



Housing Conditions and Supply Team

Harassment and Illegal Eviction Policy

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POLICY

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This document is held by Tamworth Borough Council, and the document owner is Rob Barnes.

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Document Review Plans

This document is subject to a scheduled annual review. Updates shall be made in accordance with business requirements and changes and will be with agreement with the document owner.

Distribution

The document will be available on the Intranet and the website.

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1. Summary

There are a small number of private landlords or their agents with properties in Tamworth who do not conduct themselves within the requirements of the legislation relating to private rented accommodation. These landlords sometimes resort to using illegal eviction and/or harassment to force tenants to leave their properties.

Illegal eviction can normally be prevented through mediation with the landlord, however, there are occasions when the landlord continues to harass or even illegally evict a tenant despite advice and information that they may be committing a criminal offence.

The Council provides a range of assistance to help landlords comply with their legal responsibilities when asking a tenant to vacate their properties including providing landlords with relevant advice and the landlord forum. Illegal Eviction and Harassment are Criminal Offences and the maximum penalty in a Crown Court is an unlimited fine and two years' imprisonment.

Harassment and illegal eviction can cause considerable distress and anxiety to households and may lead to homelessness. The Council will therefore take a proactive stance against illegal eviction and/or harassment and offer support, advice and assistance to residents in this situation including taking appropriate action to help tenants regain occupancy of their home.

The Council will also prosecute landlords or their agents where it is deemed appropriate to do so.

The purpose of the Policy is to identify and ensure a fast, clear and co-ordinated response by the Council, in partnership with its customers, landlords and partner agencies to deal with allegations of harassment and illegal eviction.

2. Introduction

Harassment and illegal eviction are not always reported to the Council, however when such events occur they will have a severely disruptive effect on the households involved, possibly leading to homelessness. This in turn will have a financial impact on the Council in having to find temporary accommodation such as bed and breakfast.

The law protects people living in residential properties against illegal eviction and/or harassment. It does this in two ways: by making illegal eviction and/or harassment a criminal offence, and by enabling someone who is being illegally evicted and/or harassed to claim damages through the civil courts. The only way a landlord can force a tenant to leave a property is by following the relevant legislation and procedures in the Housing Acts. For example for Assured Shorthold Tenants this means that the relevant notice must be served and then the possession order and warrant obtained. Only a court appointed bailiff can evict an Assured shorthold Tenant.

Whilst people living in accommodation on 'Licence' or less formal agreements have less rights they will still be protected from harassment.

Local Authorities have the power to take criminal proceedings for offences of illegal eviction and/or harassment. If the evidence justifies it, they can carry out investigations and prosecute if they believe an offence has been committed.

Adoption of this policy will make clear that the Council will actively investigate any allegation it receives regarding harassment and/or illegal eviction. It is hoped that landlords/agents will be prompted to ensure that they do not take any action that could constitute harassment or illegal eviction and will be deterred from following such courses of action.

3. The problem locally

Both the Housing Solutions and Housing Conditions Team receive enquiries about the legality and/ or correctness of Notices/ requests to leave accommodation from both tenants and landlords. Most landlords follow the advice given and take the correct procedures to evict their tenants. However there are some private landlords (or their agents) with properties in Tamworth who do not conduct themselves within the requirements of the legislation relating to private rented accommodation, most notably the 'Protection from Eviction Act, 1977'. These landlords may issue a 'notice to quit' that is not legally valid and/or encourage their tenants to leave through a variety of means (persistent calling at the property, threat to change the locks and in the extreme case physically removing a tenant from a property by force). Some tenants are not aware of their rights and may end up leaving their home without any support or advice. It is therefore difficult to assess the frequency of tenant harassment and illegal eviction and it is likely that many cases go unreported.

The Private Sector Housing Team has experienced instances where landlords will try to evict their tenants when they are contacted by the team following a request for service. It is believed that a number of these may have resulted in harassment or an illegal eviction, but tenants are too frightened to come forward for help.

Research suggests that the types of household most likely to experience harassment and illegal eviction are those dependent on housing benefit and classed as 'priority'.

4. What is Harassment?

Harassment is defined in the Protection from Eviction Act 1977 as:

- Acts likely to interfere with the peace and comfort of those living in the property, or
- Persistent withdrawal of services that are reasonably required for the occupation of the property.

The Protection from Eviction Act 1977 creates two separate offences of harassment:

- The first offence can be committed by any person if it can be shown that s/he had an intent to cause an occupier to leave all or part of the property or refrain from exercising any right or remedy in respect of the premises.
- The second can only be committed by a landlord or her/his agent. This offence is committed if it can be shown that the landlord or her/his agent should have known or had reasonable cause to believe that her/his action(s) was likely to have this effect. This Act creates four criminal offences, harassment, putting another person in fear of violence, breach of restraining order and breach of an injunction.

Examples of behaviours which may be classed as harassment include:

- Making threats to persuade a tenant to leave.
- Cutting off services such as gas, electricity or water.
- Preventing access to shared kitchens and bathrooms.
- Entering a tenant's room without permission.
- Not carrying out essential repairs.

5. What is Illegal Eviction?

The majority of occupiers cannot be evicted unless specific legal procedures have been followed (Protection from eviction Act 1997). The exact procedures vary according to the particular type of tenancy or licence agreement the occupier has.

Action taken by a landlord or any other person to deprive an occupier of access to all or part of their accommodation without following the correct legal procedures constitutes illegal eviction.

The Council will take a proactive approach to supporting the rights of residents and tenants in relation to illegal eviction and/or harassment. This will include taking appropriate action to help the tenant regain entry to their home and the possible prosecution of any person, organisation or agency who are acting illegally.

The Council also recognise the rights as well as the responsibility of landlords and will actively encourage all tenants to observe their legal obligations as tenants.

In all cases the Council will adhere to its written procedures in reported or suspected cases of illegal eviction and/or harassment.

At the time of writing this policy there is no accurate data on the number of harassment and illegal evictions in Tamworth, but the Private Sector Housing Team has successfully mediated on a number of occasions to help tenants remain in their homes.

6. Retaliatory eviction

Tenants with Assured Shorthold Tenancies created after 1st October 2015, can be protected from what's known as 'retaliatory eviction'. Retaliatory-eviction is a term used to describe situations where a landlord chooses to evict a tenant who has made a request for repairs rather than carrying out any necessary work. Tenants will only be protected from eviction in these circumstances where the Council's Private Sector Housing Team have undertaken a risk assessment of the property and served a relevant notice as a consequence of a disrepair issue that is hazardous to health or safety. In such circumstances the landlord cannot issue the tenant with a section 21 until 6 months after the service of the Housing Act Notice.

Tenants who receive notice from their landlord before the Council takes this action may only be protected if they have made their initial repair request to the landlord in writing. Normally the landlord is allowed 14 days to respond appropriately to the request for repairs. We recommend that you keep a copy of any correspondence you send to your landlord for your own records as this could be important. If you are a tenant and you are worried about retaliatory eviction please speak to the Council's Private Sector Housing Team.

7. Relevant legislation

There are two main pieces of legislation that deal with illegal eviction and harassment:

- Protection from Eviction Act 1977

Under S1 (2) Protection from Eviction Act 1977 it is an offence for any person to unlawfully deprive a residential occupier of the premises (or any part of it) that they occupy.

The law makes it an offence to:

- Do acts likely to interfere with the peace or comfort of a tenant or anyone living with him or her; or
- Persistently withdraw or withhold services for which the tenant has a reasonable need to live in the premises as a home.

It is an offence to do either of the things described above, intending, knowing, or having reasonable cause to believe, that they would cause the tenant to leave their home, or stop using part of it, or stop doing the things a tenant should normally expect to be able to do. It is also an offence to take someone's home away from them unlawfully.

- Protection from Harassment Act 1997

This Act creates four criminal offences, harassment, putting another person in fear of violence, breach of restraining order and breach of an injunction.

8. Service Criteria

In dealing with cases of illegal eviction and/or harassment the Council: -

- Aims to mediate and negotiate in cases of serious landlord and tenant disputes in the rented housing sector within the boundaries of Tamworth. We will signpost anyone from outside the Borough to talk to their own local authority.

- Where mediation fails or is inappropriate the Council may decide to pursue an investigation which may lead to a criminal prosecution under the Protection from Eviction Act 1977 or the Protection from Eviction Act 1997.

The Council will deal with cases of: -

- Unlawful eviction of tenants by private and registered social landlords or people acting on their behalf.
- Threatened unlawful evictions of tenants by private and registered social landlord tenants or people acting on their behalf.
- Serious cases of harassment of tenants by their landlord or people acting on their behalf. Serious could be violence, threats of violence, abusive, discriminatory, aggressive or intimidating behaviour.
- Disconnection of essential services (water, gas, electricity) by the landlord or person acting on their behalf.
- Cases of harassment where the tenant(s) involved may be vulnerable e.g. elderly tenants, tenants with mental or physical health problems.
- Cases of racial, sexual or other discriminatory issue.
- Any enquiries over general terms and conditions of tenancies, tenancy deposits, contracts, rent increases or other related matters will be directed to the Private Sector Housing Team.

9. How the policy will operate

The Council will take a proactive approach to supporting the rights of residents and tenants in relation to illegal eviction and/or harassment. This will include taking appropriate action to help the tenant regain entry to their home and the possible prosecution of any person, organisation or agency who are acting illegally.

The Council also recognise the rights as well as the responsibility of landlords and will actively encourage all tenants to observe their legal obligations as tenants.

In all cases the Council will adhere to its written procedures in reported or suspected cases of illegal eviction and/or harassment (see attached procedures). This will

include making contact with the landlord/ agent to discuss the situation and issuing the templated initial letter.

Referrals will be made to the Housing Solutions team where appropriate. The service provides information, advice, help and support about a wide range of housing solutions and for those who maybe homeless or threatened with homelessness.

The Council has the legal power to investigate and prosecute under the provisions of the Protection from Eviction Act 1977 and the Protection from Eviction Act 1997.

Referrals may also be made in certain circumstances to the local Police e.g. where threats of violence have been made or where we feel they may be needed to assist with stopping an attempted illegal eviction. The Police may review the circumstances when taking a prosecution for other related factors that might include theft of residential occupier's belongings, criminal damage, assault or protection from harassment.

9.1 Specific principles

In all cases of illegal eviction and/or harassment of a residential occupier the Council will actively consider a formal caution or prosecution on behalf of the customer. In coming to this decision between the two options, the Council will have regard to the seriousness of the alleged incident of illegal eviction or harassment, and where a formal caution is refused; prosecution will usually commence having regard to the issues outlined in the following section.

9.2 Issues to be taken into account

In deciding whether a case is suitable for the application of a caution or prosecution the authority will take a number of issues into account, and these are outlined below;

- Strength of evidence obtained
- The severity of the offence and the circumstances of the case
- If there is any previous history of this landlord/ agent being involved/ suspected of being involved with illegal eviction /harassment

- Voluntary disclosure
- Social factors

A case will not be deemed unsuitable for a prosecution or caution because either the Council has successfully enable the tenant to regain possession of their home or because the landlord or their agent has allowed or is about to allow a displaced residential occupier back into their home.

9.3 Enforcement options

The Council regards enforcement from a holistic view whilst encompassing all actions that can be taken to achieve compliance with a statutory requirement. It has a staged approach to enforcement wherever possible to ensure solutions are initially sought through education, co-operation and agreement. Where this is not successful, formal action will be necessary, which may ultimately lead to prosecution or other summary action. The following options will be available:

- Mediation & negotiation
- Formal Cautions
- Prosecution

Any case will need to meet both the Evidential Test and also the Public Interest Test. The case will have to be prepared, discussed with the Housing Conditions and Supply Manger and presented to the Corporate Director who will have to give consent for the prosecution to go ahead.

10. Roles & Responsibilities

The Council is ultimately responsible for ensuring that any case of illegal eviction and/or harassment will be investigated and where appropriate, will take any necessary action including prosecution.

All staff are responsible for adhering to the policy and for reporting any matters where they suspect illegal eviction and/or harassment may be taking place. Partner

agencies have a responsibility to advise and assist customers and to refer relevant cases to the Council's Private Sector Housing Team.

11. Reviewing the policy

The policy will be reviewed annually or sooner should there be any major changes in National or Local policy. Where minor changes are required to the policy this will be undertaken with the agreement of the head of service and the Portfolio Holder for Housing and Health.

12. Complaints

Tamworth Borough Council has an established corporate complaints procedure for dealing with complaints. Information on how to make a complaint is outlined in a complaints leaflet that is available at all Tamworth Borough Council Offices and on the website via the 'tell us system'.

13. Further information

If you would like further information about this policy, please contact Tamworth Borough Councils Housing Conditions and Supply Team

In writing

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