

HALTON HOUSING TRUST
DEMOTED TENANCY APPEALS POLICY

Date due for Review :

Introduction

The Anti-Social Behaviour Act 2003 gave all social landlords, including Halton Housing Trust ('the Trust'), new powers to deal with tenants who are habitually anti-social. One of the more significant ones is the ability of the Trust to apply to Court for an order to demote an assured tenancy where a tenant or resident of, or a visitor to, a property is guilty of anti-social behaviour. This power can be applied by the Trust to any of its assured tenancies, whether they have preserved rights attached to them or not. (The Trust is aware that Demotion Orders cannot be used against any of its starter tenants, as these are already considered to be 'less secure' forms of tenancy.)

However, the Trust also notes that the Court will only make a demotion order if it is satisfied that conduct which is a nuisance or annoyance or is an unlawful use of the property has taken place and that it is reasonable to make the order.

Where the Trust is successful in obtaining an order, the tenancy will be 'demoted' for a 12 month period, and makes it much easier for the Trust to end the tenancy during this period if it feels it has to. The County Court has strictly limited powers to refuse to grant an application for possession once a tenancy has been demoted. Provided that the Trust has given the correct notice and followed the correct procedures in the run up to the possession proceedings, the Court must grant the possession order.

Where the Trust decides that there is a case for the tenancy to be terminated, it must serve the 'demoted' tenant with an appropriate notice under Section 21(4) of the Housing Act 1988. In view of the situation once the case gets to Court, the only point at which the demoted tenant could appeal against the decision to end their tenancy is when they have been served with this notice. There are obvious similarities here with Starter Tenancy Appeals process.

In contrast to the position faced by local authorities when they use this power to demote a secure tenancy, there is nothing in regulations or legislation which requires the Trust to allow its demoted tenants the right to request a review of the decision to end their tenancy. However, the Trust has decided to allow demoted tenants to appeal against the decision to

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end their tenancy under the appropriate part of its Complaints Policy. This policy has been developed to ensure that the Trust deals with demoted tenancy appeals equitably and fairly. The Appeals process has been developed to take account of the Demoted Tenancies (Review of Decisions) (England) Regulations 2004.

The Trust regards this policy as part of its wider strategy to deal with anti-social behaviour and nuisance in the communities it looks after, and as such there are obvious links between it and the Trust's main Anti-Social Behaviour Policy.

Policy Statement

The Trust does not see the use of demotion of tenancies as appropriate for the most serious cases of anti-social behaviour it may have to deal with. The decision here is likely to be between whether to seek an outright or suspended possession order through the Court.

Demotion will normally only be considered for serious anti-social cases where a strong message needs to be sent out to the tenant, but the Trust does not think it appropriate to start possession proceedings at this stage in their tenancy. The Trust sees advantages in using demotion rather than seeking a suspended possession order in these circumstances in that :

- if the demoted tenant's behaviour improves they can be restored back to a higher level of security and rights;
- conversely, the Trust is in control of any possession process if there are any further breaches of tenancy during the demotion period. For example, there could not be an application by the tenant to suspend a warrant for possession.

The Trust sees the use of Demotion Orders as a 'final chance' for the tenant to change their behaviour. It would be up to the tenant to respond positively to the order. If they do and stop causing problems, the tenant would eventually regain a higher level of security and rights. If the anti-social behaviour or nuisance continues or worsens, the Trust would then take action to end the tenancy.

However, because of the effects of Demotion Orders on an assured tenancy the Trust will carefully consider the use of this power before using it. Each case will be considered on its merits.

The Effect of a Demotion Order

- If the Court decides to grant a Demotion Order against an existing assured tenant, the order will effectively end that tenancy.
- It will be replaced by a demoted assured shorthold tenancy.
- The tenant will lose the security of tenure and a number of rights enjoyed under an assured tenancy, e.g, the right to buy or acquire and the right to exchange. (There is an additional consequence for those tenants who transferred to the Trust from Halton Borough Council with a preserved right to buy. If such a tenancy is demoted and is

subsequently converted at the end of the 12 month demotion period, it will become an assured tenancy once again, **but** the tenant will lose their preserved right to buy.)

If during the course of the demoted tenancy the Trust decides there is a case for terminating the tenancy, e.g. because of serious anti-social behaviour, a Notice Requiring Possession (NRP) under Section 21(4) of the Housing Act 1988 will be served. The NRP is the first step the Trust has to take if it wishes to terminate the demoted tenancy and will run for 2 months. When such a notice is served the tenant will be informed that they have a right to appeal against this decision.

The Trust will ensure that when a NRP is served, the demoted tenant will also be provided with the following additional information:

- a letter explaining the reasons why the Trust has decided to serve the NRP;
- an application form on which they can submit their appeal, which will inform them that they have 14 days from the date the Notice was served in which to notify the Trust that they wish to appeal;
- a leaflet explaining how the appeals system works and where they can get independent help or advice.

Once a request for an appeal has been received, the Trust will ensure that the hearing is arranged and a decision made before the expiry date of the Notice.

Acknowledgement and Notification

The request for an appeal will be acknowledged by the Trust within 2 working days of receipt. The acknowledgement letter will inform the appellant:

- that the appeal can be heard either as a paper hearing or an oral hearing;
- who will hear the appeal;
- that they have the right to appear in person or to be represented at or bring someone with them to the hearing if they so wish;
- that they will be given at least ten days notice of the date, time and venue of hearing;
- that they will be provided in advance with copies of any written evidence to be used at the hearing by the officer presenting the case on behalf of the Trust.

Once the appeal hearing has been set up, the appellant will be informed of the arrangements and will receive all the appropriate paperwork referred to above. Whether the appellant has indicated that they will be attending or not, the letter will also include a date by which they would need to send in any written evidence which they wanted the appeals panel to take into account. The notification letter will also contain details of how the appeal will be conducted.

The Appeal Hearing

The Appeal Hearing will take place before the same Review Panel which considers second

stage appeals under the Trust's Complaints Policy, i.e. by 3 members of the Trust's Senior Management Team, none of whom will have had any previous involvement with the case.

The hearing will not be conducted as a 'court' style hearing, but will simply consider the facts relevant to the case.

The main factors that the Appeals Panel will take into consideration are that:

- the NRP was served correctly;
- it was appropriate in terms of the evidence provided;
- the decision to terminate the tenancy will stand up to scrutiny.

If they attend the hearing, the appellant will normally be informed of the decision of the Review Panel on the day, but in any event this will be confirmed to them in writing within 10 days of the hearing. The decision letter will contain the reasons for the Panel's decision.

Implementation

Full details of how the appeals process is implemented are contained in a separate procedure document.

Responsibility

The Deputy Chief Executive will be responsible for the effective implementation of this policy, and to ensure that appropriate staff are aware of and have received training in dealing with such appeals.

Review & Consultation

This appeals process will be reviewed at least every 3 years and sooner in the light of any legislative changes.

The views of tenants in general, Trust staff and other appropriate organisations on the impact of demoted tenancies will be sought as part of any review.

Any review of this policy will ensure that it takes account of legislative changes and the development of best practice initiatives internally or externally so that improvements in performance can continue to be made.

Monitoring

The Trust will set up appropriate recording systems in order to monitor the effectiveness of this policy. The following outcomes will be recorded:

- the number of notices served on demoted tenants and the reason for service, i.e.

- whether for anti-social behaviour or rent arrears;
- the number of requests for review made;
- the number of Court orders obtained or refused;
- the number of evictions carried out;
- the number of tenancies relinquished following receipt of the notice;
- the number of tenancies abandoned.

Quarterly summary reports will be made to Senior Management Team and the Operations Committee.

Associated Documents

Complaints Policy
Anti-Social Behaviour Policy
Demoted Tenancy Appeals Procedure