A short guide to dealing with tenancy problems

This guide is about some of the common problems landlords encounter during the life of a tenancy, when a landlord may want to take legal action against a tenant to put things right. Different landlords have different policies for dealing with these issues, but have also been given guidance about what they should do by the government and by the social housing regulator. This guide deals with:

- Rent arrears, which are the most common reason that landlords take legal action against their tenants
- Anti-social behaviour, and
- Tenancy offences - when tenants misuse their tenancy they may not only be vulnerable to eviction they may also have committed a criminal offence.

The subject is divided into several explanatory topics that help you to learn about the subject in a structured way. You may want to make notes in your Workbook. There are activities that relate the material to your own organisation and experience. You are then invited to test your knowledge in a set of review questions.

You’ll find it useful to have available your own organisation’s internal documents, in particular:

- Your organisation’s rent recovery policy and procedures
- Your organisation’s ASB policy and procedures
- Your organisations policy and procedures (if any) for dealing with tenancy misuse.

Introduction

Problems may occur during the life of the tenancy, and landlords may take legal action, often possession proceedings, to address the problems.

Rent arrears are the most common reason for tenants being evicted, and making sure arrears are controlled is important for landlords’ financial viability. Landlords usually do not want to evict a tenant in arrears but ask for a “suspended possession order” so that the threat of eviction encourages the tenant to pay up. Official Guidance encourages landlords not to evict but to find other ways of helping tenants to pay.

Anti-social behaviour (ASB) has had a lot of public attention over the past 20 years. Social landlords have been encouraged to deal with ASB on their estates, whether from their tenants, their tenants’ family or from other people. Social landlords traditionally evict nuisance tenants, but social landlords have been given more and more legal remedies to deal with ASB. These remedies often straddle the civil and
criminal law. Social landlords often work in partnership with other agencies such as the police and the local council.

As the government, the social housing regulator and social landlords have become more concerned that those who live in social housing are those who are entitled to live in it, they have become more worried about those people who exploit it. Social landlords have taken part in fraud initiatives to uncover cases of unlawful subletting, wrongful succession claims, obtaining tenancies by deception and abandonment. Social landlords have been able to repossess properties following these enquiries. Making false statements to obtain a council tenancy is already a criminal offence. The Government intend to make unlawful subletting a criminal offence.

**How does your organisation do it?**

Find out what sorts of legal actions against tenants your organisation took in the last year, for example, possession claims, injunctions. What was the most common sort?

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**Rent arrears**

Rent arrears are a problem both for tenants in arrears and for landlords. Possession claims are the usual legal action taken by landlords to recover rent arrears. Often a suspended possession order is used to put pressure on the tenant to pay.

Rent arrears are one of the most common problems encountered during the lifetime of a tenancy. Rent arrears threaten both the tenant, because the landlord may try to evict them, and the landlord because they rely on rental income to operate as a landlord and service their debts.

Although rent arrears are often seen as caused by tenants’ fecklessness, failure to pay rent is often due to wider problems of personal indebtedness, poverty, debt and budgetary mismanagement. Benefit problems are also a common cause of rent arrears. Social landlords have increasingly become involved in helping tenant with welfare benefits, debt advice and financial literacy as way of minimising their rent arrears. Social landlords tend to house disadvantaged people and as the incomes of the less well-off are squeezed, debt and rent arrears will remain an important issue for landlords and tenants.

The traditional legal action take by landlords to address rent arrears is to apply to court for a possession order. Rent arrears are the most common grounds for possession used by social landlords against secure and assured tenants. However Government Guidance and the courts’ Pre-Action Protocol say landlords should evict only as a last resort.
Landlords can apply for a county court judgment for the debt, rather than go for possession, but “rent actions” are rarely used. Even when a social landlord applies for possession usually they do not actually want to evict the tenant, as this will make recovering the arrears more difficult. It is thought to be easier to get a current tenant to pay up than a former tenant. Often the landlord asks for a suspended possession order; this means the landlord cannot evict the tenant so long as the tenant pays their current rent and so much a week off the arrears. The weekly amount depends on the circumstances of the tenant. The threat of eviction is used to get the tenant to pay their arrears.

However in some cases the landlord wants to evict the tenant- usually because the landlord has decided the tenant will never pay or never be able to pay. The landlord then applies for an outright possession order, which allows the landlord to evict the tenant in due course.

There are a number of different rent arrears grounds available to landlords, depending on the type of tenancy. However not all debts owed by the tenant to the landlord can be treated s rent arrears - for example rent owed for a former tenancy do not count, or where the tenant has offered to pay in cash but has been turned down.

Landlords don’t need grounds for possession to apply for a possession order against tenants without security of tenure, but often a failure to pay rent will be the reason why the landlord decides to evict.

How does your organisation do it?

Look at your organisation’s rent recovery policy; when does the organisation ask for a suspended possession order and when for an outright order?

Can you find out how many rent arrears possession claims the organisation took last year, and how many tenants were evicted?

Anti-social Behaviour

Social landlords have a range of legal tools available to deal with ASB; perhaps the most commonly used are injunctions and possession claims. The Government intends to replace the ASBO with a new injunction, and to make it easier for social landlords to evict nuisance tenants.

Anti-social Behaviour (ASB) is a problem on many social housing estates and elsewhere. It is hard to say precisely what ASB is, as it depends on whether it upsets other people, and what causes distress to one person will be shrugged off by another, and what is commonplace in one area will be outrageous behaviour in another. This makes it difficult to measure ASB: the recent public concern about ASB may be because people are being less well behaved or it may be that people now have higher standards. It is also hard to say whether measure to deal with ASB are working; an increase in complaints may mean ASB is getting worse or it may mean that people are more confident that if they complain something will
be done to help them. There are also different legal definitions of ASB— for possession claims, for injunctions, and for Anti-social Behaviour Orders, for example.

The Government and the social housing Regulator have encouraged social landlords to take ASB seriously. Many social landlords have specialist ASB and tenancy enforcement teams which work closely with other agencies such as the local council, social services and the police.

Over the past 20 years social landlords (but not private landlords) have been given a range of different legal remedies to deal with those causing ASB, and to protect those suffering from ASB. Social landlords must have policies and procedures to address ASB, and if they do not follow them then victims may complain to the landlord and to the Ombudsman.

Social landlords have used probationary (starter and introductory) tenancies to try to weed out and evict those new tenants who do not behave. If problems occur later in a tenancy (perhaps when children become adolescents) then the landlord can apply to demote the tenancy, and put the tenants back on probation.

The traditional remedy used by social landlords, and one which many victims want them to use, is to apply to evict the nuisance tenant and their family. Landlords have been able to evict secure and assured tenants even where the ASB has been caused by members of the tenant’s family and not by the tenant. However eviction often just moves the problem on to another area, and landlords are encouraged to try other measures first.

Landlords usually take a progressive approach to ASB— starting with informal measures, such as warnings and only moving onto legal action if they do not work. Often the first legal action a social landlord takes is to apply to court for an Anti-social Behaviour Injunction (an ASBI). An ASBI prohibits a tenant or other adult from engaging in housing-related anti-social conduct. In serious cases they can be excluded from the area and may be arrested by the police if they breach the injunction. If someone breaks the terms of an injunction they can be fined or sent to prison for contempt of court.

Injunctions are thought to be a quick and effective way of dealing with ASB. However they cannot generally be used against people less than 18 years old. Where young people are causing problems social landlords have to work closely with other agencies such as the police and youth offending teams. Often young people are invited to agree to an Acceptable Behaviour Contract (an ABC) which sets out what they should and should not do. If they break the ABC then an application for an Anti-social Behaviour Order (ASBO) may then be made by the landlord, the local authority or the police. An ASBO prohibits a person from specified nuisance conduct. ASBOs are often seen as cumbersome and expensive, involving a lot of different organisations. Breach of an ASBO is a criminal offence, so that young people may get a criminal record for nuisance behaviour which may not itself be criminal behaviour.

Other agencies such as the police and local authorities have a number of other community safety measures they can take to deal with ASB, which may affect social landlords, such as dispersal orders (to move on groups causing ASB) and closure orders to shut up houses where serious ASB is being caused.
The Coalition Government intends to rationalise and simplify the remedies available to deal with ASB. The Anti-Social Behaviour, Crime and Policing Bill 2014 will, for example,

- replace the ASBI and the ASBO with “injunctions to prevent nuisance and annoyance”. These will be available against anyone over 10 who is engaging in or threatening to engage in conduct capable of causing nuisance or annoyance to any person. The new types of injunctions may prohibit behaviour and also impose requirements, such as to attend anger-management sessions. Exclusion orders and powers of arrest may be made in more serious cases. Breach of an injunction will be contempt of court, but not a criminal offence in itself.
- introduce a new absolute power of possession where a court has already decided there has been ASB

How does your organisation do it?

Does your organisation have specialist ASB or tenancy enforcement officers? Look at your organisation’s Policy and Procedures for dealing with ASB; do they suggest a tiered approach to dealing with ASB? What legal actions, in what order do they suggest? Do you think they use the full range of ASB tools?

Tenancy offences

Tenancy fraud is broad term that is used to describe misuse of the tenancy. However social landlords are increasingly investigating misuse to repossess properties and prosecute for fraud.

There has been a lot of concern about the misuse of social housing by tenants, and in particular about unlawful subletting. Commercial sub-letting seems to be a particular problem in the south and London, where big profits can be made from the gap between the social rent paid by tenants and the market rent they can charge others. However there is little firm information about the extent of tenancy fraud, although the Audit Commission in 2012 estimated that around 90,000 social homes were subject to some form of tenancy fraud.

Increasingly the use of social housing by someone not entitled to occupy that home has been defined as tenancy fraud. Tenancy fraud is often give a wide definition covering, for example, unauthorised subletting of all or part of a property, submitting false information in a housing application, wrongful succession and non-occupation by the tenant has their principal home, although not all of these acts are of themselves criminal. This approach undermines tenants’ rights in their homes. For example although secure tenants should get their landlord’s permission before subletting part of their home, this permission may be sought afterwards, and the landlord cannot refuse without good reason.
A social housing fraud initiative was implemented aimed at tenants who unlawfully sublet their tenancy, people who wrongly claimed succession to a tenancy and those who obtained a tenancy by deception. The initiative was focused on recovering possession of unlawfully sublet properties, and used methods such as tenancy audits, identity checks and data matching exercises to check that the right people were living in the property.

The criminal law may be used to deal with misuse of social housing. For example, obtaining a tenancy by deception is a ground for possession against assured and secure tenants but also a criminal offence under sections 171 and 214 Housing Act 1996 it is an offence to knowingly or recklessly make a false statement or to knowingly withhold information in relation to a council housing or homeless application. The police and councils are increasingly prosecuting tenants under the Fraud Act 2006 for lying in housing applications; often for not disclosing that they owned properties elsewhere. Offenders have been imprisoned and heavily fined. Some sub-letting by social tenants was made a criminal offence in the Prevention of Social Housing Fraud Act 2013. Secure tenants and assured tenants of social landlords commit a criminal offence if they sublet the whole or part of their property so that they no longer occupy it as their only or principal home and they know this is in breach of their tenancy agreement. Local authorities will be the prosecuting authority, rather than the police. As the law about whether someone is occupying a property as their only or principal home is not straightforward, proving the offences may be difficult.

How does your organisation do it?

Does your organisation think that they have a serious problem with tenancy fraud? Does your organisation have a procedure for dealing with tenancy misuse? If so, does it cover criminal prosecution as well as recovery of the property? Does your organisation have a specialist Housing Investigations team?