

Housing Management	Breach of Tenancy Agreement Procedure
Providence Row Housing Association	VERSION: 4

Breach of Tenancy Agreement Procedure

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1. Policy statement

PRHA exists in order to provide housing and support to vulnerable people. Our staff direct their efforts and expertise towards helping tenants to retain their accommodation and receive the support they require. Consequently, any action we take which may result in a tenant having to leave their home will only occur after all other reasonable efforts have failed to resolve the particular problem.

Much of PRHA's stock is intended as temporary accommodation & in many cases tenants must also require the support service on offer. When move on options are made available tenants must consider these reasonably and PRHA may have to take action to end a tenancy if the tenant refuses a reasonable offer of accommodation. This includes options in the private rented sector. This will enable PRHA to ensure that this highly resourced resource which is in high demand is used to best effect.

Action to recover possession of premises occupied under an Assured/Assured Shorthold Tenancy will only be taken on grounds specified in those agreements. In all cases, factual information regarding the problem (e.g. incidents) and action taken to resolve it will be recorded to demonstrate to the tenant how they have breached the agreement. This information may also be required in support of an action for possession.

Where steps are taken to evict a tenant PRHA will notify relevant agencies before the tenant leaves, and will advise and assist the tenant to find suitable alternative accommodation wherever possible.

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It is PRHA's duty to take action to address all breaches to Tenancy Agreements in a systematic manner to ensure that both the rights of the tenant are upheld and the right to safety, security and "peaceful enjoyment" are upheld for all tenants and residents.

This policy should be read in conjunction with PRHA's anti-social behaviour **& resettlement policy**.

This procedure states the steps to be followed when a tenant breaches the terms and conditions set out within their tenancy Agreement.

2. PRHA as Managing Agent

Where PRHA is managing a property as agent for another Registered Provider, action for possession must be taken only with the consent of, and by or on behalf of, the landlord Registered Provider. This authority must be in writing. In these cases the relevant Registered Provider's policies will be followed.

3. Authority

Implementation of Tenancy Agreement

In order to ensure that breaches to Tenancy Agreements are addressed in a fair, proper and equitable manner and follows the relevant legislation PRHA's Board has delegated **specific levels of** authority to officers:

- In cases of anti-social behaviour in our supported housing projects: to scheme management
- In cases of arrears across **all services** and anti-social behaviour in our general needs properties: to Housing Officers.
- **In all cases the issuing of notices and the approval of evictions rest with Service Improvement Managers and Senior Management Team level respectively.**

AUTHORITY TO IMPLEMENT AND ADDRESS BREACHES TO TENANCY AGREEMENT: please note Deputy/ Assistant Manager level also refers to senior supported housing officer/senior support worker etc.

ARREARS AND OTHER TENANCY BREACHES

The Service Improvement Manager Community Services has responsibility for ensuring accurate sign up to Assured Shorthold and Assured tenancies and that procedures are followed whenever a potential or actual breach occurs.

Housing Officer	The Housing Officer can issue arrears letters in
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	accordance to the arrears procedure. However, the housing officer cannot issue notice.
Service Improvement Manager Cli/Com Serv. or Assistant Director Cli./Com Serv.	Authorises all NOSP/NTQs
ANTISOCIAL BEHAVIOUR :General needs	
Housing Officer	The Housing Officer can issue arrears letters in accordance to the arrears procedure. However, the housing officer cannot issue notice. In the case of serious breaches and in the case of serious incidents the Service Improvement Manager (community services) may lead on action.
Service Improvement Manager Com Serv. or Assistant Director Com Serv.	Authorises all NOSP/NTQs
Anti Social Behaviour in PRHA's General Needs properties will be addressed by Housing Officers	
ANTISOCIAL BEHAVIOUR :Supported housing	
Project Managers	The manager can issue warnings to address any instances of anti-social behaviour. The project manager can only issue Notice Of Seeking Possession (NOSP) with the authority of the Service Improvement Manager Client Services or Assistant Director Client Services.
Deputy / Assistant Manager	The deputy/ Assistant Manager can issue warnings as necessary following this procedure. The deputy manager cannot issue NOSP. However, in the absence of the project manager can take the deputising role and following consultation with a senior manager can issue NOSP on behalf of the project manager.
Project Officers	Project officers do not have the delegated authority to issue warnings or NOSP. However, in emergency situations where there is risk to staff, tenants or others they may do so under the express authority of the project manager or in their absence a senior manager. In such cases full documentation of the authority trail must be provided in the incident report

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	which the Project manager/senior manager must sign off.
Service Improvement Manager Cli Serv or Assistant Director Cli Serv.	Authorises all NOSP/NTQs

4. NON ENGAGEMENT WITH MOVE-ON

Non engagement with move on options from temporary accommodation is distinctly different from other forms of non engagement. PRHA accepts its responsibilities for the promotion of engagement and to proactively address non engagement. All tenants will be advised when they first move into PRHA temporary accommodation that they should only be staying there while their support needs are addressed. They will be expected to engage with support to develop independent living skills & will be assisted to find a move on option, probably in the private rented sector. Non engagement with PRHA or partnership agencies will be addressed by staff.

Where PRHA is not the landlord requests will be made to the relevant landlord for permission to issue Notice.

AUTHORITY TO ISSUE NOTICE FOR NON ENGAGEMENT

Project Officers	Individual staff members have a responsibility and role in ensuring that the Resettlement policy is put into practice, monitored and reviewed. Project officers do not have the delegated authority to issue warnings or NOSP/NTQs
Project Managers	The manager can issue warnings to ensure that tenants are aware of the consequences of non engagement with move-on. The manager can only issue Notice Of Seeking Possession (NOSP) with the authority of the Service Improvement Manager Client Services.
Service Improvement Manager Cli. Serv.	Authorises all NOSP/NTQs.

5. Breaches of Tenancy Agreements

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In order to ensure that all breaches of tenancy agreements are addressed in a fair and equitable manner the following steps must be followed.

It is important to note that fundamentally PRHA has the aim to maintain tenure and it is hoped that by addressing breaches quickly, fairly and with proper reason the resident is enabled to maintain their agreement. However, in cases where the safety of residents, staff or the general public is in question the emergency grounds outlined in **appendix two must be followed**.

AUTHORITY TO IMPLEMENT AND ADDRESS BREACHES TO TENANCY AGREEMENT:	
ARREARS	
Service Improvement Manager (Community Services)	The Service Improvement Manager Community Services has responsibility for ensuring accurate sign up to Assured Shorthold and Assured tenancies and that procedures are followed accordingly in regards to any breaches.
Housing Officer	Issue standard letters R1 – HO, R2 – HO, R3 – HO, R4 – Visit letter
Housing Officer	Issue Section 21 notice/or NOSP (approved by SIM or project manager): dependant on tenancy type
Housing Officer	Issue R5 & pre-visit prior to court application.
Housing Officer	Issue R6 – informing tenant we have made an application to court.
Arrears Letter Appeals	
NB: at each Arrears Letter Stage the tenant may appeal against the letter. This must be put in writing and the Service Improvement Manager (Com Ser) will investigate and respond within 5 days of receipt. Please also see appeals process below.	

NB: staff should be aware that issuing a Notice of Intention to Seek Possession **should** itself be seen as part of the effort to remedy the problem. Even after the issue of a notice all efforts must be made to resolve the main causes of the breach of tenancy agreement.

Please note stages may be jumped where the severity of cases warrants this. In such cases full reasons must be documented.

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ANTISOCIAL BEHAVIOUR			
		Supported Projects	General Needs
Stage	Warning/Notice	Authority	
Stage 1	Verbal Warning (supported in writing)	Deputy Manager	Housing Officer (permission from SIM)
Stage 2	Breach of Tenancy	Deputy Manager	Housing Officer (permission from SIM)
Stage 3	Written Warning	Deputy Manager	Housing Officer (permission from SIM)
Stage 3 Appeal	First Appeal against written warning: within 5 days.	Project Manager	SIM(Com Services)
Stage 4	NOSP/Section 21	Project Manager	Housing Officer (permission from SIM)
Stage 4 appeal	First Appeal against NOSP: within 5 days of receipt of notice.	Project Manager	SIM (Com Services)
	Second Appeal against NOSP: within 5 Days of receipt of first appeal decision	Service Improvement Manager (Client Services)	Service Improvement Manager (client Services)
Stage 5 Eviction	Eviction (decision to proceed to court)	SIM (SMT permission)	SIM (SMT permission)
Stage 5 Appeal	First Appeal against decision to proceed to Court for eviction: Within 5 days of receipt of notice.	Service Improvement Manager (Client services)	AD Community Services
	Second Appeal against decision to proceed to Court for eviction: Within 5 days of receipt of notice.	AD Client Services	AD Client Services

Please note that once the case reaches court their decisions are superior.

Please see Appendix Two for grounds for ending both Assured Shorthold Tenancy & Assured Tenancies.

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Non engagement with Move On

It is important that services ensure that residents across the organisation are clear that non-engagement with support may result in there being in breach of their tenancy or licence. This includes refusing to accept move-on options once their support needs have been met.

Residents who are ready for move on, but who refuse to engage with any of the move-on options offered to them will be considered to be in breach of their tenancy agreement & action will be taken to proceed to eviction where necessary.

The eviction proceedings outlined below should begin once a person is assessed as ready for move on and either refuses to engage with the process, or rejects two offers of accommodation.

There should be a minimum of two written warnings, each one issued weekly subsequent to the first rejected offer or once it has been clearly established that the tenant is refusing to cooperate with attempts to provide a suitable offer. The process should be as detailed in the table below:

Timescales	Key Workers Actions	Resettlement Team Actions
Before offers are made (stage 1 verbal warning)	The resident will be clearly advised verbally (if possible) & supported in writing that if they refuse a reasonable offer this will be considered a breach of tenancy and may result in eviction (informal warning to be recorded on file)	
Initial week Stage 2 Breach of tenancy	Resident confirms (signed statement where possible – appendix A) that he / she is not interested in move-on and / or refuses first property. First warning issued to the resident, Resettlement Team notified and sent signed statement.	Upon notification of first warning, Resettlement Team send a letter to resident (and copy to key worker) confirming the move-on options available (appendix B).
Second week (or	PRHA staff pro-actively continues to	Once in receipt of declaration,

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longer if there are no available properties that week). Stage 3	discuss move-on options with resident. If resident continues to refuse to discuss move-on options and/or refuses second property: Second warning issued to the resident. Declaration that resident has been supported to understand their options and the consequences of not taking these up, sent to Resettlement Team (appendix D).	Resettlement Team send a letter to resident (and copy to provider) explaining the case has been closed and no further properties will be offered (appendix E).
Subsequent week Stages 4 onwards	If on receipt of the second warning the resident takes no positive action to engage with move-on &/or refuses an offer of alternative accommodation, PRHA will serve a NOSP/NTQ & initiate eviction procedures. Supporting People / HOST & Resettlement Team must be informed.	

Throughout the process the resident must be supported and encouraged to engage with move-on options. The Resettlement Team will use their discretion if a resident decides to positively engage following issue of the second warning letter.

All of the above information (letters, warnings, statements and any relevant signed notes of discussions) will be collated at the end of the process to ensure that the correct procedure has been followed and that residents have had every opportunity to engage.

If a person is evicted from PRHA for non-engagement with move-on options, it is unlikely that they will be offered further accommodation by the council or other provider. This will be made clear to residents throughout this process.

6. EVICTION REFERRAL

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Once all the procedures including the service of the NOSP/Section 21 letters have been complied with, an eviction referral can then only be completed. This referral is to be completed by the responsible officer for either rent arrears ANTISOCIAL BEHAVIOUR or **NON ENGAGEMENT** cases then referred to the Service Improvement Manager/Project Manager for their review.

For rent arrears cases, once the Service Improvement Manager(Community Services) has reviewed and confirmed continuance for the case this would then be sent to the responsible Project Manager for review (If for a supported Project). This is to ensure all avenues of support have been provided to the tenant. When both managers are in agreement to continue, this eviction request would then be referred to the relevant Assistant Director for approval.

This eviction request would then be reviewed at the following SMT meeting to which it would either be declined with reasons stated or approved to which an eviction warrant can then be applied for through the county court.

7. ASSURED TENANCY AGREEMENT

This section of the procedure deals with full Assured Tenancies.

a)	The grounds upon which any RP may seek possession of property let as an Assured Tenancy are set out in the Housing Act 1988, as amended by the Housing Act 1996, and are contained in the Assured Tenancy Agreement.
b)	If PRHA intends to end a tenancy agreement, it must ask a court to grant a Possession Order. There is a defined legal procedure for this, which <u>must</u> be followed. To start the procedure the Association is required to issue the tenant with a Notice of Seeking Possession (NOSP) or Notice to Quit (NTQ).
c)	This notice informs the tenant that we intend to ask the court for vacant possession of the premises (the flat or room/s in question); in other words, that it will ask the court to require the tenant to vacate the property.
d)	The notice must specify the grounds on which the court will be asked to grant possession. As these grounds are specified in the Housing Acts the grounds and wording should be checked and approved by the Service Improvement Manager.
e)	There is a standard format for the notice, which is prescribed in the Housing Acts and must be used in all cases. PRHA keeps stocks of pro-forma notices in the prescribed format, with blank spaces to be completed as appropriate.

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f)	The Housing Officer will sign the notice and the Service Improvement Manager will monitor notices served to ensure accuracy. This will ensure that the necessary authorisation occurs and responsibility is held at the appropriate level. One copy of the notice must be retained on file.
g)	Other agencies or persons concerned with the care or circumstances of the tenant should be advised at this stage.
h)	The notice must be served to the premises that the tenant occupies. This means that, in a shared property, notice should be served to the tenant's own room, not a shared part such as a kitchen or hallway, or a communal post box. The best way to serve a notice is to hand it to the person. Ideally, two people should serve notices; one to act as a witness to confirm that the notice was served. If this is the case, the witness must sign the Notice just before it is served. All copies of the notice should be accompanied by a certificate of service detailing the date and time, and how, it was served. This should be signed by the serving member of staff and witness. A letter must accompany the notice to the tenant, making clear the position and our intended course of action. Where applicable, it should state what the tenant might do to avoid the matter having to go to court. The notice will advise the tenant that they may seek legal advice, and the accompanying letter will specify where this may be sought. When the notice is served, the tenant should be given a full, verbal explanation of the situation unless this is impractical.
i)	The NOSP or NTQ remains in force for 12 months from the date it is served. This means that if at the end of the specified notice period (4 weeks) we decide not to apply for a court order, we can subsequently apply for an order without the need for a further Notice if the problem resumes within that year. A Section 21 notice remains valid for the life of the AST and becomes active after a two month expiry of service.
j)	A decision to proceed to court must be referred to, and approved by SMT who would notify the Service Improvement manager. They would then instruct the Housing Officer to make the application if required. If solicitors are used they must be provided with a copy of the Notice and information regarding the grounds for the notice, the Housing Officer would then have to notify the tenant that an application is being made. It should be expected that the date for a hearing would be set approximately 3 to 13 weeks after the date of the application.
k)	The solicitor/county court will advise when a date for the hearing is obtained. They should be provided with up to date information prior to the hearing. A representative of PRHA will be required to attend

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	the hearing, to present the case and give evidence. This will normally be the SIM or the Housing Officer who has been dealing with the case.
l)	At a hearing, it is possible to ask the court to grant a Postponed or Suspended Order. This means that the court will grant possession to us but will suspend it for a period of time, attaching conditions for the tenant (e.g. to payment rent arrears, or to stop causing a 'nuisance'). We will be able to return to court without the delay of a further notice, and with the benefit of an expedited hearing, if the tenant fails to comply with any of the conditions, which the court has attached.
m)	If an immediate Possession Order is obtained at the first, or a subsequent, hearing, and we want to proceed with the eviction, we must apply to the Bailiff's office for a Warrant of Eviction. This will be issued on production of the Possession Order issued by the court, and will only take a day or two to issue.
n)	Staff must never attempt, themselves, to physically evict a tenant, but must be present when a bailiff is executing a Warrant.
o)	Approval to apply for an immediate Possession Order or a warrant of Eviction must be obtained from SMT.
p)	If the behaviour of a tenant is violent or dangerous it may be appropriate to begin possession proceedings relatively early in the process of working with the tenant. It is possible to apply for possession at any time after serving the Notice, rather than waiting for 14 to 28 days, if possession is being sought on 'ground 14' – that the tenant, or someone else living in or visiting the dwelling, "has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting, or otherwise engaging in a lawful activity in the 'locality', or has allowed the dwelling to be used for illegal or immoral purposes, or has carried out an arrestable offence (i.e. one with a maximum sentence of five years or more) in the locality of the dwelling. This could cover a range of anti-social behaviour, including violence, threats or harassment towards neighbours or other people visiting the premises. In all cases reports must be based on fact.
q)	In this case, the Housing Services Manager/Project Manager/Housing Officer may make an immediate application to the court, and can expedite the hearing by outlining the situation, which is perceived as a danger to others. SMT approval must be given in such situations.

8. ASSURED SHORTHOLD TENANCY

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a) ASTs in Supported Housing Projects (Use of Support)

PRHA uses ASTs in our Supported Housing Project and as part of the tenancy is the condition to require and utilise the support services provided.

We will regularly review each Assured Shorthold Tenancy as part of the tenant's care/support planning process and in doing so will consider whether the tenant still requires the support services, whether they should be offered alternative accommodation.

Where the resident no longer requires / uses the support provided, or requires another type of support, and the resident is in priority need of long-term housing, the Association will advise and assist the resident in finding suitable alternative accommodation.

b) Ending AST (Support Utilisation)

We will normally only use the possession procedure outlined above if the tenant no longer requires or uses the support offered, or requires more support, or if suitable alternative accommodation has been offered and refused. A decision to end a tenancy in this way must be authorised by a Service Improvement Manager with authority from SMT. We will use our best endeavours to prevent a tenant becoming homeless when an AST ends.

c) Types of AST

There are two types of AST: a fixed-term AST, where the duration of the tenancy is agreed at the outset; and a periodic AST, where there is no specified fixed term; however, both kinds of AST must run for at least six months. In practice most AST's used by PRHA are **periodic tenancies**.

d) Periodic Tenancies

If the AST is periodic, we can serve two months' notice on the tenant if we require possession. This notice must be in writing, but there is no statutory form, which it must follow. It can be served at any time during the tenancy, and court proceedings can begin at any time after the notice has expired. Possession will be granted automatically provided the proper procedure had been followed, but an Order on this ground cannot take effect within the first six months of the tenancy. Otherwise, the grounds for possession of a periodic AST are the same as those for a full Assured Tenancy.

e) Fixed Term Assured Shorthold Tenancies

If the AST is fixed-term, we can gain possession on or after the expiry of the fixed term. The procedure is the same as for a periodic AST, except that

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proceedings cannot begin until the fixed term has ended and the notice has expired. If the notice is not served within the fixed term, the tenancy becomes a periodic AST, so notice can be served once the fixed term is up; again, it must be a two-month notice.

f) Grounds for Possession relating to Assured Shorthold Tenancies

Not all of the grounds for possession, which apply to full Assured Tenancies and periodic ASTs, apply to fixed-term ASTs. Only Grounds 2, 8,10,11,12,13,14,15 and 17 apply to fixed-term ASTs. If possession is being sought on these grounds, the same procedure that applies to full Assured Tenancies is used.

g) Communication

Whichever possession procedure is used, other agencies or persons concerned with the care or circumstances of the tenant should be advised at the stage when notice is served (acting within PRHA Confidentiality and Data Protection Policies).

h) Abandonment

Where we believe the tenant has abandoned their home and tenancy, we will need to gather proof, e.g. s/he has moved all their clothes. PRHA tenancies state that if the tenant fails to occupy their home as their only or principal home for a period of more than 28 days and we have reasonable cause to believe that their home has been abandoned, then we can end the tenancy and take possession of their home. In these circumstances, the Association may end the tenancy by service of a Notice to Quit, giving at least 28 days on their property or at their last known address.

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Appendix One

Appeals Procedure

THE TENANTS RIGHT TO APPEAL

Support

The tenant has the right to appeal any warnings from stage 3 (written warnings) and any Notices/Section 21's issued. **Throughout the appeals process Project workers/Housing Officers should provide support to the tenant in writing their appeal if this is needed.**

When the appeal is based on rent arrears housing officers will lead on responding to the appeal within timescale.

The Tenant should be advised of assistance and agencies available to him/her in respect to making representation. Project workers/Housing Officers should not represent the tenant at appeals.

Please note the decision of all appeals must be put in writing to the Tenant. Information must be given as to the Tenant's right to appeal all decisions. Specific details must be given as to whom and at what address the resident may make the appeal.

Arrears Letters

At each Arrears Letter Stage the tenant may appeal against the letter. This must be put in writing and the Service Improvement Manager (Com Ser) will investigate and respond within 5 days of receipt. Please also see appeals process below.

Stage One and Two: Anti Social behaviour & other grounds: verbal warning & breach of tenancy

There is no appeal at these stages

Stage Three: Written warning: Appeal

Within five days of issue of the warning letter the tenant should make representation in writing to the Project Manager(supported housing) or housing officer (for general needs housing).This appeal should be in writing & be as specific as possible.

The appeal will be heard within 7 working days. The Tenant, relevant officer and the Project manager will be notified in writing of the decision

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and how to proceed to the next stage of the appeals procedure if still dissatisfied.

The decision of this appeal is final.

Stage Four: Appeal against Notice of Seeking Possession/Section 21 notice

There will be two levels of appeals process.

First Appeal

Within five days of issue of Notice the tenant should make representation in writing to the Project Manager(supported housing) or Service Improvement Manager Community Services (general needs housing). This appeal should be in writing & be as specific as possible.

The appeal will be heard within 7 working days. The Tenant, relevant officer and the Project manager will be notified in writing of the decision and how to proceed to the next stage of the appeals procedure if still dissatisfied.

Second Appeal

If the tenant is not satisfied with the first appeal they may wish to make representation to the Service Improvement Manager (Client Services). This appeal should be addressed to the Service Improvement Manager (Client Services) at PRHA head office within five days of receipt of the first appeal findings. Again, the appeal must be in writing and be as specific as possible.

The appeal will be arranged in writing and heard by the Service Improvement Manager (Client Services/Community Services) within seven days of its receipt. The Project Manager/Housing Officer will summarise the circumstances of the action taken and the Tenant can state the grounds of their appeal.

In the Service Improvement Manager (Client Services) absence this will be dealt with by a manager of similar or higher seniority.

When the case relates to rent arrears, guidance and further information re the licensee's account would be sought from the Housing Officer prior to any appeal review.

The decision of this appeal will be final.

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Please note: in the case of immediate eviction or cases where the Tenant fails to attend arranged appeal meetings then the appeal may be heard after the resident has been evicted.

Stage Five: Appeal against notice of proceeding to court for eviction

There will be two levels of appeals process.

First Appeal

Within five days of issue of Notice the tenant should make representation in writing to the Service Improvement Manager (Client services)(supported housing) or Assistant Director Community Services (General need housing).This appeal should be in writing & be as specific as possible.

The appeal will be heard within 7 working days. The Tenant, relevant officer and the Project manager will be notified in writing of the decision and how to proceed to the next stage of the appeals procedure if still dissatisfied.

Second appeal

If the tenant is not satisfied with the first appeal they may wish to make representation to the Assistant Director Client Services. This appeal should be addressed to the Assistant Director Client Services at PRHA head office within five days of receipt of the first appeal findings. Again, the appeal must be in writing and be as specific as possible.

The appeal will be arranged in writing and heard by the Assistant Director Client Services within ten days of its receipt. The Service Improvement Manager (Client services) (supported housing) or Assistant Director Community Services (General need housing) will summarise the circumstances of the action taken and the Tenant can state the grounds of their appeal.

In the Assistant Director Client Services absence this will be dealt with by a manager of similar or higher seniority.

When the case relates to rent arrears, guidance and further information re the tenant's account would be sought from the Housing Officer prior to any appeal review. In the case of anti-social behaviour or other grounds further information will be sought from the project manager or housing officer.

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The outcome of the appeal will be decided by the Assistant Director and detailed to the Tenant and the Project Manager/Housing Services Manager in writing.

The decision of this appeal will be final.

The Project Manager/Service Improvement Manager shall relay the outcome to the appropriate Support Staff/Housing Officer to ensure that any action required in regards to the appeal outcome is taken.

Court Action

PRHA will then take court action to regain possession of the property. Please note once the case reaches court the courts decisions are superior.

PRHA staff will always aim to support any tenant in relation to providing information on their housing options.

9. Complaints Procedure

If a tenant believes due process has not been followed then they should submit a complaint using PRHA's Complaints procedure (available from housing and project officers or head office). This will be looked into provided that the appeal process is exhausted for the relevant stage of the procedure.

Please note steps towards approaching the courts for eviction may still proceed whilst the appeals or complaints processes are utilised.

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Appendix 2: Grounds For Possession Against Assured & Assured Shorthold Tenants

The following highlights the grounds for possession contained in Schedule 2 of the Housing Act 1988 and amended by the Housing Act 1996. The Act lists two categories of grounds for possession:-

- a) **Mandatory** – where a court must order possession and has no discretion to suspend or postpone orders for possession except where ground eight is used, as long as it is satisfied that the grounds are proved. (1996 Housing Act amended Ground 8).
- b) **Discretionary** – even if the court is satisfied that the grounds for possession are proved it may exercise its discretion in deciding whether or not to award a possession order. The court may only order possession where it considers it just and reasonable to do so.

It is worth remembering that the grounds for possession, which will apply in most emergency possession, are discretionary. This means that landlords must make sure that they can convince the court not only that the tenant is in breach of their agreement, but also that it is also reasonable for the court to grant possession.

CLAIMS FOR RENT ARREARS

For Rent Arrears, perhaps the most common claim, the landlord relies on either one or a combination of grounds 8, 10 and 11. PRHA will serve notice seeking possession (NOSP) of the property on the tenant before starting court proceedings.

Where the tenancy is a contractual periodic or statutory periodic tenancy, the notice must end on the last day of a tenancy period. Notices of Seeking Possession Section 8 and section 21 notices can be served in person or by recorded mail. Courts will accept proof of postage or a recorded delivery as proof of delivery on the day, though it's advisable to allow sufficient time to arrive such as two postal days.

If served in person, ideally this should be witnessed. Personal service is preferable, with proof of postage being the next option recommended. Sometimes respondents refuse to accept and sign for recorded delivery letters which causes delay.

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LENGTH OF NOTICE

In cases of very serious nuisance section 151 changes the notice period and notice can be served in the morning warning that proceedings will begin in the afternoon.

Mandatory Grounds

No.	Ground	Period of Notice
1	Returning owner occupier	2 months
2	Mortgage requiring possession	2 months
3	Tenancy preceded by holiday let	2 weeks
4	Educational institutions	2 weeks
5	Returning minister of religion	2 months
6	Demolition or reconstruction	2 months
7	Death of tenant (no succession)	2 months
8*	Two months' rent arrears	2 Months

Discretionary Grounds

No.	Ground	Period of Notice
9	Suitable alternative accommodation	2 months
10	Some arrears of rent due	4 weeks
11	Persistent arrears of rent	4 weeks
12	Breach of any other term of tenancy	4 weeks
13	Damage caused by waste, neglect or default of tenant	2 weeks
14*	Conduct which constitutes nuisance/immoral or illegal use of premises	4 weeks
14a	Violence or threatened violence, which had driven off partner or children (1996 Act)emergency	(0 weeks
15	Deterioration of furniture	2 weeks
16	Tied accommodation	N/A
17	Fraudulent application (1996 Act)	

NB The NFHA recommends the additional contractual right of 4 weeks minimum notice.

MANDATORY GROUNDS FOR POSSESSION

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Ground 1 The owner wishes to occupy the dwelling as his or her own home. But the owner must have served notice on the tenant prior to the tenancy starting informing him or her that possession might be sought on this ground and have either previously occupied the dwelling as his or her principal home, or now require it for their own occupation. A further requirement is that the owner should have acquired the dwelling before the commencement of the tenancy.

Ground 2 The landlord defaults on the mortgage on the property and the body, which granted the mortgage, wants vacant possession in order to sell it. But note that this ground only applies if the landlord serves notice on the tenant before the beginning of the tenancy informing him or her that possession might be sought on this ground.

Ground 3 Out of season holiday lets, where the tenancy is grant on a fixed term of less than eight months.

Ground 4 Lettings where the tenancy is for a fixed term of not more than 12 months and where at some time during the 12 months before the tenancy was granted the dwelling was let to a student by an educational institution or other body specified by statutory instrument. This ground cannot be used unless the tenant was informed before the tenancy commenced that possession might be sought on this ground. This ground for possession is closely related to the exemption from the assured tenancy regime for student lettings in paragraph 8 of schedule 1 (see Appendix 2) and is not a ground which can normally be used by housing associations unless they are specified bodies.

Ground 5 Lettings where the dwelling is held for a minister or religion and the court is satisfied it is now required for that purpose, provided the tenant was informed before the tenancy commenced that possession might be sought on this ground.

Ground 6 Re-development, where the landlord intends to demolish or reconstruct the dwelling and cannot reasonably do so with the tenant *in situ*. The landlord must have acquired its interest in the dwelling before the grant of the tenancy (or acquired it without buying it). This ground can only be exercised where a tenant refuses to accept an assured tenancy of part of their existing dwelling to allow the works to take place, or refuses to give access to allow the works to be carried out, or where it would not be practicable to allow the tenant to remain in occupation.

This ground can also be exercised when a superior landlord requires the dwelling for demolition or reconstruction if the actual landlord is a registered housing association or housing trust. This allows short-life groups,

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which are registered housing associations to regain possession when the superior landlord requires the property for demolition or substantial reconstruction.

Ground 7 When a tenant has died, and the periodic tenancy has been passed through a will or intestacy to someone other than a person entitled to succeed to the tenancy, either under the 1988 Act or under the terms of the tenancy agreement. Proceedings must be started within 12 months of the death of the former tenant, or, if the court so directs, the date on which the court considers the landlord became aware of the former tenant's death. Acceptance of rent from the new tenant will not in itself be regarded as creating a new tenancy.

Ground 8* Rent arrears, where both at the date of service of notice of seeking possession and at the date of the hearing the tenant owes two months or eight weeks rent or more.

Discretionary Grounds for Possession

Ground 9 Suitable alternative accommodation is available for the tenant. A certificate by the local council that the council will provide suitable alternative accommodation will be taken as conclusive evidence that such accommodation is available. In other circumstances the court will decide whether accommodation is 'suitable' and 'available'.

Ground 10 Rent arrears, where arrears were outstanding both at the date of the service of the notice seeking possession and at the start of court proceedings.

Ground 11 Persistent delay in paying the rent, even when no rent is owed at the time of the court proceedings.

Ground 12 Breach on any tenancy obligation, other than one related to the payment of rent.

Ground 13 Acts of waste, neglect or default by the tenant or any other person living there, leading to the deterioration of the dwelling or any of the common parts.

Ground 14* Nuisance of neighbours by the tenant or any person living there, or conviction for use of the dwelling for immoral or illegal purposes.

Ground 15 Deterioration of the furniture provided under the tenancy, which is due to the actions of the tenant or any other person living there.

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Ground 16 Tied accommodation, where the dwelling was let to the tenant because of their employment and the tenant is no longer in that employment.

Ground 17 Where the landlord was induced to grant a tenancy as a result of a false statement made knowingly or recklessly by the tenant or a person acting at the tenant's instigation. (New, 1996 Act)

Possession: Assured Shorthold Tenants

The following highlights the grounds for possession contained in Schedule 2 of the Housing Act 1988 and amended by the Housing Act 1996.

Mandatory – where a court must order possession and has no discretion to suspend or postpone orders for possession except where ground eight is used, as long as it is satisfied that the grounds are proved.

LENGTH OF NOTICE

In cases of very serious nuisance section 151 changes the notice period and notice can be served in the morning warning that proceedings will begin in the afternoon.

In all cases full documentation must be provided to support section 21s. And under good practice full documentation must be available to the courts as for the reasons for approaching the court.

Mandatory Grounds

Period of Notice

Two months rent arrears or in cases of ANTISOCIAL BEHAVIOUR or breach of tenancy or no longer requires support. 2 months notice should be given. This will be under section 21.

2 Months

PART V Conduct of Tenants

Discretionary ground 14 is replaced:-

“The tenant or person residing in or visiting the dwelling house –

- a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality; or
- b) Has been convicted of –

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i) Using the dwelling house or allowing it to be used for immoral or illegal purposes,

or

ii) An arrest-able offence committed in, or in the locality of, the dwelling house.

This deals with either misconduct or a criminal conviction. It applies to visitors as well as the tenant or other occupants. It is available if the conduct **was likely to be** a nuisance or annoyance and reduces need for neighbours to go to court. Evidence from housing officers or police would be sufficient. It has been extended to cover anyone in the locality and covers assault of housing officers etc.

DOMESTIC VIOLENCE

Discretionary ground 14A is only available to registered social landlords and charitable housing trusts.

The dwelling house was occupied (whether alone or with others) by a married couples or a couple living together as husband and wife and –

- a) one or both of the partners is a tenant of the dwelling house,
- b) One partner has left because of violence or threats of violence by the other towards –
 - i) That partner; or
 - ii) A member of the family of that partner who was residing with that partner immediately before the partner left, and
- c) The court is satisfied that the partner who has left is unlikely to return.

Allows a landlord to seek possession against any tenant who has used or threatened to use violence, which has driven off the partner. It can also be used if violence is directed against children and whether or not the departing person was a tenant.

*Please see Court Procedure Guidance – Eviction Warrant AST & Assured Tenancies for further information for how to apply for an eviction warrant and the continue procedure.

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