



Repossession Policy

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Responsible Officer:

Head of Housing and
Customer Service

Review Date:

July 2024

Regulatory Standard:

1,2,3,4,5



INVESTOR IN PEOPLE

Providing homes, supporting communities

1 Introduction

- 1.1 Hjaltland Housing Association aims to deliver a high quality housing service throughout Shetland, and is committed to supporting communities remain viable through a culture of partnership working, sustainability and continuous improvement.
- 1.2 All tenants have the right to peaceful enjoyment of their homes in a safe and secure environment, within a community free from criminal activity. Where this right is jeopardised through the actions of tenants and their households, The Association has a duty of care to consider the options available to protect the wider community. This may include formal legal action to end a tenancy.
- 1.3 Furthermore, the services delivered by Hjaltland are funded via the rent collected from all tenants. Where a tenant fails to maintain acceptable payments, The Association must look to protect the financial viability of the organisation by taking reasonable and proportionate action, which could include formal legal action to end a tenancy.

2 Aims and Objectives

- 2.1 Hjaltland Housing Association's policy is only to seek repossessions as a last resort and then only for a serious breach of the conditions of the tenancy e.g. significant rent arrears where no payment plan is in place, anti-social behaviour, drug dealing or any other criminal activity at the property. Tenants cannot be removed from their homes without a court order.
- 2.2 Alternatives to eviction will be considered, including the issuing of a Short Scottish Secure Tenancy – see separate policy for details.

3 Links to other policies

- 3.1 This policy should be considered in conjunction with the Antisocial Behaviour Policy, Short Scottish Secure Tenancy Policy and the Arrears Policy.

4 The process of repossession

- 4.1 For repossession proceedings to start, The Association must serve a Notice of Proceedings (NOP) on the tenant, and all other residents in the property over the age

of 16, in accordance with Section 14(2) of the Housing (Scotland) Act 2001. The notice must be in the prescribed format and must specify:

- the grounds for recovery as outlined in Schedule 2 Part 1 of the Housing (Scotland) Act 2001
- a date four weeks from service of the Notice, or the date on which the tenancy could have been brought to an end by a Notice to Quit had it not been a Scottish Secure Tenancy

4.2 The later of these dates applies and the Association can raise proceedings on or after that date.

4.3 The Association must ensure that there is proof of service of the Notice of Proceedings for the court in case the tenant chooses not to attend court.

- Before a Notice is served, the Association will have followed the requirements of the pre-action requirements of the Housing (Scotland) Act 2010 and contained in the Association's pre-action requirement procedures.
- Where the Association is aware that the tenant is receiving support from Local Authority staff, probation services or health, social or welfare practitioners, contact will be made to inform them that the tenant's tenancy is at risk. This action is undertaken to enable the tenant to receive support in maintaining their tenancy and will be done with the full knowledge of the tenant. Where the tenant consistently fails to comply with their tenancy conditions further action will be taken.
- Tenants may continue to occupy the house until The Association has obtained an Order for Possession, which the Sheriff will only grant if he is convinced that to do so would be 'reasonable'. Once an order has been granted the Association has the right to recover possession.
- The Head of Housing and Customer Service will report to the Management Committee at each Operational Committee meeting updating Members on any Notice of Proceedings issued and the outcome of any court action sought.
- Whilst a Notice of Proceedings can be issued no recovery of possession will be taken, against tenants with resident children in full time education, without the sanction of the

Management Committee, who will satisfy themselves that all reasonable methods of dealing with the breach have been explored.

5 Streamlined eviction process

- 5.1 Section 14 (2) of the Housing (Scotland) Act 2014 created new legislation whereby social landlords can take action against a tenant referred to as a 'streamlined eviction process'. The purpose of the legislation is to allow landlords to act quickly in relation to serious antisocial behaviour or criminality, thereby reducing the impact and harm on the surrounding community.
- 5.2 This legislation can be used where a tenant, a sub-tenant, an occupant or a visitor has been convicted in court of using the house for immoral or illegal purposes or of a criminal offence, punishable by imprisonment, in or around the locality of the house. Community based sentences, such as a community pay back order as a substitute for imprisonment, are also applicable.
- 5.3 Where all other action to evict a tenant will require the judgement of the sheriff on the grounds of 'reasonableness' to evict, the streamlined eviction process does not require this assessment and will be automatically awarded if the criteria is met.

The court must automatically grant eviction where;

- The landlord has a ground for recovery of possession as set out in paragraph 2, schedule 2 of the 2001 Act; and
 - The Notice of proceedings was serviced on the tenant before the first anniversary of the date of the conviction
- 5.4 As part of the evidence when lodging the sheriff court application, The Association should look to obtain the extract conviction from the original offence.
- 5.5 The Association will seek legal advice and consider the following points, prior to raising any court action using the streamlined eviction process;
- the nature and seriousness of the offence, including any recurring nature of convictions or the cumulative effect of several incidents, or the potential seriousness of a one off offence;
 - who has been convicted of the offence and their connection to the property;

- where the offence was committed and the connection to the social housing tenancy;
- whether and to what extent the offence has affected neighbours or others in the community;
- the impact on neighbours and communities over time and the impact on the stability of the community;
- what action, if any, the person convicted of the offence is taking to make positive change;
- impact of eviction on household members;
- other steps taken/which could be taken by the landlord or partner agencies to address the antisocial or criminal behaviour.

5.6 A tenant does have the option to seek a judicial review of the landlord's decision to use this piece of legislation to evict and/or defend the repossession action.

6 Section 11 Notification to Shetland Islands Council

6.1 Section 11 of the Homelessness etc (Scotland) Act 2003 requires landlords, when taking action to recover a property through a court action, to notify the Local Authority so they can consider providing additional advice to the tenant to prevent homelessness.

6.2 Whilst the notification is only required to be submitted at the point of raising court action, The Association will maximise the opportunity for the tenant to receive additional advice and support, by issuing the Section 11 Notice to Shetland Islands Council upon a Notice of Proceedings being served.

7 Equal opportunities

7.1 Hjaltland Housing Association is committed to providing fair and equal treatment to all in accordance with our Equality & Diversity Policy.

7.2 In line with our commitment, this Policy can be made available free of charge, in a variety of formats including; large print, Braille, community languages or audio format.

8 REVIEW

8.1 This policy will be reviewed every three years or earlier in line with legislative changes.