

Mid-Market Rent Arrears Procedure

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PURPOSE

The purpose of this procedure is to lay out the processes to be followed where customers living in Mid-Market rented accommodation let on Short Assured Tenancies and Private Residential Tenancies, fall into rent arrears. The procedure differs from that relating to Scottish Secure Tenancies.

PREVENTION

The collection of rent is essential for the landlord in the provision of a high-quality housing management and maintenance service. The prevention of arrears and other tenancy related debts is the key to ensuring this. To help achieve this, customers are required to pay the rent and deposit upfront into the Eildon Enterprise Ltd (EEL) bank account prior to signing the tenancy agreement. A Direct Debit mandate is filled in by the customer at the sign-up ensuring payment is made on the first of each calendar month thereafter.

EEL acknowledge that an individual's circumstances can change, resulting in financial difficulties and will work with customers to reach an acceptable repayment agreement, taking into consideration the circumstances of the individual customer. However only short-term repayment agreements (over the maximum period of 3 months) will be accepted. Where additional debt and/or benefits advice is required, customers will be referred to an appropriate local agency to provide this.

EARLY INTERVENTION

Where a customer falls into arrears of rent it is essential to make contact quickly. It may be that the customer is unaware of the problem, (e.g.: a problem when changing bank) and they can arrange for payment within the following 24-48 hours, but it may equally be likely that there has been a change in the customer's circumstances resulting in financial difficulties where repayment in full cannot be achieved within a short space of time.

Early intervention will stop the level of arrears becoming unmanageable for the customer and it will reduce the risk of bad debts for the Landlord.

ACCOUNT MONITORING

Rent is charged on the first of every month. Customers pay by Direct Debit and it can quickly and easily be identified when a payment has not been received.

Initial Contact Days 1-7 Of the Month

Rent accounts are monitored regularly to ensure that incidences of non-payment of rent are identified within the first 7 days of the month.

Allpay will advise us that the direct debit has bounced, 'stage 1 letter' will be sent to the customer to advise them of the rent arrears. Allpay will only try to take the rent twice. The customer is advised to contact us within 5 days.

Phone Contact

When phone contact is made with the customer the matter of the outstanding rent will be discussed and payment of this amount should be agreed within 28 days.

Change in Circumstances

If a change in circumstance has occurred and a customer requires additional support, we have tenancy sustainment officers who are able to offer professional advice.

Account Monitoring Days 8-14 Of the Month

Where there has been no response to the phone call's or the 'stage 1' letter, the 'stage 2' letter should be sent. This letter advises the customer of the arrears and provides a deadline when the account should be cleared (which will normally be within 7 days of the date of the letter) and when contact should be made with the PRTO to discuss the matter (this should normally be within 2 working days of the date of the letter). This letter advises the customer that they have one opportunity to make an acceptable repayment agreement but it also advises the customer that should the account not be brought up to date within the specified time that legal action will be pursued which will result in court action to recover the property and the costs of carrying out this action.

Final Contact Before Legal Action - Days 15-21

Where there has been no response from 'stage 1' and 'stage 2' letters, a final letter should be sent advising the customer that Legal Notices are to be prepared within 7 days of the date of this letter. The customer will also be advised that the only way to stop this action is to clear the account in full within 48 hours, if they are unable to clear the account then they must contact the PRTO within 48 hours.

REPAYMENT AGREEMENTS

There will be one agreement made which if broken will result in legal action to recover possession of the property. Only in an exceptional case will a second agreement be entered into, and this must be with the agreement of the Director of Property Assets.

The purpose of making the repayment arrangement is to allow the customer one opportunity to clear the outstanding account within an acceptable time frame to EEL.

The PRTO will need to take into consideration the amount of outstanding rent, the term of the tenancy outstanding, the likelihood of a successful Local Housing Allowance application (if applied for) and the income of the household.

Ideally the account should be cleared within 1-2 months, however this may not be feasible if LHA has been applied for and the household income has reduced significantly, in these cases the account should be cleared within 3 months.

- **Form MRAGR** should be used, the customer will be asked to sign this agreement.
- **Form MRAGR** clearly states that this is the first and final agreement and that should the agreement be broken; legal action will be started which may result in eviction proceedings.

Once finalised a copy of Form MRAGR should be sent to the customer with **Letter MRAGR**.

Broken Agreements

Where a repayment agreement has been broken and the debt remains outstanding on the account, **letter MRBAGR** should be sent to the customer. This letter advises the customer of the broken agreement and asks for an immediate payment to bring the account up to date within 48hours, and advises that failure to do so will result in legal action being commenced (where no Notice has been served) or a court date will be applied for (where a valid Notice is in place) or a re-presentation at court where the case has been sisted, or if the case has been continued, the letter advises that EEL will seek decree for eviction.

LEGAL ACTION - SHORT ASSURED TENANCY AGREEMENT

A tenancy can be ended using a Notice to Quit and a Section 33 Notice, which does not require a specific ground to end the tenancy, and this can be used, for example to end the tenancy at the initial 6 month end date or at a later stage if running on a month to month basis. Form AT6 can also be used where the customer has not given vacant possession through the use of the Notice to Quit and Section 33 Notice.

Note that 2 months' notice is required if using the Section 33 Notice or the AT6, therefore the Notice to Quit should also have a 2-month Notice period. (Appendix 3 provides more information on Notices and terminology.)

The notice will be sent to the customers by Sheriffs' Officers.

LEGAL ACTION - PRIVATE RESIDENTIAL TENANCY AGREEMENT

To start the eviction process, you must give your customers written notice called a notice to leave. This notice must state:

- the day on which your landlord will be entitled to apply to the First Tier Tribunal for an eviction order, and
- which ground is being used

Notice Period

To end the tenancy there are different periods of notice depending on how long the customers have been living at the property and what ground is being used:

- If the customers have lived in the property for less than 6 months, then the notice period is 28 days, regardless of the ground used.
- If the customers have lived in the property for longer than 6 months and the landlord is not using a conduct ground, then the notice period is 84 days.
- If the customers have lived in the property for more than 6 months, and the landlord is using one of the six conduct grounds (see below) the notice period is 28 days.

The six conduct grounds are:

- Ground 10 - Not occupying let property
- Ground 11 - Breach of tenancy agreement
- Ground 12 - Rent arrears
- Ground 13 - Criminal behaviour
- Ground 14 - Anti-social behaviour
- Ground 15 - Association with a person who has relevant conviction or engaged in relevant anti-social behaviour

The notice period starts from the day our customers receive the notice; this is assumed to be 48 hours after the landlord has sent it. You will not be able to make an application to the tribunal until the day after the notice period expires.

The notice to leave is valid for 6 months, if no application for an eviction order is made, then another notice to leave would need to be issued.

Applying to The First Tier Tribunal

If the customers haven't moved out by the expiry of the notice, you will have to apply to the First Tier Tribunal for an eviction order.

An application to the First Tier Tribunal for an eviction order must include a copy of the:

- Notice to Leave given to the customer, and [Section 11 Notice](#) - which must be sent to the local authority notifying them of a possible eviction.

Court Outcome

The Sheriff may grant decree for eviction or may continue the case, or sist the case or indeed dismiss the case (with or without expenses).

The outcome of the case should be notified to the customer as soon as it is known using the most suitable outcome letter (**Letter MRCRTSIS, MRCRTCON or MRCRTEVI.**)

EVICITION

If the Sheriff awards a Decree for Repossession of the property, the customer should be advised of this as soon as the Decree has been received using **Letter MREVI**. In this letter the customer will be advised of the date for the eviction, they will be advised that they are still liable for the debt and any costs awarded.

The PRTO will arrange for a joiner to be in attendance and Sheriffs' officers to attend on the proposed eviction date.

TERMINATION OF TENANCY WITH ARREARS

Where a customer hands their notice of intention to terminate the tenancy and there are arrears on the account, the PRTO should send **letter MRTERAR** to the customer. This letter explains that there are rent arrears outstanding and that these should be cleared before the end of the tenancy. The letter also reminds the customer that the deposit may be withheld in full or in part, to cover the outstanding arrears.

Customers are required through their tenancy agreement to pay a deposit of one month's rent which will be placed in a government-authorized tenancy deposit protection scheme. The tenancy agreement will state that we will be entitled to make deductions from the deposit in respect of rent arrears at the end of a tenancy.

FORMER TENANCY ARREARS

Where the location of the former customer is known, EEL will write to the customer using **Letter MRFTAR1** and request that a repayment arrangement is made to clear the outstanding debt. If there is no response to this letter, then EEL will instruct a tracing agent to search for the location of the customer, which if discovered, EEL will write to the customer at this address.

MONITORING AND REVIEW

This procedure will be subject to regular monitoring and review.

REVIEW

This procedure will be reviewed three years from the date of approval, or earlier should the need arise to reflect changing circumstances or changes in legislation or good practice standards