
**SOUTHEND BOROUGH COUNCIL
ENFORCEMENT POLICY - REPAIR OF TENANTED
PROPERTIES
Private Rented Dwellings –Advice to Tenants**

Context

The Council has a variety of powers available to enforce the repair of tenanted properties and those let on licence under different laws including, amongst others:

Housing Act 1985

Environmental Protection Act 1990

Public Health Acts 1936 and 1961

Local Government (Miscellaneous Provisions) Act 1984

Building Act 1984

Housing Act 2004

Housing Grants, Construction and Regeneration Act 1996

Repair

Note that 'repair' may also in some instances include works of construction and improvement.

Current Enforcement Policy

The Council approach to the enforcement of repairs and improvements in tenanted properties in the Borough is based upon Government advice, law and the Council's agreement to act in accordance with the Government's Enforcement Concordat which establishes a series of principles of good enforcement practice covering: standards, openness, helpfulness, complaints against service, proportionality and consistency.

The Council recognises that contact between landlords and agents and the Council's enforcing departments is essential to ensure that the law is understood by all, cost effective for all parties and fulfilling its purpose to protect the community.

Formal action will only be taken as a last resort, where owners fail to co-operate.

Initially, the Council will write informally to agents or landlords bringing their attention to the need for works following an inspection of the property by the relevant district Officer. Normally, this informal correspondence will include a formal request for information regarding the ownership of the property within a 14 day period. Note that failure to give such information within the set time period is in itself an offence, liable to summary prosecution.

Enforcement

Although enforcement is very much a last resort, it is important to note that the Council will not hesitate to take the necessary enforcement action where this is deemed appropriate. The Council views the responsibility for repairs to tenanted property to be essentially a private one, which lies with the owner of the property concerned. The renting of property in the private sector is seen as a legitimate business activity, where part of the return on investment should be put towards the maintenance and repair of the property so as to preserve its condition over the period of the investment.

Where enforcement action is taken by the Council, it normally involves the service of a statutory notice or Order requiring works to be carried out, or making other requirements. Notices are normally served on the person to whom rent is being paid, or who would receive it, if rent were paid. This can and does include managing agents and trustees. Notices invariably specify a time within which works are to be completed, and often, a time in which works must be started.

Normally, statutory notices are a legal land charge. This means that the fact that a notice has been served is put in the Land Charges Register, the register which is usually searched by solicitors before anyone buys a property. The Council's general involvement is also logged on the Register even at the earlier informal stage, so that any prospective purchaser may be told that there may be outstanding requirements.

Offences in Connection with Statutory Notices

A criminal offence is typically committed if a person served with a notice fails to comply with specified start or completion dates for the works in the notice. Punishment for such an offence would involve prosecution of an offending person by the Council in the local Magistrates Court, where a fine could be imposed up to a specified maximum.

Prosecution Policy

Any decision whether or not to prosecute will take into account the seriousness of the offence, the previous history of the party concerned, any willingness shown towards prevention of a recurrence of the offence, the public benefit of such a prosecution and any explanation offered as to why the offence occurred. Therefore, in some circumstances, a caution (or written warning), rather than prosecution, may be seen to be more appropriate.

Appeals

Notices usually have provision for an appeal to be made against the notice requirements on specified grounds. Typically, appeals must be made with respect to the Housing Act to the Residential Property Tribunal and for other notices to the County Court within 21 days of the date of service. Unfortunately, if appeals are made, the legal process may take some months before the court makes a decision and the Council is again in a position to enforce the completion of works.

Works in Default

Where works have not been carried out in accordance with any notice requirements, there is usually a power open to the Council to carry out the works in default of the person served with the notice. Works in default involve the arrangement of the works by the Council. The cost of works can usually be recovered from the person served with the notice, including any administrative costs involved in arranging them. Such a financial charge becomes a local land charge registered against the property, until the debt is paid.

Where works in default are to be considered, there will normally have been much informal and formal contact between the Council and the owner of a property. Works in default can take a long time to arrange and are considered only as a last resort, to be used where an owner has proved persistently uncooperative. Sometimes this procedure is used where the ownership of a property is unknown, so that there is no person available to carry out the necessary works.

Before works in default are undertaken, the Council is usually required by law to serve another notice of their intention to carry out the works in default. This is usually a seven day notice. Occasionally, statutory works notices allow the Council to carry out works straight away if an owner ignores the notice requirements.

Discretionary Loan or Grant Aid

On occasions, landlords make enquiries to see whether any discretionary loan or grant aid is available towards the cost. Note that discretionary grant will not be given where a statutory notice has had to be served. Therefore, legal action is usually not taken until a landlord making a grant enquiry has had a reasonable chance to make any application.

However, due to restrictions on grant funding, discretionary grant is only likely to be rarely available. A separate advice sheet for landlords has been produced in this regard with fuller details of the grant system, together with information indicating in what circumstances such grants may be available.

Rental Increases

In certain circumstances, it may be possible for a landlord to increase the rent following the completion of any required works. Normally, specific legal procedures and provisions have to be followed before any rent increase is made; in this regard you advised to contact the Rent Officer Service at Chelmsford on [01245] 266861.

Further Sources of Advice

If in doubt about any notice requirement you are advised to contact the *Private Sector Housing Service* in the Adult & Community Services Department of the Council on Southend [01702] 215815 between the hours of 9 a.m. to 5 p.m. any weekday.

You may also visit the reception desk at the Customer Contact Centre on the ground floor of the Civic Centre during normal working hours. However, if you turn up without first ringing to make an appointment, the district Officer may well not be in to see you. (The officers spend most of their day outside the office making visits). If you

wish to telephone the officer involved, it is often best to ring between 9 and 10 a.m., before they go out for the day.

Alternatively, if you wish to see whether there is any way in which you can also take your own private action, perhaps to speed up any repairs or make a claim for damages, you are advised to contact a private solicitor [see local Yellow Pages], or the Citizen's Advice Bureau (CAB) on Southend [01702] 610610.

Liaison between the Landlord and the Occupying Tenant

The law requires a landlord to liaise with their tenant about any works to be done, and to make reasonable arrangements for access, with appropriate notice. Working together in this way is in everyone's interest and aids the smooth progression of works. A tenant, is, of course, also under an obligation to allow reasonable access to the landlord, or his appointed workmen. Keeping each other informed of what is going on helps no end in these circumstances.

The Council itself has Housing Options Officers who may be able to advise if tenancy relations seriously break down to assist both tenants and landlords in the private sector. The Officers will investigate claims of harassment and illegal evictions and if necessary use available statutory powers to take legal action against an offending landlord. Contact: Southend [01702] 215467.