

Policy Name:	Eviction & Abandonment Policy and Procedure
File No:	P02
Version:	3.0 (Final)

Policy Custodian:	Head of Youth Services
Policy Champion: (if applicable)	

This document also relates to the following St Basils policies, procedures and guidelines:

- Assessment & Support Planning
- Safeguarding
- Move on & Fair Exit
- Engagement
- Equality, Diversity & Inclusion
- Rent & Service Charge Arrears
- Alcohol & Substance Misuse
- Comments, Compliment and Complaints

- Licence/Tenancy Agreements (LTA)
- Disposal of Goods Guidelines

Consultation Framework:

Consultation of this policy has taken place with the following parties during the following periods of time:

Custodian	28.11.2018 – 13.03.2019
Champion	28.11.2018 – 13.03.2019
Senior Leadership Team	27.03.2019 – 24.04.2019
Staff	Policy Development Day 28.11.2018
Committee	12.08.2019
Board	16.09.2019

Approved by:	The Board	Approved date:	16.09.2019
Issue date:	8 th October 2019	Review due by:	September 2022

Policy Statement

St Basils aims to enable young people to maintain their tenancies and to create sustainable communities. Eviction will generally be an act of last resort, taken when any other action would be inappropriate or when all efforts to tackle breaches of the tenancy/licence agreement have been exhausted. However, there may be circumstances, for example extremely serious antisocial behaviour, a serious indictable offence being committed or using a property for illegal or immoral purposes when eviction may be considered the only appropriate action, and be sought at the outset.

As a social landlord it is the primary duty of St Basils to provide homes for young people and our focus is centred on supporting those young people to sustain their tenancies. There will be circumstances where it is necessary to seek possession of a property for breach of tenancy which may include anti-social behaviour, rent arrears, property abandonment and tenancy fraud. This policy sets out the circumstances in which an eviction may take place.

Scope of Policy

This policy applies to all employees, in all departments and services as well as young people who are St Basils' residents.

For the purposes of this policy the term 'employee' will include all employees (whether full time or part time), volunteers, casual workers and contracted workers.

Definitions

Eviction is the act or process of officially forcing someone to leave a property

Abandonment is property left by a tenant intentionally and permanently when it appears that the tenant does not intend to come back.

Legislation and Guidance

The legal powers available for landlords and the procedures to be followed in order to evict tenants and licensees who are in arrears are set down in:

The Protection from Eviction act 1977 – Protected and Excluded Licensees

The Housing Act 1988, and Housing Act 1996 – Assured Short hold tenants

Housing Act 1985 grounds for possession

Torts (Interference with Goods) Act 1977

Human Rights Act 1998- Possession proceedings

Housing Benefit Regulations

Data Protection Act 2018

Welfare Reform Act 2012

Children & Families Act 2014

Supporting People Programme / Quality Assessment Framework

General Principles

St Basils Eviction Policy seeks to ensure that young people are treated in a fair, non-discriminatory and consistent manner and to ensure young people have a right to appeal, and an awareness of their right to seek independent legal advice.

St Basils will act to support and sustain tenancies:

- We will seek to ensure that young people understand the terms of their tenancy agreement, the consequences of breaching these terms and what action they can take to remedy any breach.
- When we become aware of breach or possible breach of tenancy agreements, we will make reasonable attempts to intervene at an early stage and to investigate and consider the individual circumstances of each young person.
- Progression Coaches and Housing Workers will work in partnership to ensure that the young person receives appropriate support to help them keep their home.

In the case of breach of tenancy, St Basils will seek possession of a property only after reasonable steps to ensure compliance with the tenancy agreement have failed:

- Where young people have rent arrears, we will seek possession only where appropriate preventative methods have failed to resolve the problem. We will not normally seek possession if a young person is maintaining an agreement to repay arrears, unless there are other breaches of tenancy in addition to rent arrears.
- In the case of anti-social behaviour or harassment by the young person, their visitors or any other person living in the property, acts of waste or neglect of the accommodation and other breaches of the tenancy agreement, we will not normally seek possession until we have pursued appropriate alternative interventions, and these have failed to improve the situation to our reasonable satisfaction.

The mandatory and discretionary grounds for possession, under the Housing Act 1988, are summarised in Appendix 1 you should however also refer to the full text which can be found in Schedule 2 of the Housing Act 1988

This policy reflects equal opportunities and anti-discrimination in practice and service delivery.

Roles and Responsibilities

Managers will ensure this policy is promoted, understood and implemented by all relevant employees ensuring consideration is given to any implications arising from policy decisions.

Training Requirements

St Basils will ensure that all staff receive appropriate levels of training in relation to welfare benefits and local support groups.

Communication

This policy will be communicated effectively to all employees via a range of different media avenues and can be produced in other formats where needed.

Responsibility

The Head of Youth Services is responsible for ensuring this policy is implemented and monitored.

Continuous Renewal Clause

This procedure will be reviewed every 3 years by the organisation to ensure it is in accordance with good practice guidance, prevailing legislation and statutory frameworks. However this policy may be assessed before that time as necessary – such as:

- if it becomes ineffective
- to reflect substantial changes in practice
- following inspection, as recommended by auditors
- or changes required by law

Disclaimer

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EVICTON AND ABANDONMENT PROCEDURE

1. Information on Arrival

- 1.1 We inform all our tenants during their induction, of our eviction procedures, our warning procedures and of their right to seek independent legal advice. The Licence/Tenancy Agreement (LTA) includes a list of reasons for evictions and the process for eviction.

2. Eviction - Licences

- 2.1 Reasons for giving notice to quit must comply with the terms and conditions of the LTA. All warnings and notices to quit must be consistent, be for clear breaches of the agreement and be based on standard notices.
- 2.2 Reasons for immediate eviction are clearly stated in the LTA. These include: cases of seriously disruptive behaviour; repeated harassment; or where the safety of staff or residents is put at risk. Eviction proceedings must be agreed by the Youth Service Manager.
- 2.3 If a tenant has caused a serious incident, the Youth Service Manager or the Head of Youth Services, may decide not to accommodate them in any of our projects for a fixed period of time. If this occurs, all projects, cross-project services and the tenant are informed.
- 2.4 All requests to give notice must be authorised by a Youth Service Manager.
- 2.5 If a notice to quit is issued to a tenant housed under a specific local authority agreement, the matter is discussed with the authority and sufficient warning given to enable them to help the resident find alternative accommodation, if possible.
- 2.6 All requests to withdraw a notice, must be authorised by a Youth Service Manager

3. Eviction – Assured Shorthold Tenancies

- 3.1 Tenants on Assured Shorthold Tenancies (AST) must be given the appropriate notices in order to legally end the agreement and must follow the procedure outlined below: If a tenant holding an AST refuses to leave, they may only be evicted via a court order. A Youth Service Manager or the Head of Youth Services must be involved at this stage.
- 3.2 Prior to taking action to evict a tenant, St Basils must serve a notice seeking possession under section 8 or section 21 of the Housing Act 1988. This notice does not terminate the tenancy; rather it is the commencement of legal action.
- 3.3 We cannot rely on postal delivery to serve a notice seeking possession. Rather, the notice is served by two people directly on a tenant. If not possible, two people are present when the notice is pushed under the tenant's door. Delivery is to be recorded precisely for legal requirements; if necessary, using a Certificate of Service completed by both persons.
- 3.4 If a tenant resides in a project managed on behalf of another organisation, we may act on behalf of the landlord; consequently, all notices must be served in the landlord's name.
- 3.5 It is essential that the Youth Service Manager, and where appropriate a Solicitor, is involved from the outset at all times. When dealing with violent incidents, staff are advised immediately by the Head of Youth Service with regard to police involvement and/or other legal/civil procedures.

4. Financial Circumstances

- 4.1 We do not start possession for rent arrears against a tenant who can demonstrate a reasonable expectation of eligibility for housing benefit. The tenant must provide the Local Authority with the evidence required to process a housing benefit claim. They are also required to pay personal contribution towards the charges.

- 4.2 Staff have established effective ongoing liaison with housing benefit departments and make direct contact with them before taking enforcement action. A certificate is obtained, if possible, to confirm no outstanding benefit enquiries.¹
- 4.3 Tenants with rent arrears often face multiple debts and are referred to holistic debt counselling services as soon as possible after the debt has arisen and should continue to do so during the recovery procedure. Possession action should not be taken where a tenant has maintained an agreement to pay the arrears.

5. Ending a Licence/Tenancy

- 5.1 We can end the Licence/Tenancy by issuing a written notice on one or more grounds if the tenant:
- fails to pay the due charges
 - fails to comply with, or breaches any of the conditions of the agreement, including the obligation to engage with support provided by us
 - causes damage to the property, fixtures or fittings of the residency to which the agreement refers
 - causes serious and/or persistent nuisance to any other tenant, staff member, visitor, volunteer or neighbour, on the grounds of race, colour, religion, gender, sexuality, age and disability
 - refuses alternative accommodation that was offered through, or with the knowledge of our staff; provided we are satisfied of the suitability of the accommodation and the tenant/licensee was warned that refusal results in termination of their licence/tenancy
 - stays beyond the maximum length of stay for the project.

6. Abandonment of Property

- 6.1 Staff must contact the police, following the procedures within our Safeguarding Policy if a tenant is suspected as missing.
- 6.2 Staff must, on initial suspicion that a property has been abandoned send a letter to the tenant, which includes
- a request to get in touch
 - a date by when, if no contact is made, it is assumed they abandoned the property; usually this is three days
 - our intention to repossess the property.
- 6.3 Subsequently, St Basils serves a seven day notice, which can be served with a protected licence; however, if the resident returns within 28 days the room is offered back to them, if vacant, or an alternative room is offered. If there are no vacancies within the project, alternative accommodation is sought through the relevant allocation process, including re-referral to the Birmingham Youth Hub.
- 6.4 The seven day notice to terminate Licence/tenancy under abandonment includes a clear, covering letter explaining why the notice has been served. The letter requests the tenant to contact a named worker as soon as possible to confirm ongoing residency and warns of the danger of losing their home if they do not respond within the notice period.
- 6.5 Neither notices nor letters are to be pinned to the outside of the property, as this is a breach of confidentiality and they may be removed by others. Notices must be pushed under the door, but be careful they don't disappear under carpets. Keep a copy of the notice and statement on the resident's file.

¹ In line with the Department of Work and Pensions Good Practise Guide

- 6.6 If the agreement allows access to the property in the event of suspected abandonment (if on a licence), place the notice and prepare a statement of service, which you and a witness must sign.
- 6.7 A copy of the notice and the covering letter can be sent to any addresses staff believe the tenant to be at, which may include the next of kin' address given on their referral form or their social worker. All correspondence is marked "Private and Confidential"
- 6.8 We make every attempt to locate the tenant by contacting their family or friends, if known. We also contact other agencies involved in their support such as care hospitals, prison, probation, youth offending service, police and social services.
- 6.9 If appropriate and safe, any belongings that are left behind are kept for a maximum of three weeks before being disposed of, if unclaimed. *(Please refer to the Disposal of Goods Guidelines)*

7. Right of Appeal and Complaints

- 7.1 All tenants are informed of their right to appeal against eviction when signing their agreement and again at the start of eviction proceedings and given the option to seek legal advice.
- 7.2 In the first instance a tenant should approach the Youth Service Manager if they wish to appeal against a decision. If still dissatisfied, they may appeal directly to Head of Youth Services.
- 7.3 If the resident remains dissatisfied, they can complain direct to the owners of the property, if applicable, or the Housing Ombudsman. *(Please refer to the Comments, Complaints and Compliments policy.)*

8. Records & Reporting

- 8.1 A copy of the notice must be retained and submitted to the Rents Team in order for the Performance Hub to report on data in line with St Basils key performance indicators.
- 8.2 Projects must maintain records of the young people who have been asked to leave, the reasons and whether they are to be considered for admission in the future. This information is recorded on our internal database system (QL).
- 8.3 All stages of the eviction procedure will be regularly reviewed to meet standards of this policy

Possession of Housing Act 1988 Tenancies - Summary

Assured Tenancies

For a landlord to gain possession they must serve a Section 8 notice and prove one or more of the grounds (either mandatory or discretionary) for possession laid out in Schedule 2 of the Housing Act 1988. If a mandatory ground is proved, the court must give possession to the landlord. If a discretionary ground is proved, the court will not necessarily give possession to the landlord. They will only do so if they think it is 'just and reasonable' to do so. See below for a summary of mandatory and discretionary grounds for possession.

Notice Periods

Different grounds need different notice periods and some grounds require prior notice to be given. This means that notice must be served on the tenant before the tenancy starts, stating that the landlord may rely on the ground later to regain possession.

Assured Shorthold Tenancies (ASTs)

Section 21 Notice

To end a tenancy at the end of a fixed term the landlord must serve notice under a Section 21 of the Housing Act 1988 and need not give any reason. If the tenant does not leave, the landlord still has to go to court, but the court must give possession. A Section 21 notice must be in writing, warn the tenant that a court order is needed to enforce possession and give at least two months' notice.

Service within the Fixed Term

Within the fixed term, a notice under Section 21(1)(b) is served. The notice period must be for a minimum of two months and cannot expire before the end of the fixed term, or must end in line with the timings of a break clause.

Service during a Periodic Tenancy

If the Section 21 is served during a periodic tenancy, the notice period will be a minimum of two months and must be in line with the period of the term and expire on the last day of the period.

With ASTs, possession can also be gained in exactly the same way as for assured tenancies if needed. This must be used if possession is needed within the fixed term or within the first six months of a tenancy that was initially created as a periodic tenancy.

Accelerated Possession Procedure

Quicker and cheaper, accelerated possession can be used where the tenancy is an AST created after 15 January 1989 where:

- The tenant is the original tenant
- A Section 21 notice has been correctly served and has expired, and
- The landlord is only seeking possession (i.e. not claiming any rent arrears).

It still requires a court application and the landlord (or agent) must send all relevant documents to court. However, the application form must be signed by either the landlord or the landlord's solicitors, not the agent. If these are in order and the tenant makes no representation within 14 days of being sent the documents, the court can grant a possession order without the need for a hearing.

Summary of Grounds for Possession in Schedule 2 of the Housing Act 1988

Mandatory Grounds

If these grounds are proven the court has no choice but to grant possession to the landlord.

Grounds 1 - 5 do not apply to St Basils.

Ground 6 - Demolition or reconstruction

The landlord intends to demolish or reconstruct the whole or substantial part of the premises and the work cannot be reasonably carried out without the tenant giving up possession. Two months' notice is required, and the landlord must pay the tenant for reasonable removal expenses.

Ground 7 - Death of the tenant

The tenant has inherited the tenancy on the death of the former tenant, but does not qualify as a successor. Two months' notice is required.

Ground 8 - Serious rent arrears

Both at the date of service of the notice and at the date of the hearing at least 8 weeks rent is owing. Two weeks' notice is required.

Discretionary Grounds

If these grounds are proven the court must consider if it is reasonable to grant possession and has the power to suspend possession on terms.

Ground 9 - Suitable alternative accommodation

Suitable alternative accommodation is available for the tenant or will be once the court order is made. If this order is made the tenant is entitled to reasonable removal expenses from the landlord. Two months' notice is required and the landlord must pay the tenant reasonable removal expenses.

Ground 10 - Rent Arrears

Some rent lawfully due from the tenant:

- a) is unpaid on the date on which proceedings for possession are begun **and**
- b) was in arrears at the date of service of notice (except where it is just and equitable to dispense with the requirement for notice)

Two weeks' notice is required.

Ground 11 - Persistent delay in paying rent

Whether or not any rent is in arrears on the date on which proceedings are begun, the tenant has persistently delayed paying rent which has become lawfully due. Two weeks' notice is required.

Ground 12 - Breach of an obligation of the tenancy

Any obligation of the tenancy (other than related to the payment of rent) has been broken or not performed. Two weeks' notice is required.

Ground 13 - Waste or neglect

The tenant, or member of his/her family or a lodger or subtenant, has taken action or failed to take action resulting in deterioration of the property. Two weeks' notice is required.

Ground 14 - Nuisance or annoyance or conviction

The tenant or a person residing in or visiting the dwelling house:

- has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise lawfully engaged in activity in the locality

or

- has been convicted of using the dwelling house for illegal or immoral purposes or an arrestable offence committed in or in the locality of the dwelling house.

Two weeks' notice is required.

Ground 14a - Domestic violence

The dwelling was occupied by a married couple or couple living together as husband and wife and:

- one or both parties is a tenant of the dwelling house **and**
- the landlord is a registered social landlord **and**
- one partner has left the dwelling house because of threats of violence or violence by the other towards that partner or a member of their family residing there **and**
- the court is satisfied that the partner who has left is unlikely to return.

Two weeks' notice is required and additional notice must be served on the partner who has left, or the court must be satisfied that reasonable steps have been taken to serve such a notice.

Ground 15 - Deterioration of furniture

Similar to ground 13, but applying to landlord's furniture. Two weeks' notice is required.

Ground 16 - Premises let to employees

The property was let in consequence of the tenant's employment by the landlord and the employment has now ceased. Two months' notice is required.

Ground 17 - False statement inducing grant of tenancy

The tenant is person, or one of the persons, to whom the tenancy was granted, and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by the tenant or a person acting on the tenant's instigation. Two weeks' notice is required.