
TENANCY CHANGES POLICY

Title:	Tenancy Changes Policy
Purpose of Procedure:	To clarify procedures for changes within a tenancy
Section:	Housing Management
Date:	October 2019
Review Date:	October 2022
Charter Standards:	6: Neighbourhood and Community Estate management, anti-social behaviour, neighbour nuisance and tenancy disputes 7,8,9: Housing Options Tenants and people on housing lists can review their housing options. 11: Tenancy Sustainment Tenants get the information they need on how to obtain support to remain in their home; and ensure suitable support is available, including services provided

directly by the landlord and by other organisations.

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Introduction & Policy Objectives

The purpose of this policy is to explain Blairtummock Housing Association's policy in relation to all tenancy changes. In all tenancy matters, we have a number of obligations including compliance with legislation, contractual terms within the tenancy agreement and best practice guidelines. We aim to provide uniformity in decision making in respect of tenancy changes and balance the rights of tenants with the needs of housing list applicants.

Definitions of Types of Tenancy Changes

- Succession
- Assignment
- Joint Tenancy
- Permission to Reside/lodgers
- Sub-letting

Legal Provisions & Compliance

The Tenancy Changes Policy meets with legislative and good practice requirements including:

- Housing (Scotland) Act 2014
- Housing (Scotland) Act 2001
- Housing (Scotland) Act 1988
- Matrimonial Homes (Family Protection) (Scotland) Act 1981

Scottish Social Housing Charter

In terms of the Scottish Social Housing Charter, the Scottish Housing Regulator has identified a number of key indicators relevant to tenancy changes by which it will measure landlord performance, including the following:

- Outcome 6 – Estate Management – tenant and other customers live in well maintained neighbourhoods where they feel safe.
- Outcome 7,8 & 9 – People at risk of losing their homes get advice.

1.0 Requests for Permission to Reside

- 1.1 Tenants may make requests for permission for others to reside with them in their home. This permission will not be unreasonably refused and will relate to members of the tenant's family and other non-family members. Requests must be made in writing using the Form at Appendix 1.2 and mandate completed Appendix 1.3.
- 1.1.1 Permission will not be granted where overcrowding would occur except where the request is to move a spouse or civil partner with children into the household.
- 1.1.2 Documentary evidence will be required to prove residency, this could be an original letter confirming receipt of benefit, driving license, utility bill, bank statement or council tax bill. At least 2 items should be provided. The application cannot be considered until the above information is provided.
- 1.1.3 Where a tenant moves a family member or a lodger into their household and they are not granted permission to reside, they will not be considered for rehousing under the Association's

Allocations Policy, although the family member or lodger may make their own application for housing from that address.

1.1.4 The following grounds for refusal relate to the incoming applicant and mirror the responsibilities that the Association places on applicants within our Allocations process:

- Anyone who has been violent or has used abusive or threatening behaviour to an Association staff member.
- Anyone who has been evicted by a previous landlord, or is the subject of an Anti- Social Behaviour Order. These circumstances will be taken into account when assessing the Association's response to any application, though they will not necessarily prevent the applicant from being given permission to reside by the Association. The applicant will however, require to show the Association's staff justification for these actions or that despite the problems he/she has experienced in the past, he/she will work with the Association and other appropriate agencies in sustaining a tenancy.
- Anyone or their spouse, partner or family members included in the application who have had previous convictions or have pending convictions for any offence in connection with the use or supply of any controlled drugs or has been convicted of using previous accommodation for any immoral or illegal purposes.
- Anyone who has more than one month's rent arrears/former rent arrears, or who has not maintained an arrangement to clear former tenant rent arrears for a continuous period of 3 months.
- Anyone who has given false or misleading information with relevance to the outcome of their application or withheld relevant information in order to obtain permission to reside will have their request suspended for a period of 6 months from the date of the disclosure.

1.2 **Response Timescale**

The Association will respond in writing within 28 days to requests for permission to reside, using Appendices 1.4 and 1.5,

otherwise permission shall be deemed to have been granted. Copies of all paperwork will be scanned into the tenants file on SDM.

2.0 Joint Tenancies

- 2.1 Joint tenancies will not be unreasonably refused where the parties are at least 16 years of age.
- 2.2 Any non-couple household (see Allocations Policy for definition) with more than one adult will be requested to nominate the “lead” tenant when they are signing for a new home, otherwise the Association will treat the senior member as the lead tenant. This tenant will then have discretion regarding the awarding of a joint tenancy to another household member.
- 2.3 Any existing tenant who requests that another person be granted a joint tenancy must do so in writing using Appendix 2.1. In all cases an official twelve-month residency period from when we receive written notification of them moving into the property is required.

Documentary evidence will be required at the end of this period to prove that the property has been the proposed joint tenant’s only and principal home. These requirements apply to all applications for joint tenancies including those involving spouses, civil partners or co-habiting partners.

- 2.4 Applications for joint tenancies will be refused where:
 - Permission to reside is required in respect of the proposed joint tenant and permission would be refused.
 - The Association has taken legal action in respect of the tenancy on conduct grounds (legal action being Notice of Proceedings stage, onwards; conduct grounds being any breach of the

tenancy under Schedule 2, Part 1, Grounds 1-7 of the Housing (Scotland) Act 2001).

- 2.5 Applications for joint tenancies may be refused where the proposed joint tenant has been guilty of previous anti-social behaviour.
- 2.6 The Association will respond in writing within 28 days for requests for permission for a joint tenancy, using Appendices 2.2 & 2.3, otherwise permission shall be deemed to have been granted. A statement of joint tenancy (Appendix 2.4) should be completed and attached to original tenancy agreement. Copies of all paperwork will be scanned into the tenants file on SDM.

3.0 Assignment

- 3.1 The house must have been the tenants only or principle home during the 12 months immediately prior to when applying for written permission to assign the tenancy to someone else.

An application for Assignment should be completed by the tenant (Appendix 3.1)

Assignment will not be unreasonably refused where the person to whom the tenancy is being assigned (the “assignee”) has been officially resident in the property for at least 12 months. The 12-month period starts when we are notified in writing that the person is living in the property as their only or principle home.

- 3.2 Assignment will be refused where the Association has taken legal action against the tenant on conduct grounds (as per Section 2.4).
- 3.3 Assignment will also be refused where the current tenant owes any rent or rechargeable repair arrears to the Association.
- 3.4 Assignment will be refused where it appears that the tenant is to receive payment for the assignment.

3.5 Assignment may be refused for the following reasons:

- Overcrowding would occur.
- An Order for Recovery of Possession has been made against the tenant.
- A Notice of Proceedings has been served on the tenant on any of the 'conduct grounds' set out in paragraph 1-7 of Schedule 2 of the Housing (Scotland) Act 2001.
- The tenant has any debt outstanding to BHA in terms of their tenancy, either arrears of rent, rechargeable repairs or any other debt related to their occupancy of the property.
- BHA intends to carry out substantial work on the property.
- There are anti-social behaviour issues concerning the proposed assignee.
- Where we would not give the person you want to pass the tenancy to priority under our allocations policy; or
- Where, in our opinion, the assignment would result in your home being under occupied.

This list is not exhaustive and each case must be assessed individually on its merits.

For example, other possible reasons where a request to assign may be refused are:

- Where another person's occupancy rights are likely to be adversely affected
- Where the proposed assignee is below 16
- Where the proposed assignee is unable to understand terms of the transaction, for example, because of a serious learning disability. In such cases, however, the Housing Officer should consult her/his line manager to evaluate possible options, for instance, developing some form of supported accommodation initiative
- Where the existing tenant is unable to clear the arrears and make good rechargeable repairs.
- Where the assignee has been convicted of using a previous tenancy for illegal or immoral purposes or has an

Anti-Social Behaviour Order (ASBO) out against them within the past 3 years

- Where there is substantial damage or disrepair to the property caused by the tenant, a member of the household or a visitor to the property
- The prospective assignee has deliberately omitted, distorted or given false information on their application
- Where the assignee has previously been evicted from the Association's property

3.6 A house inspection must be carried out by Maintenance and the Housing Officer before any assignation is agreed. The assignee is not responsible for any previous damage to the property. Therefore, an inspection prior to agreeing to the Assignation would mean that it would be reasonable to refuse the request if there was damage to be paid for.

3.7 The Association will respond in writing within 28 days to written requests for permission to assign a tenancy, otherwise permission shall deemed to have been granted.

3.8 Where an application has been approved, a Minute of Assignation (Appendix 3.4) should be completed and attached to the original tenancy agreement. A new tenancy agreement should not be completed and a new tenancy is not set up on SDM, but a diary entry should state that the tenancy was assigned and on which date.

4.0 Succession

4.1 Succession to a tenancy following the death of a tenant shall be in accordance with clause 7 of the Association's Scottish Secure Tenancy Agreement.

4.2 To succeed to a tenancy, any person who is not the lawful spouse or civil partner must have lived in the property as their only or principle home for at least 12 months immediately prior to the tenant's death. The 12month period only starts when we receive written notification from you that the other person is living in the property as their only or principle home. This is very important if someone has given up their home to care for a tenant.

4.3

Where a house has been designed or substantially adapted for occupation by a person whose particular needs require such accommodation, for example, a house designed for wheelchair users, a person will only qualify to succeed as follows:

The Court can be asked to end a tenancy of an adapted property that is not being occupied by anyone who needs the adaptations. This only applies if the Association requires the property for someone who does need the adaptations.

Where the person does not require this accommodation – but would otherwise have qualified to succeed – the Association must make other suitable accommodation available to the person. Suitable accommodation is defined by the Act (**Housing (Scotland) Act 2001, Schedule 1, part 2**).

4.4

Spouse, Civil Partner or Joint Tenant

No qualifying period, must be only or principle home at date of tenant's death. Rent is payable by the successor from the date of succession. In succession cases where the sole tenant dies, the debt does not pass onto the new tenant. We should therefore write off the debt as "irrecoverable" and credit the rent account. **The successor should be asked who the Executor of the deceased's estate is and a claim for the rent arrears due should be lodged with the estate.** In the case of a joint tenancy becoming a sole tenancy, the sole tenant remains responsible for the debt and all tenancy breaches. We should also record on the rent diary the date of succession.

4.5

Unmarried partners

- the house must have been the unmarried partner's only or main home for 12 months before they qualify to succeed to the tenancy
and
- the 12-month period cannot begin unless we have been told in writing that the person is living in the property as their only or main home.

4.6

Family members

- the house must have been the family member's only or main home for 12 months before they qualify to succeed to the tenancy
 - and
 - the 12-month period cannot begin unless we have been told in writing that the family member is living in the property as their only or main home.
- 4.7

Carers

- the house must have been the carer's only or main home for 12 months before they qualify to succeed to the tenancy
 - the 12-month period cannot begin unless we have been told in writing that the carer is living in the property as their only or main home.
- 4.8 A request for succession should be completed (Appendix 4.1) and a copy of the tenant's death certificate provided.
- 4.9 Where a request has been approved, a Deed of Succession should be completed (Appendix 4.10) and attached to the original tenancy agreement. A new tenancy should not be set up on SDM, a diary entry should state that the tenancy was succeeded and on which date.

4.10 Notification of Right to Succeed

Where any of the qualifying persons under the first priority category decline the tenancy, the Association must investigate within 7 working days whether there are any other persons who may qualify to succeed. The Association must use its "best endeavours" to ascertain whether other qualifying persons exist (see below for clarification of best endeavours). Prior to doing so, however, staff should first check to ensure that there are no qualifying persons under the first category, for example, a spouse fleeing domestic violence.

Housing Officers should next check whether there are any family members who qualify to succeed. Where such persons are found, the Association must serve notice, in writing, to each person (Appendix 4.4).

Should members of the family in turn decline the tenancy, the Association must then investigate whether there are any carers who may be entitled to the tenancy. Again, the Association must use its best endeavours and written notice must be served on any carer who may be entitled to succeed (Appendix 4.5).

Best endeavours to establish if other Qualifying Occupiers exist in ascertaining whether other persons may be entitled to succeed, the Housing Officer should examine/contact the following sources:

- Assessing tenancy records
- Contacting other agencies or departments as appropriate
- Contacting other relatives not resident with the tenant
- Contacting other sources as required, for example, educational bodies

4.11 Joint or Sole Tenancy

Where there is more than one qualifying person entitled to succeed to the tenancy, they are entitled to decide whether or not the tenancy should be a sole tenancy or held jointly. For example, where there are two members of the family aged 16 or over occupying the house as their principal home, then it is open to them to decide who should succeed, whether as a sole or joint tenancy.

In order to facilitate this decision, though, the Housing Officer should offer advice regarding the advantages and disadvantages of holding a sole or joint tenancy in their particular case. The Association will decide who should succeed where the qualifying occupiers cannot decide within 28 days of the tenant's death.

4.12

Where Qualifying Occupier Does Not Respond to Letter Regarding Succession

Where Appendix 4.4. & 4.5 letters have been sent to a qualified person but there has been no response within 28 days of the tenant's death, the Housing Officer should follow this up by sending Appendix 4.6 advising that the locks will be changed 7 days from the date on the letter. The tenancy is then terminated.

4.13

Declining a Tenancy

A qualified person may decline the tenancy by giving the Association notice, in writing, within **28 days** of the tenant's death (Appendix 4.7). In cases where the landlord has served notice on persons who may be entitled to succeed, the 28-day period begins from the date the notice was given.

A qualified person who declines the tenancy must vacate the house within 3 months of giving notice to the landlord. As the notice is to be treated as having effect from the tenant's death, this means in effect that the person must leave the house within 3 months of the tenant's death.

The qualifying successor who declines the tenancy is liable to pay rent for the period spent in occupation after the tenant's death (Appendix 4.8).

4.14 **Principal Home**

The issue concerning whether or not a house is a person's principal home is a question of fact and each case requires to be assessed on its merits. Types of factors to take into account are as follows:

- Information about another tenancy. For example, as provided by other landlords
- Information from official sources such as employer or medical records Information from other agencies/departments such as Social Work or Social Security
- Information from neighbours, relatives, etc.

It is emphasised that disclosure of information should conform with the requirements of the **Data Protection Act 1998 & General Data Protection Regulations 2018**.

4.15

Refusals of Claims and Disputes

The Housing Officer should send the refusal letter when it appears that the person qualifying to succeed does not, in fact, so qualify (Appendix 4.9).

The Association has established an internal appeals system to enable applicants aggrieved by a decision to lodge an appeal which would be reviewed by the Association's Housing Services Committee.

Alternatively, the landlord or tenant may raise an action in the court, for example, seeking an order of declaratory in the sheriff court to declare the rights of both parties (for discussion and possible omission).

4.16

Inspection of the House

In the case of a succession where a joint tenancy becomes a sole tenancy, the sole tenant remains responsible for any existing damage to the property. Where the successor is not a joint tenant they are not held responsible any damage caused by the previous tenant. The Housing Officer and Maintenance Officer should therefore inspect the property prior to the date of succession.

5.0 Sub-Letting

5.1 You must have been the tenant of the property throughout the 12 months immediately before you apply for written permission to sub-let your home.

5.1.1 Sub-letting will not be unreasonably refused unless:

- The Association has taken legal action against the tenant on conduct grounds (as per Section 3.5).
- Overcrowding would occur.
- It appears that the tenant is to receive a payment for sub-letting which is other than a reasonable rent, i.e. the same rent as the Association is currently charging the tenant.
- There are anti-social behaviour issues concerning the proposed sub-tenant

- 5.1.2 It will be expected that the Sub-Tenancy Agreement will be drafted by the Association's Solicitors.
- 5.1.3 The tenant will be responsible for the Sub-Tenant's conduct and for the payment of rent.
- 5.1.4 Where the original tenancy has been terminated, the sub-tenancy will continue until its expiry, as per Section 28(2) of the Housing (Scotland) Act, 1988. All tenancy obligations, including payment of rent, will revert directly to the sub-tenant for the period remaining.

5.2 **Procedures**

5.2.1 Request to Sub-Let Received

- The request must be in writing.
- The Housing Officer will then send the Association tenant(s) a sub-letting application letter (Appendix 5.1) and sub-letting application (1) form (Appendix 5.2), they will also be sent the following for completion by the prospective sub-tenant (s); a sub-letting application (2) form (Appendix 5.2) and mandate for tenancy check form (Appendix 5.3).

5.2.2 Receipt of Application Forms

- Upon receipt of forms from both parties, the Housing Officer will undertake a tenancy check on the prospective sub-tenant(s), if applicable.
- Where the Housing Officer intends to permit sub-letting of the property, a sub-letting application approved letter (Appendix 5.4) will be sent to the Association tenant(s), informing them of the procedures to be followed.
- Where sub-letting is being refused, the Housing Officer will send a sub-letting application refused letter (Appendix 5.5) to the Association tenant(s).

5.2.3 Completion of Sub-Tenancy Documentation

Where sub-letting is going ahead, the following procedure will be followed:

- Explain the contents of the Association Scottish Secure Tenancy Agreement to the prospective Sub-Tenant(s), with particular regard to, further sub-letting, mutual exchanges, etc, and issue Form AT5 to the Sub-Tenant(s), with a copy to the Association Tenant(s).
- Explain the content of the Form AT5 to both the Association Tenant(s) and Sub-Tenant(s) and issue Form AT5 to the Sub-Tenant(s), with a copy to the Association Tenants(s).
- Obtain signature of **three** Short Scottish Secure Sub-Tenancy Agreements including Schedule I, in respect of the Tenant(s), Sub-Tenant(s) and the Association, and issue accordingly.