



OAK TREE HOUSING ASSOCIATION

Legal Action & Eviction Policy

This document can also be provided in large print, braille, audio or other non-written format and in a variety of languages on request.

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CONTENTS

- 1. Introduction**
- 2. Aims and Objectives**
- 3. Risk Management**
- 4. Key Policy Goals**
- 5. Legal Background and Compliance**
- 6. Legal Action Process**
- 7. Enforcement of Decree of Eviction**
- 8. Financial Issues**
- 9. Sharing Owners**
- 10. Granting a Short Scottish Secure Tenancy**
- 11. Right of Appeal**
- 12. Committee Reporting**
- 13. Confidentiality / Data Protection**
- 14. Customer Care**
- 15. Equality Commitment and Issues**
- 16. Review**

1.0 INTRODUCTION

The purpose of this policy is to define Oak Tree Housing Association's approach to implementing legal action and evictions.

2.0 AIMS AND OBJECTIVES

- 2.1 It is the aim of Oak Tree Housing Association to assist tenants in sustaining their tenancy by helping them adhere to the conditions of their tenancy and enjoy the occupation of their home. We also aim to ensure that a consistent and professional approach is adopted and the service delivered is compliant with law, best practice and internal policy

It is our aim to prevent taking any tenant to court or indeed evict them. All support and preventative measures will be taken to avoid this course of action. However, there will be occasions when where all other options have been exhausted, staff will enforce the conditions contained within the Scottish Secure Tenancy. and This may result in legal action and ultimately eviction action as a last resort, being taken to repossess the property.

- 2.2 The objective of this Policy is to clarify the Associations position and to give staff guidance when referring any case for legal action, including all relevant stages throughout the legal process culminating in eviction.

3.0 RISK MANAGEMENT

- 3.1 By having a written detailed Legal Action and Eviction Policy & Procedure the Association can ensure that a uniform and professional approach is adopted throughout the organisation and the service delivered is compliant with law, best practice and internal policy.
- 3.2 The risk of not having this Policy in place is an absence of the above, the Association being open to bias, unfairness and inequality and a poor reputation.

4.0 KEY POLICY GOALS

The key goals that underpin Oak Tree Housing Association's work in relation to legal action and evictions are: -

- To comply within the legal framework and within the spirit and terms of the Equalities Policy good practice.
- To prevent breaches of tenancy.
- To prevent homelessness occurring by exhausting all other management remedies, where appropriate
- To encourage the voluntary co-operation of tenants to adhere to the terms of their tenancy wherever possible.
- To provide early intervention and work with the tenant at all stages of the legal action and eviction process to prevent an eviction enforcement.
- To tailor action to the individual circumstances of the tenant with a sensitive and flexible approach being adopted.

- To enlist support/information/advice from any appropriate agency for the tenant where a benefit could exist.
- To use an Eviction Decree as a last resort once other methods have failed.
- To retain confidentiality so that any discussions at Committee will not reveal the identity of the tenant.
- To protect the wellbeing and interests of qualifying occupiers and other residents in the community
- To comply with the Scottish Social Housing Charter and the relevant Charter Indicators

5.0 LEGAL BACKGROUND & COMPLIANCE

5.1 The current legal context for the recovery of possession is contained within the Housing (Scotland) Act 2001 and the Housing (Scotland) Act 2014 Grounds are detailed for both within the Scottish Secure Tenancy Agreement.

5.2 However, in implementing our approach the Association is also mindful of our rights and responsibilities contained within other legislation. The Association will ensure it complies with the following legislation: -

- Data Protection Act 2018 and General Data Protection Regulation (GDPR)
- Equality Act 2010
- Children Scotland Act 2010 and Children's Hearings (Scotland) Act 2011
- Debtors Scotland Act 1987
- Human Rights Act 1998
- Homelessness etc (Scotland) Act 2003
- Bankruptcy and Diligence etc (Scotland) Act 2007
- Housing (Scotland) Act 2010
- Housing (Scotland) Act 2018
- Statutory Instrument 2012 No 127 Pre Action-Requirements Order 2012
- Welfare Reform Act 2012
- The Scottish Social Housing Charter

5.3 The Housing (Scotland) Act 2010 ("the 2010 Act") introduced pre-action requirements that landlords must satisfy in all rent arrears cases before serving a Notice of Proceedings for Recovery of Possession on a tenant. This notice ("a notice") advises the tenant that the landlord is considering court action to recover possession of the property because of the tenant's rent arrears. Pre-action requirements are aimed at providing further protection for tenants facing eviction for rent arrears by:

- creating greater consistency in practice between landlords.
- making sure that landlords and tenants explore other ways of resolving the arrears and anti-social behaviour
- making sure that eviction for rent arrears and anti-social behaviour is a last resort.

All Notices must be served in the prescribed form as stated in the above Act.

- 5.4 The Housing (Scotland) Act 2014 (“the 2014 Act”) extends the powers to grant Short Scottish Secure Tenancy Agreements (SSST’s) or convert existing Scottish Secure Tenant Agreements to a SSST.
- 5.5 The Housing (Scotland) Act 2014 (“the 2014 Act”) alters the powers of the court in possession proceedings in certain cases where there has been a conviction for an offence punishable by imprisonment.

6.0 LEGAL ACTION PROCESS

- 6.1 The decision to grant a decree for eviction can only be made by a Sheriff, not the Association. Legal action will be taken where this is the most proportionate and effective option and where voluntary action has not been taken by the tenant to remedy the situation. Legal action will be taken forward for the following reasons:

Rent Arrears

If a tenant is failing to deal with rent arrears and the arrears policy and procedures have been followed, legal action will be commenced. Outstanding rent arrears and other charges will be included in the action e.g. rechargeable repairs and legal expenses. The Association has a separate Rent Arrears Policy.

Breach of Tenancy

If a tenant has breached their tenancy, legal action will be commenced. The type of breach can take a number of forms. The list below contains examples, but is not limited to: -

- Providing false or misleading information, or withholding information that led to the granting of a tenancy
- Committing an offence which is punishable by prison for example drug dealing
- Engaging in anti-social behaviour, examples of which are given in section 3 of the tenancy agreement.
- Poor Condition of Home

Anti-Social Behaviour

If a tenant is acting in a manner that is anti-social and despite formal warnings their behaviour is continuing, the following legal action remedies will be considered

- (a) Notice of Proceedings followed by Court Action for Decree of Eviction.
- (b) Conversion of a tenancy from a Scottish Secure Tenancy (SST) to a Short Scottish Secure Tenancy (SSST). This gives a tenant fewer rights and less protection from eviction. The tenant will have the right to appeal against any decision to convert a tenancy to a SSST.

We will also consider making use of the following interventions, if appropriate, and work with partner agencies to achieve these.

- Antisocial Behaviour Orders (ASBO) and Interim Antisocial Behaviour Orders (Interim ASBO)
- Noise abatement/fixed penalty notices & seizure of equipment notices (issued by local authorities)
- Dispersal of Groups Orders
- Premises Closure Orders
- Acceptable Behaviour Orders
- Interdicts

There will be occasions when The Association will consider Eviction action to be the only option, due to the severity of the Anti-Social Behaviour or breach of tenancy (for example Violence, Drug Dealing, etc)

(c) The “streamlined” eviction procedures introduced by the 2014 Act will be used when there is a conviction for an offence punishable by imprisonment, in circumstances where we consider that the offence is sufficiently serious and that the eviction is a proportionate step for the benefit of the neighbourhood or there is a conviction for using the house for immoral or illegal purposes. The Association has a separate Streamlined Eviction Policy.

6.2 In all the above cases, the tenant(s) will be advised at all stages of the action being taken in accordance with the Legal Action and Eviction Procedures.

6.3 As a general rule, all relevant grounds will be incorporated in the Notice served, except, for example, where this may delay action (i.e. where extreme anti-social behaviour occurs, and the tenant also has rent arrears which have not progressed through all stages of the pre action requirement process). In these circumstances the decision to proceed with legal action on the grounds of anti-social behaviour only can be authorised by the Senior Housing Officer, and a further notice served later incorporating the other grounds.

6.4 The Housing Officer dealing with a tenant who is in arrears, behaving in an anti-social manner or has breached their tenancy has the authority to raise a Notice of Proceedings for Recovery of Possession.

6.5 The Senior Housing Officer is ultimately responsible for all legal action and all cases must be approved by him/her before proceeding to convert to a short tenancy or the court stage of legal action.

6.6 The Director of Housing has delegated authority to authorise enforcement of a Decree of Eviction.

6.7 There are a number of different outcomes when a case is heard in court, which are listed with brief descriptions.

- Dismissed – This is when the case has reached a conclusion and does not require any further court intervention.
- Continued – This is when the case is continued for a stated period, normally between 4 and 12 weeks to monitor payments or a behavioural change.

- Sisted – This is when the case is suspended indefinitely. This type of action is used, for example, when the Housing Officer is satisfied that the tenant is not currently causing concern but would want the option to recall the case back to court in the future if required.
- Diet of Proof – This is when the Sheriff requires to hear the evidence of witnesses before the court could consider granting eviction. A date will be set by the court for both parties to discuss the case at length and for the Sheriff to make their judgement. The Housing Manager Director of Housing is required to attend these hearings together with any other staff members requested by either party's solicitor.
- Decree Awarded – This is explained in more detail in the next section.

7.0 ENFORCEMENT OF DECREE OF EVICTION

The decision to grant a decree for eviction can only be made by a Sheriff, not the Association.

Rent Arrears Grounds

If the court grants a Decree for possession of the property, section 16(5A) of the 2001 Act now means that, in proceedings where a ground is that the tenants have not paid rent lawfully due, the tenancy is not ended on the date appointed when the court grants an order. In such cases, the tenancy ends only when the Association recovers possession of the property.

The order granted by the court must specify a period during which landlords have the right to recover possession of the house. The period order prescribes a maximum period for the court order of six months from the date from when the Decree is extracted.

Anti-Social Behaviour and Breach of Tenancy Grounds

When a Decree is granted in the Sheriff Court there is a period of 3 weeks before the Extract Decree is available. This document will stipulate a date that enforcement can take place. Enforcement of the Decree must not take place earlier than this date.

- 7.1 The Association will not implement a Decree of Eviction without the Director of Housing's approval.

8.0 FINANCIAL ISSUES

An annual budget will be agreed to cover the costs of legal advice, raising notices, service of legal documents, costs of legal proceedings and implementing evictions. The Director of Housing is responsible for monitoring expenditure and reporting to the Housing and Technical Sub-committee. It is accepted that legal costs may increase due to issues out with the association's control, such as whether an action is defended or an increase in the volume of cases.

The interest of the association and its tenants may be best served by taking proceedings which are expensive and take expenditure above the budget threshold. The Director of Housing will advise the Housing and Technical Sub-Committee of projected costs and seek an adjustment to the budget if required.

If the Association obtains a Decree for Expenses award from the Sheriff Court, then the expenses will be recharged to the tenant. This will apply even if the arrears are subsequently cleared or the tenancy is ended.

9.0 SHARING OWNERS

The approach to legal action for Sharing Owners will largely be similar to that for tenants except that legal action can only be taken in respect of non-payment of rent and cannot be raised for any social behaviour.

Any legal action will be based on the terms of the Occupancy Agreement which allows for The Association in conjunction with the mortgage lender to recover possession and force a sale of the property or on a Summary Cause action to recover the debt only.

10.0 GRANTING A SHORT SECURE TENANCY AGREEMENT TO NEW TENANTS.

This will be considered in cases where an offer of rehousing is to be made to a new tenant and there is evidence that the applicant (or referral) has a history of Antisocial behaviour. The evidence required includes, but is not limited to, the following: -

- Eviction from a previous tenancy on breach of tenancy or antisocial behaviour grounds
- An Anti-Social Behaviour Order has been granted against the applicant or any of the members of the future household.
- Evidence of criminal convictions for anti-social behaviour in the last 3 years by the prospective tenant, a member of their household or a visitor in or near their home in the last 3 years (e.g. violent behaviour, drug dealing etc)

11.0 RIGHT OF APPEAL AND COMPLAINTS

- 11.1 Tenants and prospective tenants have a right to appeal to the courts if they are not satisfied with the type of tenancy offered by the Association or with the conversion of their existing SST to SSST.
- 11.2 Appeals or complaints against our operation of this policy will be processed through the Association's complaints handling procedure, which is available at the Associations office or on our website.

12.0 COMMITTEE REPORTING

- 12.1 Housing Officers will register all legal action cases and their progress on the Association's housing management software system. A legal action database will be maintained to allow the cases to be monitored.
- 12.2 The Director of Housing will report quarterly to the Housing and Technical Services Sub-Committee on the following;
- Number of NOPs served
 - Number of Court dates requested
 - Number of Decree's obtained
 - Decrees recalled
 - Number of Evictions
 - Number of tenancies converted to Short Scottish Secure tenancies
 - Number of tenancies reverted to Scottish Secure Tenancies
 - Number of cases called to court

An analysis of evictions in the financial year will be reported to the Housing Services and Technical Sub-Committee annually.

13.0 CONFIDENTIALITY

- 13.1 The Association stresses that the tenant's privacy must be safeguarded. As detailed earlier, the Association has various legal responsibilities, which must be adhered to in this respect.
- 13.2 All information regarding arrears is to remain confidential to the staff and tenant unless the tenant installs a 3rd party to negotiate with the Association on their behalf. A signed mandate must be provided before staff will enter into discussions regarding an individual case. This mandate must conform to the conditions of the Data Protection Act 2018 and General Data Protection Regulation (GDPR)

14.0 CUSTOMER CARE

The Association will ensure that tenants at risk of eviction are dealt with in a clear, respectful, customer friendly manner. We will ensure that tenants feel they are being supported in dealing with problems and that they feel comfortable approaching staff.

15.0 EQUALITIES COMMITMENT AND ISSUES

- 15.1 Oak Tree Housing Association is committed to treating all people equally and with respect irrespective of their age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, or sexual orientation".
- 15.2 In order to ensure that the Association is fair in its dealings with people from diverse backgrounds, the Association will periodically analyse tenants at risk of eviction by household type, gender, age, disability and ethnicity. Equality

information will also be reviewed on those tenants who are taken to court and on those who are evicted.

This will enable the Association to establish whether there are higher rates of legal action and evictions amongst particular groups.

16.0 REVIEW

The policy will be subject to review a minimum of every 5 years or sooner if relevant.

This policy has been assessed with law, regulatory standards and good practice. This covers all relevant protected characteristics. The policy is therefore likely to have a positive effect in respect of equality issues.