

POLICY ON THE UNLAWFUL OCCUPATION OF COUNCIL RENTAL STOCK

APPROVED BY COUNCIL : 27/03/2008
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POLICY ON THE UNLAWFUL OCCUPATION OF COUNCIL OWNED HOUSING RENTAL STOCK AS ADOPTED BY COUNCIL ON 27 MARCH 2008

1. PRINCIPLES:

1.1 An unlawful occupant is a person who:

- Has moved into a vacant dwelling without Council's authorisation, or
- Has forced the tenant out of his/her dwelling, or
- Has been left behind by a vacating tenant or when the tenant dies and is not a family member of the original household (includes families living in backyard structures)

1.2 Children of former tenants who move into their parents homes will not be considered as unlawful provided that:

1.2.1 They can prove that they had lived in the dwelling unit with the tenant at some stage of the tenancy prior to the termination of the tenancy;

1.2.2 They qualify in terms of the statutory requirements;

1.2.3 They have registered an application for housing and are recorded on the Council's Waiting List. (This would not apply to children who have never left the family home.);

1.2.4 They are not in occupation of another Council owned dwelling;
and

1.2.5 Doubtful cases will be referred to the Mayoral Committee Member for Housing for adjudication.

1.3 Unlawful occupants who moved in prior to 1 March 2006 will be considered for normalisation subject to their meeting the eligibility criteria (the unlawful occupant will have to submit adequate proof that he/she moved in prior to the cut off date) but not necessarily in the accommodation they presently occupy.

1.4 Unlawful occupants who moved in after 1 March 2006 must vacate failing which legal action will be taken for their eviction unless of course they are the next qualifying applicants for assistance on the waiting list or qualify in terms of section 1.2.

1.5 In dealing with unlawful occupants, Council must ensure that the rights of the occupants are not undermined.

1.6 Unlawful occupants will be dealt with in terms of set administrative procedures.

- 1.7 Unlawful occupiers of Council owned properties against which land restitution claims have been registered will not be considered for normalisation in respect of these properties but offered alternative letting accommodation elsewhere provided they qualify in every other respect. In the event that alternative accommodation is not available within a period of three months from the date of normalisation, the unlawful occupants will be required to vacate the premises or be evicted with no immediate obligation on Council to re-house them other than when their turns are reached on the waiting list.
- 1.8 Unlawful occupants dealing in drugs, alcohol or any other illegal substance not be considered for regularisation.

2. ELIGIBILITY CRITERIA FOR LEGALISATION:

- 2.1 Five main criteria need to be fulfilled in order for an unlawful occupant to be eligible for legalisation.

2.1.1 Married or single with financial dependants permanently living with them: he or she is married (in terms of the civil law or in terms of a customary union) or habitually cohabits with any other person, or he/she has proven financial dependants.

2.1.2 Monthly household income: the gross monthly household income does not exceed R3 500.00. A prospective tenant will be required to submit adequate proof of income, and, in the case of income received through self-employment, must sign an affidavit stating the amount earned (household income includes joint income of head of household and partner).

2.1.3 Personal occupation: the prospective tenant and family must personally occupy the dwelling.

2.1.4 Not currently owners of property: neither the prospective tenant nor his spouse (including common-law spouse) are already owners of residential property suitable for human habitation.

2.1.5 Not yet benefited from government funding: neither the prospective tenant nor his/her spouse has previously derived benefits from the housing subsidy scheme or any other state funded or assisted housing subsidy scheme which conferred benefits of ownership, lease hold or deed of grant.

- 2.2 Subject to the unlawful persons meeting the above criteria, normalisation will also be conditional upon their:

2.2.1 Being on the Council's waiting list.

2.2.2 Having no proven record of anti-social behaviour. Where anti-social behaviour is suspected and cannot be proved, the unlawful occupancy may be normalised subject to the occupants being warned in writing that should these behavioural problems be verified, legal action will be taken for the termination of their tenancies.

2.2.3 paying up in full or by means of entering into acceptable arrangement, any monies which they may have previously owed to the Council.

2.2.4 being liable for rental since the date of occupation.

2.2.5 where possible, they will be moved to a suitable dwelling more appropriate in size and type provided existing tenants waiting for a transfer of tenancy are not disadvantaged.

3. PROPOSED ADMINISTRATIVE PROCEDURES

3.1 Unlawful occupancy prior to 1 March 2006:

3.1.1 A house visit to determine household circumstances and date of occupancy must be conducted by staff at the local housing offices.

3.1.2 The unlawful occupant must qualify in terms of the five main criteria and conditions as set out in section 2.2 of this policy document.

3.1.3 If the unlawful occupant qualifies in terms of the eligibility criteria, a letter will be sent to him/her to call at the local housing office. If the accommodation is considered appropriate for the family, alternative accommodation may be negotiated. If the unlawful occupant does not qualify in all respects, the procedures outlined in section 3.2 will apply.

3.1.4 Where suitable alternative accommodation is available at the time of normalisation and the unlawful occupier refuses such accommodation, normalisation will be cancelled and legal action instituted for his/her eviction from the premises.

3.1.5 The unlawful occupant who has met the eligibility criteria will be interviewed by the Housing Manager and advised that he/she is being considered for the tenancy and this will be conditional on sub-sections 2.2.1 to 2.2.5 where applicable.

3.1.6 If an arrangement is made to pay off any monies due to the Council, such arrangement must be confirmed in writing and handed to the unlawful occupant at the time of the interview. Transfer forms for normalisation will be issued at this stage. The unlawful occupant must be advised that if he/she fails to pay the amount as arranged, action in terms of Council's Debt Management Policy will be instituted.

3.1.7 Once the normalisation forms are returned, the unlawful occupancy will be normalised by concluding a standard lease agreement which must be signed within thirty (30) days of the unlawful occupier being issued with the normalisation forms.

3.1.8 Where the unlawful occupier refuses to sign the lease agreement within the stipulated thirty (30) days, normalisation will be cancelled and legal action instituted for his/her eviction from the premises.

3.2 Unlawful occupancy after 1 March 2006:

3.2.1 A home visit must immediately be conducted after a report is received or it is suspected for any reason that there is an unlawful occupant in occupation to establish the following:

3.2.1.1 Date the tenant vacated or died;

3.2.1.2 That persons who are members of the tenants' household and who may have claim to the tenancy are no longer in the dwelling;

3.2.1.3 Ascertain the date the unlawful occupant moved into the dwelling;

3.2.1.4 The unlawful occupants details are checked and any special circumstances pertaining to the occupants noted (eg. invalids, terminally ill persons, pregnant persons, wheelchair-bound persons, whether the household is headed by a woman, whether there are minor children, elderly, whether they are employed, etc);

3.2.1.5 Whether the unlawful occupant has applied for accommodation, and if so, is the application next in line for allocation purposes.

3.2.1.6 Determine whether the occupant will be considered for re-housing.

3.2.2 When all relevant information has been obtained, a letter must be sent to the unlawful occupant to call at the office to see the Housing Manager within seven (7) working days.

3.2.3 At the interview, the unlawful occupant must be advised that he/she either qualifies for the tenancy in terms of 3.2.1.5 or has no right to the dwelling and that he/she is required to vacate.

3.2.4 Where the unlawful occupant is not the next qualifying applicant on the waiting list, a notice letter which gives a clear thirty (30) days notice is handed to him/her or sent by ordinary and registered post to vacate the premises or face eviction.

3.2.5 Officials will provide Councillors with names and addresses of people in their wards against whom action is being taken for unlawful occupation when the families are served with the thirty (30) day notice.

3.2.6 An extension in order to find alternative accommodation may be granted in exceptional circumstances. The onus rests with the unlawful occupant to find his/her own alternative accommodation.

3.2.7 After the expiry of the notice, or extension, whichever is applicable, a physical check will be done to ascertain if the unlawful occupant is still in occupation.

3.2.8 Where the unlawful occupant is still in occupation, Council's attorneys will be instructed to institute the required proceedings for the eviction. The unlawful occupant will be held liable for these costs.

3.3 Unlawful occupants responsible for anti social behaviour

Anti social behaviour can be described as people who persistently destabilise the community through the illicit sale of drugs and liquor without a license and gang related activities.

3.3.1 Where the unlawful occupant is known to be responsible for anti social behaviour and this can be verified, normalisation will not be considered and the procedures under section 3.2 will apply.

3.3.2 Where anti social behaviour is merely suspected, the procedures contained in section 3.1 will be applicable provided that the unlawful occupant on normalisation must be given a letter warning him/her that should the allegation be found to be true, legal action will be instituted for the cancellation of the tenancy and eviction from the premises.

3.4 Dwellings occupied by more than one unlawful family qualifying for normalisation

In the event of a dwelling being occupied unlawfully by more than one family, normalisation will be deemed to include the households as opposed to an individual family. In other words, the household irrespective of the number of families will be concluding the lease agreement. This will preclude the other household members from claiming the tenancy later on in terms of the unlawful occupancy policy should the tenancy be terminated for whatever reason.

This will coincide with the legal principle of a sub-lease terminating upon the cancellation or termination of the primary lease. The procedures applicable in this respect will be those contained in section 3.1 provided that:

3.4.1 Normalisation is determined by consensus and confirmed by way of an affidavit detailing the agreement reached and the terms and conditions relative to the normalisation of households.

3.4.2 Where consensus cannot be reached within thirty (30) days, the matter be referred to the Manager: Existing Housing or his/her nominee for a decision based on the available facts. The terms and conditions of normalisation of households must be reduced in writing in addition to the lease agreement in such instances.

3.5 Children of former tenants who moved into their parents' home

Children of former tenants qualifying for normalisation in terms of section 1.2 excludes children who have never left the family home and who are considered for the tenancy in terms of the Council's Transfer of Tenancy Policy.

Children falling into the former category must be dealt with as follows:

3.5.1 Establish:

- The relationship of the unlawful occupiers to the former tenants;
- Whether they are registered on the Council's Waiting List;
- Whether they qualify in terms of the statutory requirements;
- Whether they are not existing tenants or owners of Council property or own property elsewhere;
- Whether they at any stage during the tenancy, lived in the unit with the tenant.

3.5.2 In the event of more than one qualifying adult child moving into the dwelling at the same time, the following procedure will be applicable:

- The normalisation should be determined by consensus and this must be confirmed by way of an affidavit detailing the terms and conditions of the agreement reached;
- If consensus cannot be reached within thirty (30) days, the matter must be referred to the Manager: Existing Housing or his/her nominee for a decision based on the available facts;

- Where the children are not as yet eligible in terms of age, and there are other adult relatives in occupation i.e. an uncle/aunt, normalisation may take place by entering into a temporary lease agreement with such persons with the express understanding that the tenancy will be taken over by the children on reaching major status;
- Where there is any doubt about any aspect regarding the normalisation of children in terms of the unlawful occupancy policy, such cases accompanied by detailed reports must be referred to the Mayoral Committee Member for Housing who will have the sole discretion to adjudicate on such matters.