

**FALKIRK COUNCIL
RENT COLLECTION POLICY**

1. GENERAL STATEMENT

- 1.1 Falkirk Council is the major provider of rented accommodation in the Falkirk area. Rents are set annually and are charged over 24 fortnightly periods in each year with two "no charge" periods falling at the Falkirk 'Fair' holiday and over Christmas / New Year.
- 1.2 Rent charges meet the cost to Falkirk Council of managing, maintaining and improving its stock of houses and lock-up garages and it is the responsibility of every tenant to pay the fortnightly amounts due.
- 1.3 In addition to rent some tenants may be liable to pay charges for other services i.e. electricity, furniture and house contents insurance along with their rent. Also, V.A.T. is payable where a lock-up is let to non-Council tenants.
- 1.4 Falkirk Council is fully committed to ensuring that all aspects of the rent accounting, collection and recovery processes are delivered in the most efficient and effective ways, to the highest standards of customer care and having regard to the individual needs and circumstances of customers and the interests of Falkirk Council tenants as a whole.

2. STAFFING / SYSTEMS

To support this commitment, Falkirk Council will :-

- 2.1 ensure that the appropriate level of resources are employed in the collection and recovery of rent and that arrangements are in accordance with best practice.
- 2.2 ensure that staff are fully trained in the various aspects of the administration and recovery of rent.
- 2.3 embrace new information technology and seek ongoing enhancement / upgrade to systems and computer hardware to support continuous improvements in the delivery of the rent accounting service and collection levels.

3. ARRANGEMENTS

- 3.1 The key features to meeting this commitment are to ensure that rent and service charges are accurately calculated and raised, (including the award of any Housing Benefit), payment cards and other payment documentation are issued promptly and early action is taken for recovery where arrears occur.
- 3.2 To meet this commitment Falkirk Council will:-
- 3.3 Provide information to tenants about rent, service charges, house contents insurance and Housing Benefit when tenancy agreements are signed, prior to the commencement of each tenancy.
- 3.4 Notify tenants of charges and issue appropriate payment documentation within 14 days of commencement of tenancy, or on request for replacement payment card by tenant.

- 3.5 Give tenants at least 28 days' notice of any increase in the basic rent charge for each property.
- 3.6 Maximise the take-up of Housing Benefit through benefit campaigns and by taking measures to ensure that tenants who have an underlying entitlement, claim Housing Benefit and also notify Falkirk Council of any changes in circumstances.
- 3.7 Issue Housing Benefit decisions within 14 days of receipt of completed claim and detail rent account balances on determination notices.
- 3.8 Provide cost effective payment facilities that are convenient for customers. This includes initiatives to encourage the take-up of payments by Direct Debit and may include incentives to pay rent on time.
- 3.9 Pursue rent arrears in accordance with statutory procedures and best practice.
- 3.10 Issue first reminder letter within 2 weeks of rent charge for any period becoming overdue.
- 3.11 Advise tenant of rent arrears and any outstanding Housing Benefit issues at settling-in visits carried out within 4 to 6 weeks of commencement of new tenancy.
- 3.12 Issue Notice of Proceedings for Recovery of Possession within 2 weeks of settling-in visit or issue of first reminder letter.
- 3.13 Issue reminder prior to date Notice of Proceedings for Recovery of Possession becomes valid (4 weeks after service) that court action will be raised if a payment arrangement is not made or maintained.
- 3.14 Initiate court action within 4 weeks of Notice of Proceedings becoming valid and issue a letter to the tenant confirming that an application to the court has been made for repossession of the property and / or a payment action, whichever is most appropriate.
- 3.15 Ensure contact is made with tenant prior to court hearing, either by office interview, telephone call, home visit, or if no direct contact can be made, by hand delivered letter.
- 3.16 Within 7 days of confirmation that Decree for Payment has been granted, pass over account to Sheriff Officers for enforcement by the way of appropriate diligence eg. arrestment of funds or earnings arrestment.
- 3.17 Within 7 days of confirmation that Decree for Ejection has been granted, issue letter to tenant confirming that eviction will be carried out unless a suitable repayment arrangement is made.
- 3.18 Pass over list of proposed evictions to Sheriff Officers weekly, at least 7 days prior to the date for ejection specified in the court order.
- 3.19 Instruct the Sheriff Officers to issue letters to tenants 7 days prior to the eviction date.
- 3.20 Carry out evictions as a last resort.

- 3.21 Not consider a transfer or mutual exchange to any tenant who has not maintained a clear Rent account for a minimum period of 6 months. Variations to this policy may be considered by the Director of Housing and Social Work Services in exceptional circumstances.
- 3.22 Not consider the allocation of a Council tenancy to any applicant with rent arrears relating to a former tenancy with Falkirk Council. Variations to this policy may be considered by the Director of Housing And Social Work Services in exceptional circumstances.
- 3.23 Where a tenant is in receipt Income Support / JSA (income based) and is in receipt of 100% Housing Benefit, an application will be made for direct deductions from Income Support / J.S.A. in accordance with statutory procedures.
- 3.24 Data match rent arrears debts with Falkirk Council employee payroll records.
- 3.25 At any stage in the recovery process, enter into a payment arrangement that will facilitate the repayment of rent due within a reasonable period. Repayment arrangements will take into consideration the tenant's circumstances and the repayment of any other debts that the tenant may owe Falkirk Council.
- 3.26 Provide customers with advice on rent and Housing Benefit matters and where to obtain independent debt counselling including Money Advice, where appropriate.
- 3.27 Continue to pursue debts due by former tenants.

4. ENFORCEMENT PROCESS / DILIGENCE

- 4.1 Falkirk Council is committed to using all the legal remedies that are available to it which are considered to be effective, are reasonable and will not create undue hardship for any individual. In each case action will be considered in the light of the individual household circumstances and evictions will only be carried out as a last resort. In the case of most legal remedies, they must be executed by a Sheriff Officer and are regulated by statute.
- 4.2 Notice of Proceedings for Recovery of Possession

Before the Council can raise an action of eviction against a tenant, it is obliged by statute to serve a notice on the tenant. This notice will specify that the council may take action to recover possession of a tenancy on the ground that the tenant is in arrears with rent. It is designed to act as a warning to the tenant that eviction action may be commenced and gives information to the tenant to help them understand their legal position should an eviction action be raised.

The eviction action may be raised 4 weeks after the notice has been served on the tenant. The notice remains in force for a period of 6 months from this date. The Council may raise an action at any time during the period of validity of the notice.

Evictions can only be carried out by Sheriff Officers although an appropriate officer from Falkirk Council will be in attendance in every case.

4.3 Action for Eviction

A summary cause heritable action is raised in the Sheriff Court asking the court to allow the Council to repossess the property and evict the tenant and others resident in the property with their goods and effects.

These proceedings are regulated by statute. The court must be satisfied the landlord has a ground for recovery of the property, (i.e. that rent arrears remain due and unpaid) and that it is reasonable to make the order in all the circumstances of the case.

The order, if made, will appoint a date for recovery of possession of the property and has the effect of terminating the tenancy and giving the Council the right to recover possession of the house at that date.

4.4 Court Action for Payment

The Council may raise an action in the Sheriff Court asking the court to make an order against the tenant for payment of a specified amount of rent arrears due to the Council at that date. A notice of proceedings for recovery of possession does not require to be served as a prerequisite to the raising of such actions. Once granted, the Sheriff Officers can enforce the decree for payment by a range of diligences.

4.5 Diligence

This is the legal process by which the creditor attaches property of the debtor with the object of forcing then to pay the debt due. The remedies that are available to Falkirk Council are :-

4.5.1 Deductions from Income Support

In those cases where a debtor is on Income Support, the Council may apply to the Benefits Agency for an attachment of Income Support or Job Seekers Allowance. The amount that is to be deducted is decided by the Department of Social Security and is updated each year.

4.5.2 Charge for Payment

This is a Notice served by the Sheriff Officer on the basis of a decree for payment demanding settlement of the debt within 14 days. This must be served as a prerequisite to the diligences of poinding, warrant sale and sequestration of the debtor.

4.5.3 Earnings Arrestment

In those cases where a debtor is in paid work, the Sheriff Officer can serve a notice on an employer for regular payments to be made from a debtor's wages or salary.

4.5.4 Arrestment of Bank/Building Society Accounts

Where a debtor has a bank account, the Sheriff Officer can make an arrestment of their bank or building society accounts which may attach sufficient funds to pay the debt.

4.5.5 Action of Furthcoming

Where a debtor and / or the person in whose hands the goods / funds were arrested refuses or unreasonably delays handing them over, an Action for Furthcoming may be raised to have the goods / funds released to the Council.

4.5.6 Poining

Poining is the diligence whereby the moveable property of the debtor, which is not exempt from being poined, is attached and preserved for the benefit of the creditor and brought within the protection and control of the court until they can be realised at a warrant sale. A poining must also be carried out before the Council petitions for sequestration of a debtor.

4.5.7 Warrant Sale

The Scottish Executive is currently seeking an alternative remedy to replace warrant sales which are to be abolished from 31 December 2002. The Sheriff Officer arranges a sale by public auction in which the poined goods belonging to the debtor are realised. There are wide restrictions on those goods that can be poined and the value of the goods must be sufficient to cover the debt and expenses. However, there remains concern that warrant sales can cause undue hardship and should only be considered where the debtor clearly has the means to pay the amount due and all other methods of recovery have been exhausted.

4.5.8 Inhibition

This is a diligence, which prevents a person who has an interest in heritable property from disposing of that interest to the prejudice of their creditors. Application is made to the Court of Session for Letters of Inhibition, which are registered in the Register of Inhibitions and Adjudications, which is a public record. They last for five years and should obstruct any future sale of the property. This diligence can only be used in relation to actions for payment. The inhibition does not operate to transfer the property to the inhibitor and would have to be followed by an Action of Adjudication to achieve this. Although rare, the use of this diligence may be considered by the Director of Finance in exceptional circumstances.

4.5.9 Sequestration

The Council may petition for sequestration proceedings against a debtor once the level of debt exceeds £1,500. Sequestration is the process whereby all a debtor's assets, both moveable and heritable, are set aside for the use of creditors under the supervision of a trustee appointed by the Court.

5. COURT EXPENSES / SHERIFF OFFICER FEES

- 5.1 The Council will seek to recover from the debtor all court expenses and Sheriff Officer's fees necessary and reasonably incurred in the raising of court action against them, subject to approval of the court. The amount of court expenses and Sheriff Officer's fees are fixed by statute and charges will be recovered through the issue of a sundry account.

6. SERVICE LEVEL AGREEMENT WITH SHERIFF OFFICER

- 6.1 Falkirk Council will enter into a contract with a firm of Sheriff Officers to recover legally founded rent debts, to carry out diligence and on the specific instructions of Falkirk Council to carry out evictions as a matter of last resort. Arrangements will be laid down in a Service Level Agreement between both parties and will be subject to performance review at the end of each quarterly period. i.e. at the end June, September, December and March.
- 6.2 The Sheriff Officer will not carry out a warrant sale without the specific approval of Falkirk Council through a report being submitted to, and agreed by, the Policy & Resources Committee.

7. LIAISON WITH HOUSING and SOCIAL WORK SERVICES

- 7.1 The Children (Scotland) Act 1995 places duties on local authorities in relation to the general care and welfare of children aged 18 and under. Therefore, if the Council evicts a family with children aged 18 or under, the Council may be required to make provision for the children.
- 7.2 So that the interests of all tenants and Council Tax payers are best served, and that Falkirk Council meets its statutory obligations, Social Work Services will be notified of all new applications for heritable actions, within 14 days of an application being made. Social Work Services will also be advised of all court hearing dates weekly, will be notified of within 7 days of confirmation that a decree for ejection has been granted and will be given at least 7 days' notice of the date of any eviction.

7. PERFORMANCE REVIEW / INFORMATION to MEMBERS

- 7.1 The Director of Finance will report annually to members on rent collection levels and details relating to evictions that have been carried out in each year.
- 7.2 The local member will be given at least 7 days' notice of any eviction that is to be carried out in their ward.
- 7.3 The Convener of Housing and Social Work Committee will be notified of all evictions carried out at the end of each month.

Prepared by : Director of Finance

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