



OTHA Tenant Information Leaflet

Legal Action Information

This leaflet tells you about the way in which OTHA deals with Legal Action

This leaflet can be made available in large print, on tape or in an alternative language or format on request.

OTHA Tenant Information Leaflet

What happens if I am facing legal action?

This leaflet tells you what to do if you are served with a Notice of Proceedings for rent arrears

Why have I been served with a Notice of Proceedings?

The Association will serve you with a Notice of Proceedings if you are in rent arrears and the arrears are continuing to increase, or you have not kept to an arrangement to clear the arrears.

What is a Notice of Proceedings?

A Notice of Proceedings is a legal document, which is the first step in the legal process that can lead to an eviction.

It will tell you

- That we intend to get an order from the sheriff court for you to leave the property
- The earliest date that we can contact the court to request a court date (this will be at least 4 weeks away)
- The reason(s) or ground(s) for why we are seeking an eviction. In this case it is for rent arrears but it could be for other breaches of your tenancy such as anti-social behaviour.

Who will the Notice of Proceedings be sent to?

A Notice of Proceedings must be sent to each person living in your home, who is over 16 years of age. Everyone over the age of 16, is called a qualifying occupier.

What should you do if you get a Notice of Proceedings?

Do not ignore it!

You should contact the Association as soon as possible regarding your notice. It is not too late to come up with an arrangement now to pay off your arrears.

If you make a new arrangement, you must do your best to keep to this arrangement because if you do not, we will move on to the next stage of the eviction process and request a court date.

A Notice of Proceedings is valid for 6 months. If we have not started legal proceedings (i.e. asked for a court date) within 6 months of the date stated on the notice, this means that your notice has expired.

What happens if I get a Summons?

A Summons is a letter from the sheriff court to tell you that we have asked for a court order for you to be evicted. Before a court order can be granted, your case must be heard at the sheriff court.

The summons will include the date of the court hearing, which should be at least 3 weeks away.

When you get a summons, you should not ignore it. You should contact the Association to see if anything can be done to avoid eviction. Again, we may still be able to accept a repayment arrangement for your arrears.

You will also need to respond to the summons. If you do not respond to the summons, or do not reply properly, it is likely an order will be granted for your eviction if you don't subsequently attend court on the calling date.

You are also advised to seek independent legal advice by contacting a lawyer, the Citizens Advice Bureau or the Legal Services Agency, Housing Rights Project, 9 Sir Michael Street in Greenock. Tel : 01475 725665

Do I have to attend court?

If you have someone to represent you at court, you do not have to go to court yourself. If no one goes to court on your behalf and you have no suitable arrangement with us for clearing your arrears, it is very likely that the sheriff will grant an eviction order and this will end your right to live in your home.

You can be represented at court by a friend or relative that you have authorised to be there; by an adviser, support worker or someone you know and trust or by a solicitor. You can of course, represent yourself.

If you get a solicitor to represent you, you will have to pay for this service. If you are on benefits or a low income, you may be entitled to legal aid.

What happens at court?

You should arrive at court on time, let the sheriff clerk know you are there and wait for your name to be called. Children are not allowed in the courtroom so you will need to arrange for childcare if you have children.

When your name is called, the sheriff clerk will tell you where to stand. The court will follow an orderly procedure and you or your representative will be given your chance to speak. You should not interrupt anyone else who is speaking.

When you or your representative are asked to speak, you will have to state how you intend to clear the arrears. If you have made a very recent payment, you should provide proof of this (i.e. a receipt). If you are hoping to get housing benefit, you will have to state what you have done to apply. The sheriff may ask you questions to make sure they have the full picture before they make their decision.

If you have made an arrangement with us to clear your arrears (after the summons had been issued) and you have been keeping to this arrangement, we will not request decree for eviction when your case calls to court. We will either request for a continuation of your court case or request for the case to be sisted.

A continuation means that your case will call back at court again at a later date to check that you have been keeping to the agreed repayment arrangement. If your case is sisted, this means it has been suspended but we can recall your case to court if you break your arrangement (i.e. we do not need to serve you with another notice and your case will call to court quicker).

If you have not paid any money toward your arrears, we will ask for decree for eviction.

What happens if Decree is granted?

If the sheriff grants decree, it will be for

- An eviction order, ending your legal right to live in our property
- An order for you to pay any money owing
- An order for you to pay our legal costs

We can normally carry out your eviction, 14 days after the decree has been granted.

However, we usually give you longer as the decision on whether to enforce this decree for eviction is taken by our Housing & Technical Services Sub-Committee. An anonymous and confidential report will be prepared for the HSSC and the final decision is taken here.

Only in exceptional cases will HTSSC take the decision not to enforce decree for eviction. Once the go ahead has been given, the sheriff officers are contacted and a time and date set to carry out your eviction. You will be advised to remove all your belongings prior to your eviction time and to go willingly because if not, the sheriff officers will forcibly remove you from our property and the locks will be changed so that you cannot move back in.

If you have not removed your possessions, we may allow you to come back and collect them at a later stage. We have no duty to look after your possessions and we would want these out as soon as possible so that we can allocate the property to the next tenant. Therefore, you should endeavour to ensure that your belongings are gone before your eviction date.

Where do I go from here?

Prior to your court case, we will refer you to the Homeless Prevention Team who will try support you to prevent your homelessness by encouraging you to pay your arrears, arrange support if they feel you qualify for additional support such as social work or assist you with applying for benefit. If they have been unable to prevent decree for eviction being granted, they can assist you with finding alternative accommodation either with the council or with a private landlord. Please note that the council will not provide you with accommodation if they feel you are intentionally homeless.