

The Moray Council
Housing and Property Service

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 considered and eviction is only used by the Council as a method of last resort.
- 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; the Council is satisfied there is

sufficient evidence to justify raising an action; 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 5.4) and other residents in the community; and
- where appropriate, to take 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;
- to ensure provision of information, advice and assistance to tenants on Housing Benefit and other welfare benefits in order to maximise their ability to pay rent. 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. Equality and Diversity

4.1 In all aspects of the Eviction process, the Council will seek to combat discrimination and promote equal opportunities for all tenants with regard to all aspects of the policy and procedure. This means the prevention, elimination or regulation of discrimination between persons on the grounds of age, sex, race, religion, disability or sexual orientation.

4.2 The Council will comply with The Equality Act 2010 at all stages of the Eviction and tenancy management process.

5. Legal Framework

- 5.1 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 Housing (Scotland) Act 2010, the Antisocial Behaviour etc. (Scotland) Act 2004, the Homeowner and Debtor Protection (Scotland) Act 2010 Part 1, The Equality Act 2010, the Bankruptcy and Diligence etc. (Scotland) Act 2007 and the Homelessness etc. (Scotland) Act 2003.
- 5.2 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.
- 5.3 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 5.4) and locally elected members.
- 5.4 The decision to grant a decree for ejection can only be made by a Sheriff, not the Council. The grounds for eviction are contained within the Housing (Scotland) Act 2001, Schedule 2, Part 1 and the Housing (Scotland) Act 2010, Sections 153 and 155(2)-(7). Eviction will only be granted when the Sheriff is satisfied it is reasonable* to do so and that the Council has adhered to the prescribed legal process including demonstrating to the court reasonable alternatives to repossession have been considered, complying with the pre-action requirements and 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.

5.5 The introduction of new legislation as part of the Housing (Scotland) Act 2010 requires the Council to explore all possible alternatives to eviction before raising court action. These 'Pre-Action Requirements (PARs)' are a series of steps that landlords should take in rent arrears cases to try and resolve the underlying debt and financial difficulties.

5.6 In the case of rent arrears, the Notice of Proceedings cannot be served until the Council has complied with the pre-action requirements set out in Section 155 of the Housing (Scotland) Act 2010. The list of requirements are set out below:

- **to give clear information** – the Council must provide clear information about the terms of the tenancy agreement, the rent due, or any other financial obligation of the tenancy.
- **to offer help and advice** – the Council must make reasonable efforts to provide the tenant with advice and assistance on the tenant's eligibility to housing benefit or other types of financial assistance.
- **to offer help with debt management** – the Council must provide the tenant with information about sources of advice and assistance in relation to management of debt.
- **to agree an affordable repayment plan** – the Council must make reasonable effort to agree a reasonable repayment plan for future payments, this plan must include proposals in respect of future payments of rent, outstanding rent and any other financial obligations of the tenancy.
- **ensures that landlords do not start an eviction action before considering:**
 - **any housing benefit application** – if an application for housing benefit has been made (but not yet determined) and is, in the Council's opinion, likely to result in benefit being paid at a level which would allow the tenant to pay, or reduce by an amount acceptable to the Council, the outstanding rent and any other financial obligation of the tenancy.
 - **steps taken by the tenant** – the Council must not serve a Notice of Proceedings if the tenant is taking other steps which, in the opinion of the Council, are likely to result in payment within a reasonable timescale of the outstanding rent and any other outstanding

financial obligation of the tenancy, or the tenant is complying with a repayment plan agreed with the Council.

6. Tenant's Responsibilities

- 6.1 The term 'tenant' refers to sole and any joint tenants.
- 6.2 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 that the actions of those living in, or visiting, their tenancy are acceptable (as detailed in the tenancy agreement).
- 6.3 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.
- 6.4 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.
- 6.5 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.

7. Council's Responsibilities

- 7.1 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.
- 7.2 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.

- 7.3 At the start of a tenancy, the Council will 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.
- 7.4 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.
- 7.5 Where appropriate, tenants will be offered support and assistance to ensure their tenancy is managed successfully.
- 7.6 Where enforcement action is taken, this will be proportionate to the breach of tenancy conditions, clearly state what action the tenant must do to resolve the issue and what the Council will do if the breaches of tenancy continue.
- 7.7 The Council will ensure that it fully complies with all legislative requirements and guidance when taking eviction action. This will include serving tenants and qualifying occupiers with a Notice of Proceedings for Recovery of Possession.
- 7.8 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.
- 7.9 Repossession action will only be used as a last resort and only after all other management remedies prove ineffective.
- 7.10 The Housing (Scotland) Act 2010 Section 153 provides that a tenant's tenancy in a rent arrears eviction case will not come to an end, even after the Sheriff Court has granted a decree for ejection, until such time as the Council has actually recovered possession
- 7.11 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 Housing Services Manager or the Head of Housing and Property. Tenants will be fully advised of this in communications with staff.

- 7.12 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.

8. Preventative Action

- 8.1 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.
- 8.2 The Council will follow an escalation policy based on preventative measures that is proportionate to the level of the situation.
- 8.3 The Council's approach to rent arrears aims to establish a culture of early and direct face-to-face contact with tenants, and shift the focus of rent arrears recovery to prevention and support. 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. These measures include offering comprehensive advice and information about sourcing welfare benefit advice, assistance with applying for, and renewing, claims for Housing Benefit, rent and service charges, insisting on the completion of a housing benefit application or the payment of rent in advance when a tenant signs their tenancy, and visits made to all new tenants within the first six weeks to assess how well they are settling in, with follow up visits continuing for as long as help is needed.
- 8.4 The Council is committed to using all the legal remedies that are available to it which are considered to be effective and reasonable. In each case, action will be considered in the light of the individual household circumstances and evictions will only be carried out as a last resort
- 8.5 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.

9. Assessment, Support and Liaison with Other Agencies

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

- 9.2 During the assessment, the tenant's needs will be identified to ensure that a full picture of their circumstances is known and support appropriately delivered. This will involve consultations with relevant services within the Council such as Community Care, Housing Needs and Children and Families. The Risk Assessment Plan will seek to measure the potential impact of eviction on households and any contingency measures which will need to be put in place, for example, storage of furniture or provision of temporary homeless accommodation.
- 9.3 Where an external agency or Council service is providing support, full co-operation will be given by the Housing and Property 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 Trading Standards the Housing and Property Service will suspend action for 21 days to allow an agreement to be reached and implemented. However, the Housing and Property Service retains the right to proceed with recovery action where the situation is not improving.

10. Authorisation for Eviction Enforcement

- 10.1 Where a Sheriff grants a Decree for ejection, the date after which the Council can recover the property will be specified on the order. A charge must be served upon a tenant before an eviction can take place. The charge must provide the tenant with a period of at least 14 days in which to remove from the property prior to the eviction being carried out. A Sheriff Officer will only be able to carry out an eviction upon expiry of a 14 day period.
- 10.2 Where a Decree for ejection has been granted, an eviction can only be enforced after the Housing Services Manager, or the Head of Housing and Property, has given authorisation. No decision will be made without an updated Risk Assessment and an Eviction Approval request being authorised by the above staff.
- 10.3 A Decree for ejection will be acted upon within six months of being granted (the date specified on the order) unless there is evidence to justify another course of action, for example, the tenant has become seriously ill. Any material change in the tenant's circumstances or delay in implementing an eviction must be notified to and approved by the Housing Services Manager or the Head of Housing and Property. Tenants/qualifying occupiers will be kept fully informed during this process.

11. Carrying Out an Eviction

- 11.1 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 Housing Services Manager or the Head of Housing and Property.
- 11.2 Sheriff Officers will send a letter to tenants to advise them of their date of eviction.
- 11.3 The letter provides the tenant with 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 Housing Services Manager or the Head of Housing and Property.
- 11.4 Before eviction, housing staff will provide advice and practical assistance to the tenant and qualifying occupiers in preparation for their eviction. This will be offered during a visit to the tenant's home. This includes details of temporary accommodation available, storage arrangements for furniture (if temporary accommodation is provided) and arrangements the tenants must make.
- 11.5 Sheriff Officers are authorised to carry out an eviction, not Council employees. However, an Area Housing Manager, an Area Housing Officer and a Building Services joiner will all be present to ensure the eviction is successfully completed. If necessary, Social Work and support staff will attend.
- 11.6 Evictions will be carried out following legal guidelines and in accordance with good practice.
- 11.7 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 Void Management Policy.
- 11.8 All tenants evicted will be recharged for the expenses incurred by the Council during and after the eviction. This will include legal expenses, Sheriff Officers' fees and the cost of any rechargeable repairs.
- 11.9 Tenants who have been evicted will be liable for all debts they have with The Moray Council after their eviction takes place.

12. Review and Complaints Process

- 12.1 Tenants who are not satisfied with the way the Council has dealt with enforcement action against their tenancy can ask for an explanation from their Area Housing Manager. If the tenant is not satisfied he/she can ask the Housing Services Manager to review their case before eviction action is undertaken. In such circumstances the Housing Services Manager will undertake the review within 5 working days.
- 12.2 If the tenant remains dissatisfied, the tenant will be advised of the Council's Complaints procedures. The Complaints Procedure 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 Access Point or by downloading a leaflet from the Council's website at www.moray.gov.uk.

13. Performance Monitoring

- 13.1 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.
- 13.2 The above performance indicators will be reported to the Communities Committee on a quarterly basis.
- 13.3 The Council will review the Evictions Policy in 2016 or earlier if legislative changes take place.