenants are equally responsible for making sure the responsibilities of the tenancy are being met. This includes:

- paying rent due every week, in advance, on or before the first day of each rental period;
- making sure that they, their household or any visitors:
  - do not act antisocially;
  - do not use the house for any illegal or immoral purposes; and
  - have respect for others.

## **6. What responsibilities does Moray Council have?**

We have a duty to:

- protect our housing stock;
- help protect our tenants, their households and the wider community by attempting to provide safe environments to live in;
- take appropriate action against those living in, or visiting, council tenancies when the behaviour threatens to disrupt the neighbourhood and put the safety and security of others at risk;
- tell tenants what will happen if they breach their tenancy agreement and of any action that should be taken to help the situation;
- offer tenants support and help to keep their tenancy;
- make sure any action taken is proportionate to the breach of the tenancy;
- write to tenants before serving a notice of proceedings for recovery of possession to advise them of the process involved;
- serve a notice of proceedings for recovery of possession in line with housing law; and
- tell tenants and household members of our homelessness duty towards them.

## **7. What actions must Moray Council take before evicting someone for rent arrears?**

By law, before we can serve a notice for proceedings for recovery of possession, we must do the following:

- give clear information, advice and assistance about the tenancy agreement terms, rent due, eligibility for Universal Credit (or other financial assistance), debt management, tenancy sustainment and income maximisation;
- complete all required legal 'Pre-Action Requirements (PARs) to try and resolve any underlying debt and financial difficulties;
- agree an affordable repayment plan;
- not start eviction action without considering:
  - if a Universal Credit application has been made. If so, will the amount of the housing element due allow the tenant to pay or reduce the amount of the rent owed; and
  - any other steps which the tenant has taken which may result in payment within a reasonable period of time or will help the tenant to maintain an agreed repayment plan.

Our approach is to encourage early and direct contact with tenants to try and avoid increase of debt and/or evictions action.

## **8. What must the Council do before evicting someone for antisocial behaviour and/or criminal activity?**

By law, before we can serve a notice for proceedings for recovery of possession, we must do the following:

- have early and regular intervention to try and avoid a situation escalating (this depends on the level of engagement from the tenant/household);
- attempt to carry out any appropriate prevention processes and actions. These may be in conjunction with the Community Safety Office and Police Scotland;
- give support services to encourage a change of behaviour which may remove the need for court action;

- take legal advice to make sure the eviction action is proportionate and justified. The rights of the tenant should be balanced against the rights of the household and the wider community.

Where a criminal conviction exists we must consider the following factors:

- the nature, period and seriousness of the offence (including any recurring convictions or collective effect caused by a series of incidents as well as the potential seriousness of a one-off offence);
- who was convicted of the offence and their connection to the property – this may include visitors and what action the tenant is taking to stop the person returning to the property;
- the impact the offence has had on household members, neighbours and/or the community;
- if a copy of the criminal conviction is available as evidence to find out the extent of the offence and if the property was used for immoral or illegal purposes;
- if the convicted person is making any attempts to improve their behaviour. For example, if repeat offences or behaviours have stopped, if the person is taking part in training, employment or rehabilitation programmes and/or if there is regular and meaningful engagement with any support services; and
- if we and/or partner agencies can take any other steps to address the antisocial or criminal behaviour.

## **9. How do you assess risk and provide support?**

We will carry out a detailed risk assessment for all tenants (and their household members) if we identify that their tenancy is at risk. This makes sure that the correct support can be delivered. Community Care, Housing Needs and Social Work will be involved where necessary. We will support any external agency when they are trying to resolve the situation to try and avoid legal action. For example, where Money Advice

Service is trying to help, housing will suspend any action for 21 days to allow an agreement to be reached and implemented. However, where the situation is not improving, we can still continue with eviction action.

The risk assessment will try to measure the potential impact of the eviction and what needs put in place, for example, storage of furniture or provision of temporary homeless accommodation.

#### **10. What legal documents will be served?**

The correct legal notice of proceedings for recovery of possession will be served within the required timescales for each case. The type of notice will depend on the ground being used for the eviction.

The Housing (Scotland) Act 2014 introduces a new notice which must be used when the eviction action is based on Ground 2 (where there is a criminal conviction) and the notice will start from the date of the conviction. If there is an appeal against the conviction, then the notice will start on the date the appeal is dismissed by the court or abandoned by the tenant. Any arrears action will be dealt with separately.

If we take court action against you to evict you and recover your home, you will get court papers. These are called a summons. Sheriff Officers will send a summons letter to advise of the date of eviction, giving a minimum of 4 weeks' notice prior to eviction, unless there is evidence to justify another course of action (for example, the property has been abandoned, left unsecured, and is at risk of vandalism). This period of notice can only be reduced if authorised by the Housing Services Manager or the Head of Housing and Property.

#### **11. What happens when authorisation has been given for the eviction?**

An eviction cannot be carried out unless the Sheriff grants a decree for eviction. This means:



- the date from which we can recover the property will be stated on the decree (the eviction will take place as soon as possible after the stated date);
- a “form of charge for removing”, called a charge, must be served on a tenant before the eviction can take place. The charge will give the tenant a period of at least 14 days to leave the property before the eviction is carried out;
- a Sheriff Officer will carry out the eviction once the 14 day period has past;
- the eviction must be authorised by the Housing Services Manager, or the Head of Housing and Property. This will not be done without an updated risk assessment;
- eviction will be taken within six months of the decree being granted unless there is evidence to justify another course of action, for example, the tenant has become seriously ill.

## **12. How will the eviction be carried out?**

Before any eviction is carried out we will give advice and practical assistance to the tenant and their household. This includes details of temporary accommodation and storage arrangements for furniture.

We will follow legal guidance and good practice when an eviction takes place.

In a rent arrears eviction case;

- the tenancy will not come to an end until such time as the property has been recovered;
- where full payment of the rent arrears and legal expenses is made before the eviction, we can cancel the eviction.

In all other eviction cases, the date stated on the decree will:

- be the date that the tenancy will end on; and
- give us the right to recover possession of the house.

The eviction can only be carried out by Sheriff Officers, not Council staff. An Area

Housing Officer/Manager and a joiner will all attend to make sure the eviction is carried out. Social work and support staff will also attend if necessary.

We will change any locks and inspect the property, garden and any outbuildings. We will recharge tenants for the expenses which result from the eviction. This includes legal expenses, Sheriff Officers' fees, any rechargeable repairs as well as all liable housing debt.

### **13. How can I make a complaint?**

We have a complaints procedure that is available to any person who is not satisfied with the evictions process. In the first instance the complaints should be made to the Housing Services Manager. If the person is not satisfied with the response, they can use our Complaints Procedure. Details about our Complaints Procedure can be found at any Council Office, Access Point or on our website at [www.moray.gov.uk](http://www.moray.gov.uk).

### **14. How do you monitor your Evictions Policy?**

We monitor the numbers of and reasons for evictions internally and report this to the Communities Committee twice a year.

We also have a statutory duty to complete an Annual Return on the Charter (ARC) for the Scottish Housing Regulator (SHR). This gives key information on eviction cases:

- number of properties recovered by reason (i.e. rent arrears, ASB or other);
- total number of court actions initiated during the reporting year; and
- percentage of court actions initiated which resulted in eviction and the reasons for eviction.