

# Tenancy Management Policy (Legal Action) January 2021

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## Table of Contents

1. Scope of the Policy .....	1
2. Objectives and Principles of the Policy .....	2
3. Legal framework .....	2
4. Tenant's responsibilities.....	3
5. Council's responsibilities .....	4
6. Preventative action .....	5
7. Assessment, Support and Liaison with other agencies .....	5
8. Authorisation for possession action and subsequent eviction .....	5
9. Carrying out an eviction .....	7
10. Review and Complaints Process .....	8
11. Performance Monitoring .....	8

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## **1. Scope of the Policy**

- 1.1 This policy sets out the circumstances in any tenancy agreement provided by the Council as a residential landlord will end due to possession action, (including evictions) 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 explored.
- 1.3 An eviction is defined as the recovery of accommodation, owned or managed by the Council, by using the legal processes that are available.
- 1.4 The Council seeks to ensure that this 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. Objectives and Principles of the Policy**

- 2.1 The overall aim of the Council's Policy is to ensure that legal action (including evictions) is carried out only after other options have been exhausted and tenancy management remedies proved ineffective, that proper authorisation is obtained, that an up-to-date risk assessment is carried out prior to the eviction, and that any eviction is carried out lawfully.
- 2.2 The specific objectives of the Eviction Policy are:
  - a) to prevent homelessness occurring by exhausting all other management remedies, where appropriate;
  - b) to provide early intervention in an attempt to prevent eviction occurring;
  - c) to define the authorisation process for an eviction enforcement;
  - d) to deal with evictions in a consistent way;
  - e) to protect the wellbeing and interests of occupiers (see section 9.2) and other residents in the community; and
  - f) where necessary, to take appropriate action to protect the assets and income of the Council.
- 2.3 The principles underpinning the Policy are:
  - a) the housing service will clearly explain to tenants specific actions they must take to avoid legal action at each stage;
  - b) the housing service will actively promote joint working with other Council departments and external agencies;
  - c) that procedures and agreed practices will be implemented consistently across the service;
  - d) that training will be provided to ensure all staff are fully equipped to carry out the roles expected of them; and
  - e) that all communication will be in plain language and will make clear who the appropriate officers are to provide advice and assistance.

## **3. Legal framework**

- 3.1 The Council will ensure that the Policy meets all legislative and good practice requirements and minimises evictions being carried out. This will include, but is not restricted to, the Housing Acts 1985 and 1996 (and subsequent legislation), the Localism Act 2011, the Pre Court Protocol, ASB Crime and Policing Act 2014, the requirements of the Regulator of Social Housing, and any Chartered Institute of Housing's good practice.
- 3.2 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 (in particular, Articles 6 (fair trial); 8 (respect for family life); and 14 (the prohibition of discrimination)). Consideration is also given to the responsibility of the Council in promoting and assisting in the building of sustainable and balanced communities.
- 3.3 In addition, the Council will ensure that no personal data relating to legal action is passed to a third party in breach of the Data Protection Act 1998 and General Data Protection Regulation 2018 without the explicit consent of the tenant(s). This will include information given to other occupiers of the property (see section 9.2) and elected Members.
- 3.4 The decision to grant a possession order and then a warrant of execution (eviction) can only be made by the County Court, not the Council. The grounds for possession are contained within the relevant Housing Acts. Possession 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 notice on the tenant and all qualifying occupiers.

#### **4. Tenant's responsibilities**

- 4.1 The term 'tenant' refers to sole and any joint tenants.
- 4.2 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 property is acceptable (as detailed in the tenancy agreement).
- 4.3 Tenants have an obligation under the terms and conditions of their tenancy agreement to pay rent due every week on or before the first day of each rental period. Failure to do this may lead, after other management options have been exhausted, to possession action being taken by the Council.
- 4.4 Tenants have a responsibility to ensure that they actively manage their tenancy to prevent the need for possession proceedings being raised. This includes, but is not limited to, ensuring that the house is not used for illegal or immoral activity, for example, using or permitting the use of Controlled Drugs, handling stolen goods, and illegal betting and gambling.
- 4.5 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 harassment and/or nuisance, annoyance or disturbance is not caused to any

other person in the locality, for example, loud noises, dog barking and fouling, using offensive language, and causing damage.

- 4.6 Tenants will be encouraged to seek their own independent advice from a housing aid service or solicitor.

## 5. Council's responsibilities

- 5.1 The Council has a duty to protect its interests, including its rental income. Enforcing the terms of the tenancy agreement will assist this.
- 5.2 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 community and put the safety and security of other tenants and residents at risk.
- 5.3 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.
- 5.4 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.
- 5.5 Where appropriate, tenants will be offered support and assistance to ensure their tenancy is maintained successfully.
- 5.6 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.
- 5.7 The Council will ensure that it follows the correct legal procedure involved when taking possession action. This will include serving tenants and qualifying occupiers with a Notice of Possession Proceedings, Notice of Seeking Possession, Notice of Seeking Demotion, or a Notice To Quit. Officers are expected to keep accurate file notes and to be aware they could be used as evidence in Court.
- 5.8 The Council will write to tenants prior to serving them with a Notice to advise them of the process involved and the legal requirement placed on the Council to serve the appropriate Notice. In exceptional circumstances, possession proceedings can begin immediately i.e. as soon as the Notice is served. This will be confirmed to the tenant, in writing, and the reason for the immediate possession action will also be notified.
- 5.9 **Possession action will only be used as a last resort and only after all other management remedies prove ineffective.**
- 5.10 Tenants and any occupiers who are due to be evicted will be fully advised of the homelessness responsibilities the Council has towards them. This will be provided by the Council's Housing Options Section and will include advice and assistance on

temporary accommodation and how to secure alternative permanent accommodation.

## **6. Preventative action**

- 6.1 The Council will ensure that all reasonable steps will be taken to remove the need for court action to enforce the terms of the tenancy. This will include early, regular and sustained intervention to avoid the escalation of a situation.
- 6.2 The Council will follow an escalation policy based on preventative measures that are proportionate to the level of the situation.
- 6.3 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. This will include the use of voluntary and alternative processes for example, referring the Case Management team for intensive support. The Council's Housing Options Service will be notified whenever a Notice is served.
- 6.4 Where there is a risk of abuse, violence and/or danger to neighbours, colleagues or the person who is being evicted, the Council will act quickly and appropriately to ensure the risk is minimised.

## **7. Assessment, Support and Liaison with other agencies**

- 7.1 The Council will undertake a risk assessment for all tenants when it is identified that their tenancy is at risk.
- 7.2 During the assessment, the tenant's needs will be identified. Existing and future sources of support will also be identified. Tenants will be encouraged to obtain advice from a solicitor or housing advice centre.
- 7.3 Where an external agency or Council service is providing support, full co-operation will be given by Tenancy Services to try to resolve a situation without the need for legal action to recover possession of a property. For example, where a referral has been made to the Case Management team for intensive support, the Tenancy Services team will suspend action for a reasonable period to allow an agreement to be reached and implemented. However, the Tenancy Services team retains the right to proceed with possession action where there are overwhelming housing management issues e.g. chronic anti social behaviour with a high likelihood of recidivism.
- 7.4 The Council's Housing Options Service will be formally notified of all eviction dates.
- 7.5 In all cases, where the tenant's household includes dependent children, the eviction will be notified to the Leicestershire County Council's Children's Service.

## **8. Authorisation for possession action and subsequent eviction**

- 8.1 It is impossible to consider all possible circumstances where legal action becomes appropriate. Equally, it is appropriate for there to be internal checks and balances on the Council resorting to legal action in respect of a tenancy. Accordingly, Officers must use their judgement within a framework.

- 8.2 Generally, possession action should be considered in the following circumstances and where there is no alternative action:
- a) where there are rent arrears in excess of the equivalent of ten week's rent and no effective agreement;
  - b) where there are long-standing rent arrears and a history of broken agreements to repay;
  - c) where there is a significant breach of tenancy and appropriate time and advice/support has been given for it to be rectified;
  - d) where there are a number of less significant breaches of tenancy and appropriate time and advice/support has been given for them to be rectified;
  - e) where there is evidence of significant neighbour nuisance and appropriate time and advice/support has been given for this to be rectified;
  - f) where there is a criminal conviction related to the use of the property (e.g. possession of illegal drugs found at the property) or in its locality; and
  - g) evidence of serious ASB in the locality of the property.
- 8.3 Formal possession action is always initiated by the service of a notice. The Housing Officer is responsible for the preparation of the notice, the service of which must be authorised by the Senior Housing Officer. The tenant's personal circumstances, including vulnerability and communication difficulties, must be considered in all cases. Except in exceptionally serious circumstances, the Council considers the service of the notice as an opportunity for the tenant to understand the consequences of continuing tenancy breaches, and a clear opportunity to rectify those breaches.
- 8.4 The decision to make an application to Court will be managed by the completion of a Possession Action Case Review by the Housing Officer. This will be authorised by the Tenancy Services Manager.
- In deciding to make an application to Court, the following must be considered in all cases:
- a) that all relevant regulatory guidance has been taken into account;
  - b) that Melton Borough Council's own policies and procedures have been followed;
  - c) that the pre-action protocol for possession claims based on rent arrears has been followed (in rent arrear cases);
  - d) that alternative solutions and interventions have been considered and/or exhausted;
  - e) that the requirements of the Disability Discrimination Act have been met; and
  - f) that adequate support has been provided for vulnerable tenants.
- 8.5 Generally, a suspended possession order will be sought for Secure tenants – in such cases the Council will not seek possession where conditions, imposed by the Court, are maintained. In serious circumstances, the Council may seek outright possession from the outset – this must be authorised by the Tenancy Services Manager or, in their absence, the Director of Housing and Communities. Outright possession will always be sought for Introductory and Non Secure tenants.
- 8.6 Where the Court has issued an outright possession order, 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 order.

- 8.7 The Council will evict the tenant(s) as soon as possible after the date specified on an outright possession order. However, if an outright order is granted for rent arrears, and full payment of the rent arrears and Court costs is made prior to the eviction, the eviction may be withdrawn. This is at the discretion of the Tenancy Services Manager or, in their absence, the Director of Housing and Communities, considering previous conduct, any vulnerability and any other relevant tenancy concerns. Tenants will be fully advised of this.
- 8.8 Breaches of a suspended order, or, where an outright order is obtained, where the tenant does not return the property to the Council, means a further application must be made to the Court, for a Warrant of Execution (eviction). Again, this is managed through the completion of the Possession Action Case Review by the Housing Officer. This will be authorised by the Tenancy Services Manager or, in their absence, the Director of Housing and Communities. In deciding to apply for an eviction, the following must be taken into account:
- a) where an outright order has been obtained;
  - b) where there is clear evidence of continued tenancy breaches, significant either in frequency or impact;
  - c) where opportunity has been given to remedy the breach(es), but they have not been resolved;
  - d) in rent arrears cases, where the tenant is more than ten weeks behind the Court order and has been given opportunity to catch up, or where the tenant is repeatedly failing to make payments as ordered by the Court;
  - e) where there is clear evidence of risk to the community, or to Council Officers or contractors.
- 8.7 Where there is clear evidence that the tenant has abandoned the property, the Council can consider taking possession of the property. For example, the property may have been abandoned, left unsecured, and at risk of vandalism. This action can only be authorised by Tenancy Services Manager or, in their absence, the Director of Housing and Communities.

## **9. Carrying out an eviction**

- 9.1 An eviction cannot be carried out unless the County Court has granted an order for possession and a Warrant of Execution has been granted.
- 9.2 The Housing Officer will send a letter to tenants to advise them of their date of eviction. A home visit or office interview must also be undertaken to give advice, including the role of the Court and how to make an application to suspend a Warrant. Where there are other occupiers of the property (e.g. a lodger), Officers must be careful not to breach Data Protection requirements. However, general advice should be given, including the option of an interview with the Council's Housing Options Section.
- 9.3 The County Court Bailiff carries out the eviction, not Council employees. However, the Housing Officer will need to be present, together with the Council's Contractor (to obtain access). All evictions will require a specific risk assessment; if necessary, and on a risk management basis, other staff and/or partners will attend.
- 9.4 Evictions will be carried out following legal guidelines and in accordance with good practice.



- 9.5 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 Council's Voids Policy.
- 9.6 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. A robust, risk-based approach will be taken where belongings are left behind by the tenant. This may involve storage of items of value for a reasonable period before disposal.
- 9.7 Tenants who have been evicted will be liable for all debts they have with the Council after their eviction takes place.

## **10. Review and Complaints Process**

- 10.1 A review process exists for tenants who are not satisfied with the way the Council has dealt with their tenancy. They should, in the first instance, ask for an explanation from the Housing Officer. If the tenant is not satisfied he/she can contact the Tenancy Services Manager, who will review the case.
- 10.2 If the tenant remains dissatisfied, the tenant will be advised of the Council's Complaints procedures.
- 10.3 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 the Council Office at Parkside or via the Melton Borough Council's website.

## **11. Performance Monitoring**

- 11.1 The Council will monitor performance on evictions using the following performance indicators:
- the total number of notices served for introductory and secure tenancies; and
  - the number of evictions.
- 11.2 The above performance indicators will be reported to tenant representatives and Elected Members as required.
- 11.3 The Council will review this Policy two years after adoption unless legislative or regulatory changes mean an earlier review is necessary.