

# Tenancy Management Policy

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# **Tenancy Management Policy**

## **Part One - Tenancy Management**

Equal Opportunities Statement: We are mindful of the definition of equal opportunities set out within the Scotland Act 1998 which states that “equal opportunities” means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinion.” As a Housing Association we are working towards building equalities considerations into all areas of our work.

### Risk Management:

All elements of tenancy management procedure should follow legislative and policy guidelines together with the statements on equality of opportunity..

Risk Assessment: Low

## **Section 1 - Introduction**

Through the operation of our Scottish Secure Tenancy Agreement, we manage the way in which individual tenancies are conducted. We have a number of policies and procedures which ensure that the rights and obligations contained in the Tenancy Agreement are maintained for both tenants and the Association.

There are a number of areas of tenancy management that are the subject of separate guidance Policies:

Account Control Policy  
Legal Action Policy  
Anti-Social Behaviour Policy

## **Section 2 - Scottish Secure Tenancy Agreement**

### List of Agreements in Operation

Scottish Secure Tenancy Agreement  
Short Scottish Secure Tenancy Agreement

We will ensure that all tenants receive a written copy of the appropriate tenancy agreement, which in most cases will be the Scottish Secure Tenancy Agreement, in the form approved by the Associations Board.

The use of the Short Scottish Secure Tenancy Agreement will be considered but not necessarily used where the circumstances set out within Schedule 6 of the Housing (Scotland) Act 2001 exist. In most cases the Association prefers to grant a full SST to prospective tenants.

This meets our legal duty as detailed in the Housing (Scotland) Act 2001, section 23.

### Provision of Other Information

Information will be provided to all new tenants on the following areas.

- Information on the right to buy the property and how this may be exercised together with any limitations that may apply and the obligations that the tenant may incur in exercising this right.
- Any obligations for property maintenance and maintenance of common areas that may be incurred following purchase.
- The Associations complaints procedure.
- The terms of tenancy.
- Policy on rent setting and charges.

Where the tenant requests it we will also offer information about our policies and procedures relating to:

- a) Applying to the housing list.
- b) Allocations and transfers of tenants between houses.
- c) The conduct of tenants and their visitors both in and around the property.
- d) Exchanges of houses between Shire tenants and tenants of other landlords.
- e) Repairs and maintenance.
- f) The Association's tenant participation strategy.
- g) The decision making process in relation to management of stock and service provision.
- h) Equal opportunities.

Our staff will provide tenants with general information about their rights and obligations as part of the process of signing for their tenancy. We will also provide detailed information on specific matters raised by tenants. Whilst most information will be provided in the form of advice leaflets or written policy statements we also place as much of this information as possible on the organisations web site.

### Requests for Tenancy Agreements in Other Formats

Where requested, we will supply the tenancy agreement in other languages, in large print, Braille, or on audio tape as quickly as is possible and will promote this service to customers.

### **Tenants Contents Insurance**

When signing the Tenancy agreement, new tenants should be made aware of the importance of having their home contents insured. We will also remind tenants of this issue by periodically publishing articles in our newsletter and on our website

## **Settling In Visits**

We will carry out a settling in visit with all of our new tenants within 6 weeks of the commencement of tenancy.

Such visits serve a number of purposes and are viewed as an integral part of the lettings process, as well as an introduction to the organisations housing management services.

The settling in visit aims to fulfil the following objectives:-

- Provide tenants with the opportunity to discuss their rights and tenancy obligations
- check that tenants are aware of services that are available and where to get them;
- make tenants aware of safety devices and issues within the home;
- ensure tenants are aware of their obligations to permit access for maintenance with particular regard to Gas Servicing;
- ensure that the tenant is not experiencing any tenancy related problems which can be addressed at an early stage of the tenancy.

## **Changes of Tenancy**

### **Succession**

The procedures for dealing with succession issues are detailed within part two of the Policy.

### **Assignment**

The procedures for dealing with applications to assign tenancy are detailed within part two of the Policy.

### **Transfer of Tenancy**

There are only a few occasions where the tenancy of a specific property will be transferred from the existing tenant to another occupier. Such occasions can include:

- The compulsory transfer of the tenancy by order of the courts due to a relationship breakdown where a voluntary transfer cannot be agreed between the parties involved. Transfer of tenancy applications can be decided as part of a divorce or dissolution of civil partnership action, however applications for transfer can be made whilst applicants are still married, in a civil partnership or still living together.
- Transfers of tenancy through the courts may also be sought by the Association using ground 15 of schedule 2 of the Housing (Scotland) Act 2001, however it should be noted that other suitable accommodation should be available for the existing tenant when the order takes effect. This course of action will only be taken on rare occasions and will be limited to situations

where it is seen as preferable for the non tenant partner to remain in the property in preference to the existing tenant. The co-operation of the existing tenant will be sought in the first instance and compulsory transfer sought only after consultation with all of the parties involved, which may include other agencies such as the local social work department.

### Subletting

## **1.0 Permission to Sub-Let**

- 1.1 The Association recognises that tenants may sublet their property as a term of their Scottish Secure tenancy. Tenants must obtain written permission from the Association before sub-letting all or part of the dwelling house and should complete the standard sub-letting form.
- 1.2 It should be clearly understood that the presence of an approved sub-tenant does not alter the legal relationship which exists between landlord and tenant.
- 1.3 To ensure Shire is acting in line with good practice guidance the terms of the Housing (Scotland) Act 2001 will apply. It is therefore important that the Association replies in writing giving consent or refusal within one month of receiving written details from the tenant. If the Association fails to notify its decision within that time, it will be deemed to have consented to the application.

See Annex 1 and explanatory leaflet Annex 2 to be found in: W:\Directorate\Policies_Procedures\Housing Management Manual\Tenancy Management\Appendices\
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## **2.0 Permission to Have a Lodger**

- 2.1 Tenants must obtain permission from the Association before taking in lodgers.

See Annex 3 and explanatory leaflet Annex 4 to be found in: W:\Directorate\Policies_Procedures\Housing Management Manual\Tenancy Management\Appendices\
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- 2.2 A lodger is a person who hires the use of one or more rooms, or part of a room with service and who has a formal financial arrangement with the tenant.

Family members are not normally considered to be lodgers. The tenant is therefore free to offer permanent accommodation within his home to members of his family provided no overcrowding is caused. For the purposes of this directive, the term 'family member' will correspond to the definition set out within section 108 of the Housing (Scotland) Act 2001.

- 2.3 It is important that the Association replies in writing, giving consent or refusing within one month of receiving written details from the tenant. Consent should not be unreasonably withheld and in cases of refusal, reasons should be given. If the Association fails to notify its decision within the required time, it will be deemed to have consented to the application.

### House Abandonment

After full investigation of each individual situation, the Association will take all necessary and reasonable steps both to protect property and to end any tenancy where the Association has satisfied itself that the property in question has been abandoned.

Following the introduction of the Housing (Scotland) Act 2001 and the Scottish Secure Tenancy in September 2002 the Association uses the statutory procedure for the repossession of abandoned properties, as laid out within sections 17 and 18 of the 2001 act.

### Abandonment by a Joint Tenant

Where the Association has reasonable grounds to believe that a joint tenant has abandoned a tenancy, a notice as prescribed under section 20 of the Housing (Scotland) Act 2001, will be served on each of the joint tenants under the tenancy.

The notice will require the abandoning tenant to inform the Association in writing of their intention to occupy the property. If such a notification is not received within a period of four weeks, a further notice will be served which will bring the abandoning tenant's interest in the tenancy to an end, with effect from a date which will be no earlier than eight weeks after the date of service of the second notice.

A joint tenant who is aggrieved by such action may raise proceedings by summary application to the Court, within eight weeks of the date of service of the second notice.

### Powers of Entry

The Association will enter a property which may still be occupied where:-

- (a) It has been established that there is no one in the house able to provide access and there are circumstances that require the property to be made secure, either against vandalism or as a consequence of vandalism, and there is no reasonable way to secure the property without entry.
- (b) There are circumstances where there is reason to be concerned about the safety or well-being of the tenant or neighbours. For example, the tenant may be trapped in the house and unable to attract attention.

***In all cases the procedures for taking entry must be followed and authorisation gained from the Head of Housing Management prior to any action being taken.***

### Boarding up of Houses

Property belonging to the organisation will be temporarily boarded-up when it is not wind and watertight, or in order to secure it against vandalism, or to prevent unauthorised access.

Before action is taken to completely secure any property, the procedural investigation set out within this Policy must be followed and authorisation of a senior officer obtained.

### Tenants Serving A Custodial Sentence

#### **1.0 Introduction**

This policy statement explains the Association's position with regard to tenants who are serving a custodial sentence for example: Prison, Young Offenders Institution or other detention centre on the instructions of a court. It is intended as a guide and the Director should use discretion when making a decision on any cases that arise.

#### **2.0 Married Co-habiting Tenants Serving a Custodial Sentence**

A married person or cohabiting tenant wishing to retain her/his tenancy, whilst in prison should be allowed to do so.

The tenant should, however, be encouraged to create a joint tenancy, or, in the event of a long sentence, e.g. seven years or more the tenant should be requested to agree to transfer or assign the tenancy, see Housing (Scotland) Act 2001. Where the relationship has been broken down the spouse/co-habitee should be advised to apply to the Court for the tenancy to be transferred under the matrimonial Homes (Family Protection) (Scotland) Act 1981.

#### **3.0 Single parents (One-Person Household) Serving a Custodial Sentence**

3.1 Where a single tenant wishes to retain a tenancy and can arrange to meet all the obligations of the tenancy agreement, he/she should be allowed to do so. The property can be secured and boarded if necessary and the keys held by Shire. Eligibility for housing benefit is limited to a maximum of 13 weeks for sentenced prisoners.

3.2 Any relatives/lodgers residing in the house should be allowed to remain there and during the tenants absence consideration can be given to a request to sub-let. In this case, the tenants Housing Benefit entitlement would cease, with the sub-tenant becoming eligible for Housing benefit in her/his own right. (See Policy on Sub Letting). If such a sub-let were conducted satisfactorily it could be renewed every six months.



- 3.3 In certain circumstances e.g. where the house would be empty for a considerable period of time, or, where the crime committed by the tenant would not allow him/her to return to the area, the tenant should be persuaded to voluntarily give up the tenancy. Priority for rehousing can be given on her/his release. Where the Council has nomination rights, this approach should be discussed with a view to obtaining their agreement.
- 3.4 Where a tenant is unable to meet the obligations of the tenancy agreement and refuses to give up the tenancy, the Association will end the tenancy, seeking recovery of possession through the courts. Shire will require to show that a relevant ground exists and that it is reasonable to evict.
- 3.5 When a tenant gives up the tenancy, or the tenancy is ended by court order, Shire will make available re housing information.

#### **4.0 Repossession Action**

- 4.1 The Association may take action for recovery of possession under the fifteen grounds for possession set out in Schedule 2 of the Housing (Scotland) Act 2001. Such action may be linked to the reasons for imprisonment such as anti-social behaviour related, for example, to dealing drugs from the property or other serious offences.
- 4.2 If the Association is successful in recovering possession, any outstanding former tenant arrears should be pursued in the normal way. Where there is furniture in the house and no relatives can be contacted, Housing Options at East Ayrshire Council or the Prison Social Work Unit should be approached to see if they can store it. If they are unable to help the Association may arrange to dispose of it.

#### **5.0 Entitlement to Housing Benefit**

The period for which benefit is payable during temporary absence will depend upon the reason for absence.

- i) up to 13 weeks for most types of absence
- ii) up to 52 weeks in prescribed cases

The reason and likely duration of an absence from home will need to be established at the outset. This will determine the limit 13 or 52 weeks to be placed on benefit payments.

- 1) If absence is likely to exceed thirteen weeks, than benefit should be cancelled immediately.
- 2) Remand Prisoners:- persons awaiting trial but held in custody, persons who have been tried but not convicted, and persons tried and convicted but not sentenced.

52 week limit:- there are 3 qualifying conditions which must be satisfied.

- The person intends to return to occupy the dwelling as her/his home
- The part of the dwelling normally occupied by him/her as her/his home is not let or sub-let
- The period of absence is unlikely to exceed 52 weeks

The first and third conditions must be satisfied throughout the absence. The 2<sup>nd</sup> will disqualify the benefit for the duration of the arrangement only.

Persons who can continue to receive benefit for up to 52 weeks are remand prisoners in approved bail hostels.

Couples will not be affected where one partner is absent and the other remains at home as the benefit claimant.

5.2 Where benefit is awarded the position will be reviewed after six months and benefit may be withdrawn at an earlier stage if it becomes clear:-

5.2.1 that the absence will in fact exceed one year or;

5.2.2 that the claimant will not be returning to the home after all

## **6.0 Prison Social Work Unit**

The Associations staff should liaise closely with the Prison Social Work Unit in all cases involving tenants serving a custodial sentence.

## **Section 3 - Unauthorised Occupation Of A Shire Housing Property**

We will take prompt action against unauthorised occupants of property.

The purpose of this Policy is to clarify the action available to Shire Housing, both to repossess a property which is being occupied by an unauthorised person and to minimise the rent loss incurred during the period of such action.

### **1.0 Legislation/Legal Definition**

1.1 Unauthorised occupation of a Shire Housing property can take a number of forms, such as someone who has failed to succeed to the tenancy, a former tenant who refuses to remove from the subjects on termination of the tenancy, a claimant under the Matrimonial Homes Act and any number of other situations. As the legal position will not be the same in each situation, it is difficult to state a set of procedures which would be applicable in every case. The Head of Housing Management should therefore discuss individual cases with the

Director so that action appropriate to the individual circumstances of the case can be taken. Legal clarification may require to be sought.

- 1.2 An unauthorised occupant of a house is not legally entitled to occupy it free of charge and to deprive the landlord of rent which he would have received from a lawful tenant. Where it is decided to take the matter to court, Shire Housing will seek payment as a remedy for loss of rent. The payment will not be put in a tenants rent account but held separately.

## 2.0 Definition of an Unauthorised Occupant

- 2.1 For the purposes of this Policy the term "unauthorised occupant" covers both "residential" and "unauthorised" occupiers.
  - i. **Residential Occupiers** include someone who is staying in the house after the death of the tenant until a decision has been made whether or not he or she is entitled to succeed to the tenancy; someone who has ended their tenancy and remains in the property; someone who is claiming occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 or the Civil Partnership Act 2004.
  - ii. **Unauthorised Occupiers** includes someone who has been told that their application to succeed to the tenancy has failed and that they must leave the property. This would also apply to persons remaining in the property after the tenant has ended their tenancy and the period of notice of termination has expired.

## 3.0 Action to Recover the Property

- 3.1 Where an occupant refuses to vacate a property in the above circumstances, there is, unfortunately, no straightforward remedy. Shire Housing must take court action to repossess the property.
- 3.2 A letter should be sent to the occupant giving them 10 days in which to leave the property, failing which court action will be started. It is imperative that this is done as soon as it has been established that the person occupying the house does not intend to leave. At the same time the occupant must be advised in writing that Shire Housing will ask the court for payment of violent profits, that is payments from the occupier to be made in lieu of lost rental.. The letter must also state that, should the court decide in favour of the occupant, then they will be liable for outstanding rent due. Payment due should be calculated from the date of the tenant's death or from the end of the last rent period for which rent has been paid, whichever is the later.

Where the court decided that the person is not unlawfully occupying the house Shire would consult with its solicitors to decide whether to accept or appeal the courts decision.

- 3.3 Housing Benefit is payable on rent due, therefore the occupant should be asked at this stage to complete a claim form. It should be made clear to the occupant that the application will be held pending the outcome of the court case. The claim must not be processed until the court has granted decree in Shire Housings favour and it has awarded violent profits.
- 3.4 The Head of Housing Management has systems in place which allow staff to identify properties where the right to the tenancy is in dispute, in order that they do not accept any payments to the rent account. This would have the effect of creating a tenancy and the recovery of possession action would then be unsuccessful.
- 3.5 Payment can be accepted as "to account of violent profits" but this should only be done where:
- a) the person volunteers to pay without any pressure from Shire Housing,
  - and
  - b) the person signs Annex 5. This states that the money is paid to account of violent profits and not as rent, and that no tenancy is deemed to have been created by the acceptance of the sum.
- 3.6 Any such payment, which is accepted, should be posted to the Suspense Account. An entry will also be made on the diary for the property in question within the Open Housing System.
- 3.7 The property should be classed as void from the date of the tenant's death, until the dispute over succession rights has been resolved by the court.

If the tenant does succeed, he/she is automatically liable for rent.

Annex 5 found in: W:\Directorate\Policies\_Procedures\Housing Management Manual\Tenancy Management\Appendices\Annex 5.

#### 4.0 Housing Advice

Whilst making every effort to ensure the property is vacated as quickly as possible the Association will also ensure that the occupier is properly advised as to alternative housing options.

Where appropriate this may include liaison with the Council's Homeless Persons Section to establish the possibility of alternative housing being made available.

## **Section 4 - Tenants Wishing To Operate A Business At Home**

### **Introduction**

Changing employment patterns with an increasing emphasis on the creation of small businesses and opportunities for self-employment are likely to lead to an increase in the number of tenants wishing to work from home. The Association's properties are provided as dwelling houses and are not intended to be used for business or commercial purposes. Section 2.3 of the Association's Scottish Secure Tenancy Agreement prohibits the operation of a business from any of the organisations stock without first gaining permission. This policy explains the Association's response to requests for consent.

### **Criteria**

A tenant who wishes to operate a business from home must first contact the Association for consent. Each request will be considered according to three main criteria: -

- a) The business concerned is not likely to cause annoyance, disturbance, damage or danger to surrounding residents or property.
- b) The business concerned is not likely to lead to a breach of any other condition of tenancy.
- c) The business concerned is not likely to require change of use or lead to objection by planning or other statutory authorities such as Environmental Health or Police.

It is the responsibility of the tenant to obtain any necessary planning permission. Tenants whose requests meet the first two criteria will be advised to contact the local authority planning department.

## **Part Two - Procedures**

### **Section 1 - Settling In Visits**

- 1 Housing officer diaries settling in visit for 6 weeks after tenancy commencement. Such visits are best practice, to ensure that the tenants have settled in and have no problems. However, the tenant can decline the visit should they so wish.
- 2 When visiting, each section of the settling in visit form will be discussed with the tenant and ticked off the sheet to ensure consistency in the procedure.
- 3 When the visit is complete the tenant and the Association's representative should sign the checklist part of the form, which is then brought back to the office. The tenant keeps the second part of the form that details the items discussed.
- 4 When the visit has been carried out the form is scanned on to the appropriate house file.

#### **Action If Tenant Not Available**

- "No Access Card" is left advising tenant to contact office.
- After 7 working days a further appointment should be made to visit and complete the settling in form.
- Further periodic calls should be made on the tenant to ensure the visit takes place, unless they have declined a visit.

### **Section 2 - Permission to Sub-Let**

#### **Checking the Application**

If the rent charged by the tenant to the sub-tenant is reasonable (Rent plus a maximum of 10% will be accepted by the Association) and no reasonable grounds for refusal exist then consent will be given. The following points should be checked when considering a request:-

#### **Length of Sub-Let**

A sublet can be approved by the Director or Head of Housing Management for periods up to one year; the sublet can be extended, on request, for further yearly periods, as required.

#### **Overcrowding**

It is an offence to create overcrowding and this should not be allowed. The test applied will be the statutory requirements as set out within the Housing (Scotland) Act 1987.

### Sub-Rent to Be Charged

The amount must be seen to be reasonable, that is, equivalent to that paid by the tenant to Shire plus in some cases an addition to cover the use of furnishings and any returnable deposit as security for use of gas/electricity. The Head of Housing Management will approve the sub-rent but it must not be, more than rent plus 10%.

The charging of deposits must not exceed two months rent or otherwise these are deemed to be a premium. (Rent (Scotland) Act 1984, section 112.)

*The address* of Tenant During Sub-Let should be obtained or how he/she may be contacted in her/his absence. It is also necessary to establish when the tenant will return to the property.

### Refusing Permission

Reasonable grounds for refusing permission to sublet are set out in Section 32 of the Housing (Scotland) Act 2001 and are as follows-

- A Notice of Intention to Seek Repossession has been served on the tenant on grounds 1-7 part 1 schedule 2 of the 2001 Act.
- An order for recovery of possession has been made against the tenant.
- A payment other than a reasonable rent or deposit has been or is to be received by the tenant in connection with the sublet.
- Overcrowding would result from the granting of permission to sublet.
- Works to the house are proposed that would affect the accommodation to be used by the subtenant.
- The age of the proposed subtenant
- The behaviour of proposed subtenants in previous tenancies
- Legal orders that affect where a person may reside such as ASBO's
- The consent of the spouse or legal partner.

A tenant who is aggrieved by a refusal may raise proceedings by summary application in the local Sheriff Court.

### Granting Permission

A letter giving permission should be delivered to the tenant, left at the address or sent by recorded delivery. The letter should contain the following conditions:-

- The sub-let will be for a period of 12 months and the tenant will require to submit a written request for any extension 8 weeks prior to the expiry of the 12 month period.
- During the period of the sub-let the tenant will continue to be responsible for rent and all other conditions of tenancy as contained in the Tenancy agreement.

- The house must be occupied only by the persons agreed by the Association (state name(s) on letter).
- The tenant must inform the Association of any changes in circumstances relevant to the sub-let.
- The Association must be informed and give approval to any proposed increase in the amount charged to the sub-tenant. (State the amount agreed on letter).
- Not less than 8 weeks before the expiry of the sub-let period, the tenant should inform the Association in writing whether or not he/she intends taking up occupancy at the end of the period.
- If at the end of the sub-let period the tenant does not return to the house and a request for a further sub-let has not been made, or has been refused by the Association, proceedings may be started to end the tenancy on the ground that the tenant has ceased to occupy the house as a principal home.
- The sub-tenant does not hold a Scottish Secure Tenancy and will have no right to remain in the house if the tenant's tenancy is terminated.
- The tenant should be asked to confirm in writing that he/she wishes to proceed with the sub-let on the conditions stated. The tenant should be advised to seek the advice of a Solicitor to safeguard her/his right to recover the house.

### **Section 3 - Housing Benefit**

The existence of an award of Housing Benefit does not bind the Association to accept the sub-tenant as a tenant should the situation arise.

Sub-tenants are normally eligible for Housing Benefit in their own right from the Local Authority, unless the tenancy has been contrived to take advantage of the Housing Benefit Scheme.

The payments cover Rent Charges only (including amenity or service charges where appropriate).

The Sub-tenant completes the same application form as a tenant to the Local Authority. The Sub-let agreement should be enclosed with the application confirming the Sub-let and the rental charge. The Sub-tenant will be required to sign the application giving approval for the Housing Benefit payment to be paid direct to Shire Housing Association.

### **Recovery Of The Property**

If a tenant who has permission to sub-let subsequently terminates his/her tenancy without returning to the former home and the sub-tenant is still in occupation, then the following procedure should be followed:-



A letter should be sent to the sub-tenant advising that the tenancy is to be terminated and specify the termination date. The sub-tenant should be advised that he/she must vacate the property, not later than the termination date.

Lettings advice should be made available to the sub-tenant including liaison with Housing Options.

If the sub-tenant does not vacate, then the Head of Housing Management should instruct legal action to regain vacant possession with suspense account.

Should a Housing Benefit payment be received from the Local Authority for a sub-tenant, it will be credited to the suspense account.

## **Section 4 - Lodgers**

### **Checking the Application**

In the case of joint tenants both tenants must be in agreement about taking in a lodger. Unless the presence of lodgers will cause overcrowding, or create a nuisance to neighbours, permission is normally granted.

All applications should, however, be fully investigated to establish if there are any works scheduled for the property, which may involve arranging, decant accommodation for the occupants. The tenant's position in relation to Housing Benefit should also be established. Lettings advice will be made available for the proposed lodger as he/she may qualify for housing in her/his own right.

The proposed charge for board/lodgings must be approved by the head of Housing Management, who will decide if it is reasonable. In deciding if a charge is reasonable, the accommodation being used by the lodger must be assessed, e.g. in a 5 apartment house where a lodger has her/his own room and the use of other public rooms, a charge for 2/5 of the rent/rates would not be viewed as unreasonable, plus an amount for gas/ electricity, meals, services depending on what is supplied.

The case can be referred to the Director if there is any doubt about the charge.

### **Refusing Permission**

The following are reasons why approval may not be given;

- A Notice of Intention to Seek Repossession has been served on the tenant on grounds 1-7 part 1 schedule 2 of the 2001 Act.
- An order for recovery of possession has been made against the tenant.
- A payment other than a reasonable rent or deposit has been, or is to be, received by the tenant in connection with the sublet.
- Overcrowding would result from the granting of permission to sublet.
- Works to the house are proposed that would affect the accommodation to be used by the subtenant.
- The age of the proposed subtenant (minimum of 16 years of age)

- The behaviour of proposed subtenants in previous tenancies
- Legal orders that affect where a person may reside such as ASBO's
- The consent of the spouse or legal partner.

A letter must be sent to the tenant within once month of receiving the full details of the application and the reason for refusal must be clearly stated i.e. overcrowding, board/lodging charge unreasonable etc.

A tenant who is aggrieved by a refusal may raise proceedings by summary application in the local Sheriff Court.

### Granting Permission

A letter should be sent to the tenant granting permission. The letter should contain the following conditions:-

Permission is granted for 12 months. Further permission must be obtained from the Association if the tenant wishes to have lodgers after the 12-month period.

Only the persons agreed by the Association must occupy the house.

Any change of circumstances must be notified to the Association e.g. if existing lodger leaves, a new application for permission must be submitted before a new lodger moves in.

The Association must approve any proposed increase in charges for board/lodgings.

Under the terms of the Scottish Secure Tenancy agreement the tenant is responsible for the behaviour of the lodger.

The lodger has no statutory rights to occupy the house and is present only with the consent of the tenant and the Association.

If the tenancy is terminated at any time in the future, the lodger will not normally be allowed to remain in occupation and the tenant will be responsible for ensuring that the lodger leaves, before the tenancy ends. If the lodger subsequently refuses to leave the property he should be advised that he is "a person in occupation without right or title" and should be instructed to leave. Where he still refuses to vacate an action for recovery of possession will be raised against the lodger 'as a person in occupation without right or title', to gain vacant possession with violent profits. The solicitor should be directed to apply to the Sheriff for a waiver of the time periods specified in the Summary Cause Rules, that is the usual waiting period after the service of notices etc and be requested to grant an order for recovery of the house to be effective in a much shorter time scale than normal.

Where a tenant is granted permission to have a lodger and he/she is currently in receipt of Housing Benefit the Local Authority should be advised accordingly.

### Particular Cases

There will be cases where it would be prudent to give permission for a shorter period than 12 months but these would normally be regarded as special cases.

## **Section 5 - House Abandonment**

### 1. General Information Points

- i) Recovery of property which is suspected of being abandoned is a complex process which should be dealt with strictly in accordance with established operational procedures. All staff who are involved in the abandonment procedure must ensure that each step is taken properly and that full written records are meticulously maintained.
- ii) The Association will follow the procedures set out within sections 17 and 18 of the Housing (Scotland) Act 2001, which are also set out within section 6.4 of the Associations Scottish Secure Tenancy Agreement. All staff should be familiar with the appropriate legislation and references within the tenancy agreement. Appropriate training will be provided to ensure compliance with both legislative and policy requirements.
- iii) Where the Association recovers a property via the abandonment procedure and the occupier is aggrieved by termination of the tenancy, they may raise proceedings by summary application to the Court within six months of the date of termination of the tenancy. If the Court considers that the Association has failed to comply with the provisions of section 18, or, did not have reasonable grounds for believing that the house had been abandoned, an order may be made for the Association to make other suitable accommodation available. It must also be remembered that failure to follow legislative requirements could also lead to a charge of unlawful eviction being levelled at the Association.

### 2. Procedure

Where a property is suspected of being abandoned the Housing Officer must open a file which will initially consist of the Abandoned House Report Form Annex 6.

Annex 6 found in: W:\Directorate\Policies\_Procedures\Housing Management Manual\Tenancy Management\Appendices\Annex 6.

The investigating officer must undertake all appropriate investigations prescribed on the report form, attaching a summary report for each check on the abandonment file. All such enquiries should be completed as quickly as is practicably possible.

Following completion of the initial enquiries all findings should be presented to the Head of Housing Management who will authorise the service of the 1<sup>st</sup> Abandonment Notice Annex 7 or Annex 8 if it is considered that reasonable grounds exist to justify the service of the notice.

Two staff members of the Association will serve the Notice immediately following authorisation: -

- Where a property requires security measures to be taken to protect it against vandalism, that is, boarding up, the following steps must be completed.
  - (i) The approval of the Director or HHM must be given to initiate the procedure in the first instance. All documentation must be provided to Director or HHM, no verbal outline will be authorised.
  - (ii) The police should be advised that the abandonment procedure is underway and entry is required to the property to effect an inspection prior to boarding.
  - (iii) A full property inspection must be carried out by two members of staff (including cupboards and loft space) to ascertain that the property is indeed unoccupied.
  - (iv) All services should be turned off or made safe by our contractor.
  - (v) The property should then be boarded up or other security measures taken as deemed appropriate.

The Lettings Officer should be advised that the 1<sup>st</sup> Abandonment Notice has been served. The the current tenancy will be updated to reflect the 28 day termination process and the necessary steps taken to identify a new tenant for vacancy.in accordance with the allocations procedure.

The Repairs Section will also be advised of the service of the Notice to allow forward planning for the second Notice i.e. Clerk Of Works/Contractor arrangements.

### 3. Cancellation Of Notice

If at any time during the 28 days period following the service of the 1<sup>st</sup> Abandonment notice the tenant contacts the Association stating an intention to reoccupy the property, the Notice should be cancelled with all records updated accordingly. A meeting should be arranged to verify circumstances and written confirmation of property occupation received. Where necessary, arrangements should be made to remove security measures and restore services.

### 4. Service Of 2nd Abandonment Notice

Where no contact from the tenant has been received during the 28 day period from the service of the 1<sup>st</sup> Notice, a second and final Notice will be served advising that the Association has recovered the property. The second Notice will be served following the expiry of the 28 day period after the issue of the 1<sup>st</sup> Notice.

Approval must be gained from the Director/HHM prior to the service of the 2<sup>nd</sup> Notice

Following service of the 2<sup>nd</sup> Notice by two staff members the under noted steps must be taken: -

Where not already carried out under the security procedure, arrangements should be made to have the locks to the property changed at the service of the 2<sup>nd</sup> Notice Annex 9 or Annex 10. The Repairs Administrator will make arrangements. Following the service of the 2<sup>nd</sup> notice, the property will be passed to the organisations contractors for the completion of void works and will thereafter be relet in accordance with the Allocations/Nominations procedure.

Annex 9 and Annex 10 found in: W:\Directorate\Policies_Procedures\Housing Management Manual\Tenancy Management\Appendices\
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#### Notes on Storage of Property and the Abandoned Property Register

On gaining entry to the property, a full inspection should be carried out including a property inventory. The property inventory should include photographs of items in the house and the inventory should be signed and witnessed by the two staff members present.

Where tenant's property is found in a house to which the abandonment procedure applies, an abandoned property notice (Annex 11) together with a copy of the inventory, will immediately be served on the tenant/former tenant at their last known address.

Arrangements must be made to retain all property for a minimum period of 28 days following service of the notice, which will advise of where and for how long the property will be stored and also give the cost of collection and detail how the property may be collected.

Where property is not collected within the initial 28 day period and the resale value of the goods is assessed as being sufficient to cover the costs of transport and storage, the property will be stored for a period of six months. If however, the goods are of insufficient value to cover such costs, the property will be disposed of following the approval of the Head of Housing Management.

Details of property found in abandoned houses will be kept in the Association's abandoned property register for a period of five years.

Annex 11 is found in: W:\Directorate\Policies_Procedures\Housing Management Manual\Tenancy Management\Appendices\Annex 11
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#### Important Points To Note!

- ◆ Under no circumstances should the property be entered by Association staff during the 28 day period from the service of the 1<sup>st</sup> Notice. The only exceptions to this are where there is reason to believe that there is danger to

life, the property requires to be secured against vandalism or there is significant threat to that, or other adjoining properties.

- ◆ It is essential that all investigations and actions are properly recorded and that no action is instructed without the authority of the senior officer outlined in this procedure.
- ◆ Housing Officers should constantly monitor both the property and the rent account following service of the 1<sup>st</sup> Notice.

## **Section 6 - Procedure for Dealing with Succession to Tenancy**

This procedure sets out how succession to tenancies should be dealt with. It should be noted that a statutory succession under the terms of the Housing (Scotland) Act 2001 may operate on two occasions in relation to any given tenancy.

### **Definition of Succession**

For there to be a succession to a tenancy there are two essential conditions:-

1. The tenant must die. This may seem to state the obvious, but no other changes in tenancy should be referred to as a succession.
2. There is a second necessary condition - there must be a "qualified person" to succeed. A qualified successor is described in Schedule 3 of the Housing (Scotland) Act 2001 as:-

a person whose only or principal home at the time of the tenant's death was the house and who was at that time either

- i) the tenant's spouse; or
- ii) living with the tenant as husband and wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex, or

who is, where the tenancy was held jointly by two or more individuals, a surviving tenant.

In the case of ii above the house must have been the persons only or principal home for the 6 month period immediately preceding the tenants death.

The above definitions fall within Level one of the succession process which sets out the way in which the order of succession is determined. Where more than one person qualifies for the tenancy under level one, they should decide amongst themselves who should get the tenancy. If no agreement can be reached, the Association retains the right to decide who will succeed to the tenancy.

Where there is no person falling within the descriptions at (i) or (ii), another member of the tenant's family who has attained the age of 16 years and was occupying the house as their only or principal home at the time of the tenant's death can be considered for succession to tenancy..

The above definition falls within Level two of the statutory procedure in determining the order of succession. Where more than one person qualifies for the tenancy under level two, they should decide amongst themselves who should get the tenancy. If no agreement can be reached, the Association retains the right to decide who will succeed to the tenancy.

A carer providing, or who has provided, care for the tenant or a member of the tenant's family where

- i. the carer is aged at least 16
- ii. the house was the carer's only or principal home at the time of the tenant's death, and
- iii. the carer had a previous only or principal home that was given up.

The above definitions fall within Level three of the statutory procedure in determining the order of succession. Where more than one person qualifies for the tenancy under level three, they should decide amongst themselves who should get the tenancy. If no agreement can be reached, the Association retains the right to decide who will succeed to the tenancy.

Where there is more than one qualifying successor they must agree between themselves which one will succeed or, they can agree to have a joint tenancy. If there is no agreement within 4 weeks then, as landlord, we can decide who is to be the tenant.

Succession can only take place under the terms of the Act on two occasions. The order of succession will be as outlined above and this information is incorporated within the Association's Scottish Secure Tenancy document.

A new missive is not issued to a successor to a tenancy as this would create a new tenancy and a further right of succession. Instead, the successor should be asked to sign a form which should then be attached to the original missive and the tenancy records should be amended.

Any outstanding arrears at the time of the tenant's death is a charge against the tenant's estate. Where there is no estate, there is no legal obligation on the successor to pay off the sum therefore, the tenant reference number should be changed.

On the death of a qualified person who succeeded to the tenancy as a result of a second round of succession the tenancy will terminate unless there remains a joint tenant.

### *Specially Adapted Houses*

Where a property has been designed or substantially adapted for occupation by a person with particular needs, there are special rules that apply to succession. For the first round of succession, the qualifying person must fall within the definition given for level one above or, if falling within the definition for level two or three, have particular needs requiring accommodation of the kind provided by the house.

For the second round of succession, any qualifying person must have particular needs as described above in order to qualify for right of succession. If however, there is a qualifying person who does not have particular needs, there remains an entitlement for that person to be offered suitable alternative housing at this stage.

### *Notification of the right to succeed*

Where the right to succeed is declined by a qualifying person at level one, the Association will use its best endeavours to advise any other qualifying person(s) of their right to succeed to the tenancy. In practice this will normally be fairly straightforward as the whereabouts of qualifying persons will be a matter of record. Such notifications will be made in writing to the person(s) concerned.

### *Rental Liability*

Where a qualifying person declines the tenancy, they must vacate the property within three months of giving the Association notice of their decision which must be provided to the Association within four weeks of the tenants death.

A qualifying person declining the tenancy will be liable to pay rent for their period of occupation of the property after the tenants death.

## **Section 7 - Assignment of Tenancy**

### *Definition*

An assignment of tenancy occurs when a tenant conveys all his rights and obligations under the Tenancy agreement to another person. The other person becomes substituted as the new tenant and assumes responsibility for all aspects of the tenancy which may include any existing rent arrears.

It should be noted that the assignor may not necessarily be leaving the household and may continue to live within the property.

### *Rights of the New Tenant*

The new tenant acquires the rights and obligations of the previous tenant by a written assignment document referring to and invoking the original Tenancy agreement (i.e. the form at Appendix 1).

### *Consent of the Landlord*



A tenant may not assign their tenancy without our prior written consent. This consent will not be withheld unreasonably.

#### *Timescale for Responding to Request for Assignment*

Shire Housing Association must respond to a request for an assignment within one month of receipt of that request. The landlord is deemed to have consented to the assignment if he fails to respond within that time to a tenant's request.

#### *Assignment Between Spouses or Co-habitees*

Requests to assign a tenancy from one spouse or co-habitee to another are the most frequent. The departing "tenant spouse" provides written agreement to an assignment in favour of the remaining spouse. The Head of Housing Management's consent is required and could be withheld if for example a Notice of Proceedings for Recovery of Possession on grounds 1-7 of schedule 2 of the Housing (Scotland) Act 2001, has been served.

#### *Shire Housing Policy on Assignations*

The Association will not unreasonably refuse a request to assign tenancy. Each application will be considered on its merits and the following issues will be considered before any tenancy is assigned.

- The assignee must have been using the property as their only or principal home for six months prior to the assignment request.
- Whether a Notice of Intention to Seek Repossession has been served on grounds 1-7 of Schedule 2 of the Housing (Scotland) Act 2001
- Decree for Repossession has been granted against the tenant
- The current immigration status of the assignee, relating to access to public funds, namely entitlement to housing benefit.
- The conduct of the assignee in relation to antisocial behaviour

The above list is not exhaustive and may not automatically lead to refusal of the request however, if any of the above circumstances are evident the Association may refuse the assignment.

#### *Tenancy Agreement*

Where an assignment is permitted, no new tenancy agreement should be signed. Instead the form (appendix 1) should be completed by the assignee.

#### *Joint Tenancies*

In the case of a joint tenancy where one tenant intends to terminate his/her interest in the tenancy, the terminating tenant must give both the Association and any remaining joint tenants four weeks notice in writing. The Association will verify that proper notice has been given to any other joint tenants. The tenancy will continue in the name(s) of the remaining tenant(s).

## **Section 8 - Transfer of Tenancy by the Courts**

Under the terms of the Matrimonial Homes (Family Protection)(Scotland) Act 1981 and more recent family case law connected to other legislation such as the Civil Partnerships Act 2004, the courts are empowered to instruct the Association to transfer the tenancy of one of its properties from one individual to another. The circumstances where this may happen will usually involve relationship breakdown, Shire Housing consent to this is not required, but if necessary we are able to object to the transfer by representation in court.

A new tenancy agreement should be issued, and should be completed by the person to which the tenancy transfers. The tenant reference number requires to be changed as with any new tenancy.

## **Section 9 –Spouse/Partner Consent**

For changes of tenancy status the above form must be completed e.g.

Tenancy termination

Assignment when not the spouse or partner

## **Staff And Service Delivery**

The Association will ensure that staff have the relevant expertise and will provide training to help staff carry out their duties effectively.

Staff will receive specific training on issues such as legislative requirements that apply to this Policy, our Scottish Secure Tenancy Agreement and other issues such as Tenants Charter outcomes.

## **Reports to the Board**

As most of the issues covered in this Policy concern day to day operational issues relating to individual tenants, reports to the Board will be statistical in nature and will be included in the half yearly updates that are produced as part of the business planning process. Should issues or trends arise that are outwith the perceived norm, they will be brought to the attention of the Board as required.

## **Availability Of Policy**

As with all of the Associations policies, this document can be made available to anyone who requests it, in full and in part, on tape, in large print, in Braille, and in translation into another language at no cost to the individual.

## **Conclusion**

This manual will be reviewed and amended as per the Board review cycle. The manual will be reviewed particularly in the light of legislative changes, new policy/procedures guidance, the performance of Shire Housing Association and the views of customers. Should any legislative or customer issues arise with regard to any part of the Policy, the section can be taken to Board for review prior to the

agreed review date.

Any targets relating to this Policy will be reviewed and amended as necessary on an annual basis for inclusion in the Internal Management Plan.

## References

- The Housing (Scotland) Act 2001
- The Scottish Secure Tenancy Agreement adopted by the Association
- The Scottish Social Housing Charter
- Performance Standards for Registered Social Landlords

## Part Three - Performance Standards

The undernoted Performance Standards are relevant to the content of this Manual and have been considered in the development of the Manual and the application of the procedures which deliver the policies.

**Performance Standard:** GS1.2 Policies and Procedures

**Description:** We have high-quality written policies and procedures to guide our actions.

**Activity:** Management Systems

**Performance Standard:** GS3.2 Information and Advice

**Description:** We provide or secure effective information and advice, in line with the national standards for housing information and advice services.

**Activity:** Service Delivery and Communication

**Performance Standard:** AS1.3 Tenancies

**Description:** We offer the most secure form of tenancy compatible with the purpose of the housing. The agreement makes clear the rights and duties of the tenant and landlord. We act to uphold these rights and duties in a fair and responsible manner.

**Activity:** Housing Management

**Performance Standard:** AS1.10 Estate Management

**Description:** We manage the environment around our properties and any common areas effectively, to ensure that the neighbourhood is an attractive, well-maintained and safe place to live.

**Activity:** Housing Management