

The Moray Council

Evictions Policy

1. Scope of the Policy

- 1.1 This policy sets out the circumstances in which a Scottish Secure Tenancy, Short Scottish Secure Tenancy, or any temporary tenancy agreement provided by the Moray Council will end due to an eviction and the associated activities and responsibilities involved.

- 1.2 This policy recognises that the Council's role as a landlord may conflict with its statutory homelessness duties. It therefore sets out the processes that will be undertaken before an eviction is carried out, to ensure that all possible alternative remedies are examined.

- 1.3 An eviction is defined as the recovery of accommodation, owned or managed by the Moray Council, by using the legal processes that are available.

- 1.4 The Council seeks to ensure that this Evictions Policy does not discriminate between tenants on any grounds. Publishing standard information and documentation in different languages and other formats, as required, will enhance the promotion of equal opportunities.

2. Corporate Development Plan, Local Housing Strategy, Homelessness Strategy & Service Improvement Plan

2.1 The Evictions Policy will assist the Council to meet its Corporate Development Plan, Local Housing Strategy, Homelessness Strategy and Service Improvement Plan aims and priorities. In particular it will assist the Council to prevent and alleviate homelessness by ensuring that any recovery action that is taken is proportionate to the breach of tenancy conditions. This policy will support the Council's commitment to sustaining communities.

3. Objectives and Principles of the Policy

3.1 The overall aim of the Council's Evictions Policy is to ensure that evictions are carried out only after other options have been exhausted and tenancy management remedies proved ineffective; proper authorisation is obtained; an up-to-date risk assessment is carried out prior to eviction and the eviction is carried out lawfully.

3.2 The specific objectives of the Evictions Policy are:

- to prevent homelessness occurring by exhausting all other management remedies, where appropriate;
- to provide early intervention in an attempt to prevent eviction occurring;
- to define the authorisation process for an eviction enforcement;
- to deal with evictions in a consistent way;
- to protect the wellbeing and interests of qualifying occupiers (see section 4.4) and other residents in the community; and
- where necessary, to take appropriate action to protect the assets and income of the Council.

3.3 The principles underpinning the Evictions Policy are:

- the housing service will clearly explain to tenants specific actions they must take to avoid eviction at each stage;

- the housing service will continue to actively promote joint working with other Council departments and external agencies;
- that detailed procedures and agreed practices will be implemented consistently across the service;
- that training will be provided to ensure all staff are fully equipped to carry out the roles expected of him/her; and
- that all communication will be in plain language and will make clear who the appropriate officers are to provide advice and assistance.

4. Legal framework

- 4.1 The Council will ensure that the Evictions Policy meets all legislative and good practice requirements and minimises evictions being carried out. This will include, but is not restricted to, the Housing (Scotland) Act 2001, the Antisocial Behaviour etc. (Scotland) Act 2004 and the Homelessness etc. (Scotland) Act 2003.
- 4.2 The Council will ensure that no tenant's human rights are breached by the implementation of this policy. In particular the Council will ensure that tenants have a fair hearing and will have respect for their private and family life, the home and correspondence in accordance with the Human Rights Act 1998.
- 4.3 In addition, the Council will ensure that no personal data relating to eviction is passed to a third party in breach of the Data Protection Act 1998. This will include information given to Qualifying Occupiers (see section 4.4) and locally elected members.
- 4.4 The decision to grant a decree for ejection can only be made by a Sheriff Court, not the Council. The grounds for eviction are contained within the Housing (Scotland) Act 2001, Schedule 2, Part 1. Eviction will only be granted when the court is satisfied that it is reasonable* to do so and that the Council has adhered to the prescribed legal process

including serving a valid statutory notice of proceedings on the tenant and all qualifying occupiers**.

*In satisfying itself that it is reasonable to make the order for repossession, the court must have regard to:

- the nature, frequency and duration of the conduct;
- the extent to which the conduct was the responsibility of persons other than the tenant. This can include for example, where delays in the payment of housing benefit have led to rent arrears and are primarily the responsibility of the local authority;
- the effect the conduct has had on neighbours and people other than the tenant; and
- any alternative action taken by the landlord, before seeking possession, to bring about an end to the conduct of the person in question.

** A qualifying occupier is defined as anyone who is:

- a member of the tenant's family *** aged 16 or over living with the tenant as his/her principal home;
- any subtenant, lodger or assignee (someone to whom the tenancy has been transferred with the consent of the Council).

*** a member of the family is defined by the Housing (Scotland) Act 2001, Section 108.

5. Tenant's responsibilities

5.1 The term 'tenant' refers to sole and any joint tenants.

5.2 If two or more people have signed a tenancy agreement they are jointly and severally liable for ensuring that the tenancy conditions are adhered to. This includes ensuring the actions of those living in, or visiting, their tenancy are acceptable (as detailed in the tenancy agreement).

- 5.3 Tenants have an obligation under the terms and conditions of their tenancy agreement to pay rent due every week, in advance, on or before the first day of each rental period. Failure to do this may lead, after other management options have been exhausted, to eviction action being taken by the Council.
- 5.4 Tenants have a responsibility to ensure that they actively manage their tenancy to prevent the need for repossession proceedings being raised. This includes, but is not limited to, ensuring that the house is not used for dealing in controlled drugs, dealing in stolen goods and illegal betting and gambling.
- 5.5 Tenants have a responsibility to ensure that they, and the people living with them, or visiting them, have respect for others. This includes, but is not limited to, ensuring that excessive noise is not created, pets are kept under control, vandalism and damage is not caused, rubbish is not left in unauthorised places and no harassment or assault is caused to any person in the house or neighbourhood, for whatever reason.

6. Council's responsibilities

- 6.1 The Council has a duty to protect its interests. Enforcing the terms of the Scottish Secure Tenancy, Short Scottish Secure Tenancy, or any other tenancy agreement provided by the Council will assist this.
- 6.2 The Council has a duty to all its tenants and the wider community, to ensure that they are able to live in an environment that is attractive, well maintained and safe and secure. This includes taking appropriate action against those living in, or visiting, Council tenancies when the behaviour of the person threatens to disrupt the neighbourhood and put the safety and security of other tenants and residents at risk.
- 6.3 At the start of a tenancy, the Council will make every effort to ensure that tenants are informed of all the responsibilities and activities

associated with maintaining a tenancy. Tenants will be encouraged to take appropriate action to prevent placing their tenancy at risk.

- 6.4 Tenants will be advised of the consequences of failing to adhere to the tenancy agreement. This will include any action that may be taken by the Council to remedy a situation.
- 6.5 Where appropriate, tenants will be offered support and assistance to ensure their tenancy is maintained successfully.
- 6.6 Where enforcement action is taken, this will be proportionate to the breach of tenancy conditions, clearly state what action the tenant must take to resolve the issue and use an escalation process to advance action where the issues continue.
- 6.7 The Council will ensure that it follows the correct legal procedure involved when taking eviction action. This will include serving tenants and qualifying occupiers with a Notice of Proceedings for Recovery of Possession.
- 6.8 The Council will write to tenants prior to serving them with a notice of proceedings to advise them of the process involved and the legal requirement placed on the Council to serve a Notice of Proceedings for Recovery of Possession on qualifying occupiers.
- 6.9 Repossession action will only be used as a last resort and only after all other management remedies prove ineffective.
- 6.10 Where the Sheriff Court has granted a decree for ejection a date will be specified for the tenancy to end. The Council has the right to recover the tenancy on or after the date specified on the decree.
- 6.11 The Council will evict the tenant(s) as soon as possible after the date specified on the decree for ejection. However, if a decree for ejection

is granted for rent arrears, and full payment of the rent arrears and legal expenses is made prior to the eviction, the eviction may be cancelled. This is at the discretion of the Senior Area Housing Manager. Tenants will be fully advised of this.

6.12 Where full payment is made following the receipt of a decree for ejection, and prior to the eviction date, the current tenancy agreement will still end (as will any protected rights associated with the tenancy. For example the Right to Buy, succession and so on). However, a new Scottish Secure Tenancy agreement may be awarded with the agreement of the Senior Area Housing Manager.

6.13 Tenants and any qualifying occupiers who are due to be evicted will be fully advised of the homelessness responsibilities the Council has towards them. This will include advice and assistance on temporary accommodation and how to secure alternative permanent accommodation.

7. Preventative action

7.1 The Council will ensure that all reasonable steps will be taken to remove the need for court action to recover possession of a property. This will include early, regular and sustained intervention when appropriate, to avoid the escalation of a situation.

7.2 The Council will follow an escalation policy based on preventative measures that is proportionate to the level of the situation.

7.3 In all situations where the Council feels that it is reasonable to recover possession of a property, the Council will ensure that reasonable preventative measures have been taken to avoid eviction. For example signpost the tenant to the money advice agency. This will include the use of voluntary and alternative legal processes.

7.4 Where there is a risk of abuse, violence and/or danger to neighbours, staff or the person who is being evicted, the Council will act quickly and appropriately to ensure the risk is minimised.

8. Assessment, Support and Liaison with other agencies

8.1 The Council will offer a detailed risk assessment to all tenants when it is identified that his/her tenancy is at risk.

8.2 During the assessment, the tenant's needs will be identified. Existing and future sources of support will also be identified.

8.3 Where an external agency or Council service is providing support, full co-operation will be given by the Housing Service to try to resolve a situation without the need for legal action to recover possession of a property. For example, where Money Advice is being given by the Trading Standards the Housing Service will suspend action for 21 days to allow an agreement to be reached and implemented. However, the Housing Service retains the right to proceed with recovery action where the situation is not improving.

8.4 The Housing Service will consult with Social Work/Community Care Services prior to authorising an eviction.

9. Authorisation for eviction enforcement

9.1 Where a Sheriff grants a decree for ejection, the date after which the Council can recover the property will be specified on the order. This is the date that the tenancy and all rights the tenant has under a Scottish Secure Tenancy or Short Scottish Secure Tenancy agreement ends.

9.2 Where a decree for ejection has been granted an eviction can only be enforced after the Senior Area Housing Officer, or Chief Housing Officer, has given authorisation. No decision will be made without an updated Risk Assessment.

9.3 A decree for ejection will be acted upon within three months of being granted (the date specified on the order) unless there is evidence to justify another course of action. For example the former tenant has become seriously ill. Any delay will be authorised by the Senior Area Housing Manager or the Chief Housing Officer and tenants/qualifying occupiers will be kept fully informed.

9.4 Where an eviction is not going to be carried out and the tenancy is going to revert back to a secure status, tenants and qualifying occupiers will be fully advised.

10. Carrying out an eviction

10.1 An eviction cannot be carried out until a Sheriff Court has granted an order for possession and an eviction authorisation has been signed by the Senior Area Housing Manager or Chief Housing Officer.

10.2 Sheriff Officers will send a letter to tenants to advise them of their date of eviction.

10.3 Former tenants will be given 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. Reduction of this period of notice will be on the authorisation of the Senior Area Housing Manager or the Chief Housing Officer.

10.4 Prior to an eviction, housing staff will provide sources of advice and practical assistance to the tenant and qualifying occupiers. This includes details of temporary accommodation available, storage arrangements for furniture (if temporary accommodation is provided) and arrangements former tenants must make in preparation of the eviction.

- 10.5 Sheriff Officer's are authorised to carry out an eviction not Council employees. However, an Area Housing Manager, an Area Housing Officer and a Direct Labour Organisation joiner will all be present. If necessary Social Work and support staff will attend.
- 10.6 Evictions will be carried out following legal guidelines and in accordance with good practice.
- 10.7 Locks will be changed after each eviction and a detailed void inspection of the property, garden and any outbuildings made. This will be in accordance with the Housing Service's Voids Policy.
- 10.8 All tenants evicted will be recharged for the expenses incurred by the Council during and after the eviction. This will include legal expenses and the cost of any rechargeable repairs.
- 10.9 Tenants who have been evicted will be liable for all debts they have with The Moray Council after their eviction takes place.

11. Review and Complaints Process

- 11.1 A review process exists for tenants who are not satisfied with the way the Council has dealt with their tenancy services. They should, in the first instance, ask for an explanation from their Area Housing Manager. If the tenant is not satisfied he/she can contact the Senior Area Housing Manager who will review the case.
- 11.2 If the tenant remains dissatisfied, the tenant will be advised of the Council's Complaints procedures.
- 11.3 The Council operates a Complaints Procedure that is available to any applicant who is not satisfied with the way in which their case has been dealt with. Details of the Complaints Procedure can be obtained from any Council Office or Access Point.

12. Performance Monitoring

12.1 The Council will monitor performance on evictions using the following performance indicators:

- the total number of tenants evicted;
- the reason for the eviction, for example rent arrears, antisocial behaviour.

12.2 The above performance indicators will be reported to Community Services Committee on a quarterly basis.

12.3 The Council will review the Evictions Policy in October 2009.