

### 1.0 PURPOSE OF POLICY

- 1.1 This Policy should be read in conjunction with SBHA's Rent Collection Policy, Anti-Social Behaviour Policy, Estate Management Policy and accompanying Standards, Tenancy Sustainment Policy and Equal Opportunities Policy.
- 1.2 This Policy sets out the circumstances in which a Scottish Secure Tenancy, Short Scottish Secure Tenancy, or any temporary tenancy agreement provided by SBHA will end due to an eviction following a court order where decree has been granted and the associated activities and responsibilities involved. It has been prepared to provide clarity for all parties who may potentially be involved in evictions, including Tenants, SBHA Teams and legal advisers.

### 2.0 AIMS AND OBJECTIVES

- 2.1 SBHA is committed to helping its Tenants to maintain their tenancies and to create sustainable communities. Eviction is seen by SBHA as an act of last resort, taken only when any other action would be inappropriate or all efforts to tackle breaches of the tenancy agreement have been exhausted.
- 2.2 The overall aim of this Policy is to ensure that evictions are carried out only after other options have been exhausted and tenancy management remedies proved ineffective; proper authorisation is obtained; an up-to-date assessment is carried out prior to eviction and the eviction is carried out lawfully.
- 2.3 The specific objectives of this Policy are:
- to prevent homelessness occurring by exhausting all other management remedies, where appropriate
  - to provide early intervention to prevent eviction occurring
  - to ensure compliance with relevant legislation and guidance relating to repossession orders as specified in section 16 of the Housing (Scotland) Act 2001; Section 153-155 of the Housing (Scotland) Act 2010 and Section 16 of the Housing (Scotland) Act 2014
  - to define the authorisation process for an eviction enforcement
  - to deal with evictions in a consistent way
  - where necessary, to take appropriate action to protect the assets and income of SBHA
- 2.4 Attached at **Appendix 1** are the main roles and responsibilities for SBHA Teams in the implementation of the Eviction Policy.

### 3.0 LEGAL FRAMEWORK

- 3.1 SBHA 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 Housing (Scotland) Act 2014 and the Antisocial Behaviour etc. (Scotland) Act 2004.
- 3.2 SBHA will ensure that no Tenant's human rights are breached by the implementation of this policy. SBHA 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 and the Equality Act 2010.

- 3.3 SBHA manages personally identifiable information in compliance with the General Data Protection Regulation ('GDPR') and the Data Protection Act 2018 ('the Act') in line with the guidance from the Information Commissioner's Office (ICO). SBHA's aim is to adhere to best practice in data management, retention, and disposal, in addition to other data protection compliance matters with which we are obliged to comply as well as ensuring that we observe the rights of our data subjects including enabling access to personal data by data subjects upon request.

#### **4.0 PREVENTION OF HOMELESSNESS**

- 4.1 SBHA is committed to the prevention of homelessness by ensuring that any action taken is proportionate to the breach of tenancy conditions. However, there will be occasions when, for specific reasons (such as intractable cases of rent arrears or breach of an Anti-Social Behaviour Order or other major breach of the Tenancy Agreement), SBHA recommends that the Chief Operating Officer or the appointed Executive Team Member acting under delegated authority approves an eviction.
- 4.2 SBHA will provide notice to Scottish Borders Council's Homelessness Team as soon as proceedings for possession are raised, in accordance with Section 11 of the Homelessness etc., (Scotland) Act 2003 and encourage the Tenant to contact Scottish Borders Council's Homelessness Team.
- 4.3 All evictions will be notified electronically to the Homelessness Team at Scottish Borders Council as soon as they are approved by the Chief Operating Officer. The actual date of the eviction will be notified to Scottish Borders Council and Tenant as soon as SBHA receives it.
- 4.4 SBHA will continue to actively promote joint working with Scottish Borders Council, including the Homelessness Team, Social Work Department and Revenue and Benefits Team, Department for Work & Pensions (DWP) and other external agencies to prevent homelessness due to eviction. This includes SBHA, working in partnership with the Council, to assist in the development of a general protocol for dealing with arrears to reduce rent arrears and to prevent homelessness.
- 4.5 SBHA will ensure that all reasonable steps are taken to remove the need for eviction. This will include early regular and sustained intervention when appropriate, and the use of voluntary and alternative legal processes. Where an external agency is providing a Tenant with support, full co-operation will be given by SBHA to that agency in attempting to resolve the situation prior to seeking eviction. For example, case conferences to discuss an individual's circumstances and future actions will be held. However, SBHA retains the right to proceed with recovery action where the situation is not improving.
- 4.6 In cases where repossession of a property is sought on grounds of rent arrears, SBHA will ensure that it meets the Pre-Action Requirements set out in Section 14A of the Housing (Scotland) Act 2001 (as Amended) before serving a notice of proceedings on the Tenant(s) and any qualifying occupiers.
- 4.7 If it is identified after a Court action is raised that a Tenant has a vulnerability that is preventing their ability to seek advice and support, SBHA will consider each Court action on its own merit. Given the severity of the vulnerability, and where appropriate engagement is in place to resolve tenancy related breaches, SBHA may consider dismissing the action in Court.

## 5.0 AUTHORITY TO APPROVE EVICTIONS

5.1 The decision to grant a decree for ejection can only be made by a Sheriff Court. The grounds for eviction are contained within the Housing (Scotland) Act 2001, Schedule 2, Part 1.

5.2 A decree for ejection will be granted by the Sheriff when s/he is satisfied that it is reasonable to do so and that SBHA has adhered to the prescribed legal process, including the fulfilment of Pre-Action Requirements where proceedings are on grounds of rent arrears, and the serving of a valid statutory notice of proceedings on the Tenant and all qualifying occupiers.

In satisfying their self that it is reasonable to make the order for repossession, the Sheriff has 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
- any alternative action taken by the landlord, before seeking possession, to bring about an end to the conduct of the person in question

5.3 SBHA may pursue a streamlined process for eviction in Section 16 of the Housing (Scotland) Act 2001 in instances where a Tenant, joint Tenant, or someone living in or visiting the property, has been convicted within the previous 12 months of:

- using the house or allowing it to be used for immoral or illegal purposes; or
- an offence punishable by imprisonment committed in, or in the locality of, the house.

If SBHA pursues this streamlined process in the above instances, SBHA will serve the Tenant with the required notice under Section 14 of the Housing (Scotland) Act 2001 within 12 months of the conviction, and the Sheriff **must** grant an order for eviction - this means that the Sherriff is not required to consider reasonableness when deciding on whether to grant a decree for eviction using this streamlined process.

5.4 In deciding whether to pursue the streamlined eviction process in instances noted at 5.3 above, SBHA will consider instances which fall within the above grounds on an individual case basis and satisfy itself that eviction is necessary and proportionate. Factors which will be considered are:

- The individual circumstances of the case
- The location of the behaviour in relation to the tenancy
- The negative impact the convicted person's behaviour had and/or continues to have on the household, neighbours and/or the local community
- The availability of reliable evidence of the conviction to SBHA, for instance an extract of the conviction from the Court
- Steps the convicted person is taking to address their behaviour and any change in the person's behaviour since conviction

5.5 Where a Sheriff grants an order for decree for ejection, the date after which SBHA can recover the property will be specified on the order, except in cases on grounds for rent arrears where, in such cases, the order will specify a period no greater than 6 months

from the date when the decree is extracted for which SBHA has a right to recover possession of the property.

- 5.6 On receipt of the decree for ejection, SBHA will terminate the tenancy from the effective date of the decree (except in cases on grounds for rent arrears where the tenancy continues until the date of possession) and the Head of Neighbourhood & Solutions, within 1 month of receipt of the decree, prepare a case report for and request approval to evict from the Chief Operating Officer.
- 5.7 SBHA's Board of Management has given the Chief Operating Officer delegated authority to approve evictions. In the Chief Operating Officer's absence, delegated authority is given to the appointed Executive Team Member.
- 5.8 Before taking the decision to evict, the Chief Operating Officer or appointed Executive Team Member will have been provided with all the appropriate details of the case, including confirmation that a Decree for Eviction has been granted by the Sheriff, household composition, assessment of vulnerability and support provided, any action taken by SBHA to avoid eviction. A recommendation for eviction will come from Head of Neighbourhood & Solutions who will have reviewed the case in detail prior to ensure that all appropriate actions have been carried out in line with SBHA's policies and procedures. This recommendation will be supported by SBHA's Director of Customer Services.
- 5.9 Following the receipt of approval to evict, SBHA's Legal Officer will contact the Sheriff Officers to arrange an eviction date and notify the occupier of the property.
- 5.10 Prior to the eviction date, a member of SBHA's Neighbourhood Services Team will visit the property to discuss with the occupiers the eviction process and provide them with sources of advice and practical assistance, including details on sourcing temporary accommodation and arrangements the occupiers themselves must make in preparation of the eviction. At this visit, the occupiers will also be made aware, where appropriate, of any prevention action they could take to prevent the eviction. Support workers and Homelessness Officers may also attend this visit.

## **6.0 ATTENDANCE AT EVICTIONS**

- 6.1 Sheriff Officers are authorised to carry out an eviction where decree for ejection has been obtained from the Court. SBHA's Legal Services Officer will always attend an eviction to take possession of the property but if problems are anticipated or the case has a "high profile," then a manager will also be in attendance. An SBHA Neighbourhood Property Officer and Joiner will also attend. Support Workers and Homelessness Officers may also attend.
- 6.2 Locks will be changed after the eviction and a detailed empty homes inspection of the property, garden and any outbuildings will be completed. This will be in accordance with SBHA's Empty Homes Management Policy.
- 6.3 All Former Tenants evicted will be recharged for the expenses incurred by SBHA during and after the eviction. This will include legal expenses, court costs and the cost of any rechargeable repairs.

## **7.0 CANCELLATION OF EVICTIONS**

- 7.1 Only the Board, the Chief Executive, Chief Operating Officer or appointed Executive Team Member under delegated authority can authorise the cancellation of an eviction following consideration on a case-by-case basis.

- 7.2 SBHA will arrange an eviction as soon as possible after the date or within the period specified on the decree for ejection. However, if a decree for ejection is granted for rent arrears, and full payment of the rent arrears, court costs and legal expenses is made prior to the eviction, the eviction may be cancelled.
- 7.3 Where full payment of rent arrears, court costs and legal expenses is made following the receipt of a decree for ejection, and prior to the eviction date, the current tenancy agreement remains.

## **8.0 REVIEW AND COMPLAINTS PROCESS**

- 8.1 Tenants who are not satisfied with the way SBHA has dealt with enforcement action against their tenancy can ask for an explanation from their Neighbourhood Housing Officer. If the Tenant is not satisfied, they can ask Head of Neighbourhood & Solutions to review their case before eviction action is undertaken. In such circumstances the Head of Neighbourhood & Solutions will undertake the review within 5 working days.
- 8.2 If the Tenant remains dissatisfied, they will be advised of SBHA's Complaints Procedure. The Complaints Procedure is available to any Tenant who is not satisfied with the way in which their case has been dealt with. Details of the Complaints Procedure can be obtained from SBHA or by downloading a leaflet from the SBHA's website at [www.sbha.org.uk](http://www.sbha.org.uk).

## **9.0 MONITORING AND REPORTING**

- 9.1 Evictions will be reported quarterly to SBHA's Customer Board through Key Performance Indicators and at intervals analysis will be presented to the Customer Board to provide an insight into the demographics and trends associated with evictions.
- 9.2 A detailed report on evictions is presented to SBHA's Executive Team on a quarterly basis.

## **10.0 POLICY REVIEW**

- 10.1 This Policy will be reviewed every three years or earlier as necessitated by legislative changes, performance trends, or other issues potentially requiring a review.



## **Appendix 1 - Main Roles and Responsibilities**

Chief Operating Officer (or delegated Executive Team member)

- Approval of eviction
- Cancelling of eviction

Director of Customer Services

- Recommendation for approval to evict to Chief Operating Officer or delegated Executive Team member

Head of Neighbourhood & Solutions

- Approve and present recommendation to evict to Director of Customer Services
- Performance monitoring of policy
- Identifying service improvements

Legal Officer

- Initiate court action
- Prepare case file for SBHA's solicitors
- Prepare court instructions
- Attend court (if required)
- Preparation of case file for consideration for eviction on receipt of decree for the Neighbourhood Services Manager/Customer Services Manager
- Request eviction date and make appropriate arrangements with Sheriff Officers
- Notify Tenant of eviction date and time
- Notify relevant partners of eviction date and time
- Advise relevant SBHA Teams of eviction time and date
- Attend eviction with Sheriff Officers

Neighbourhood Housing Officer

- Ensure compliance with pre action requirements