

Introduction and Overview

The purpose of this procedure is to guide staff through the processes that should be followed when dealing with an application to assign the tenancy.

Assignment Procedures

The document outlines the Association's procedures in relation to the following sections:

1. Legal Provisions;
2. Assignee Eligibility;
3. Applying to Assign a Tenancy;
4. Approving an Application to Assign a Tenancy;
5. Refusing an Application to Assign a Tenancy;
6. Appeals;
7. Assignment Register;
8. Allocation to Governing Body / Staff Member Arrangements.

1. Legal Provisions

The legal provisions that govern the right for a Scottish Secure Tenant or Short Scottish Secure Tenant to apply to assign their tenancy are contained within the Housing (Scotland) Act 2001 and Housing (Scotland) Act 2014.

2. Assignee Eligibility

Any Scottish Secure Tenant or Short Scottish Secure Tenant has the right to assign their tenancy to a person, aged sixteen or over, who has been resident in their home. The tenant must apply in writing to the Association for written permission to do so and must obtain the Association's permission.

In order for a tenant to assign their tenancy the following criteria must be met:

- The property must have been the tenant's only or principal home during the twelve months immediately before the tenant applies for written permission to assign their tenancy; and
- The person the tenant wishes to pass their tenancy to must have lived at the property as their only or principal home for the twelve months before they apply; and
- The tenant, joint tenant or person they wish to assign the tenancy to must have notified the Association that the person they wish to assign to is living in the property. The twelve month period does not start until the Association has been notified that the person is living in the property as their only or principal home.

Where a joint tenancy exists, all tenants must apply to assign the tenancy. If one or more joint tenant fails to agree to the application then permission to assign the tenancy will not be granted.

3. Applying to Assign a Tenancy

Any Scottish Secure or Short Scottish Secure tenant of the Association is entitled to apply to assign the tenancy to a person defined under section 2 of this procedure. Where a tenant is looking to assign the tenancy they must do so by applying in writing to the Association. In the case of joint tenancies, all tenants must agree to the application being made.

Where a written or verbal enquiry is made about assigning a tenancy, staff should issue an Assignment Application Form Covering Letter and an Assignment Application Form to the tenant within two working days of the original enquiry being made.

3. Applying to Assign a Tenancy (Continued)

As part of the application the tenant must provide the following information:

- Details of the proposed assignee including their name, date of birth, previous addresses and details of any tenancies they have held;
- Identification for the proposed assignee; and
- Documentation to demonstrate that the proposed assignee has been resident at the address for at least six months.

Where an Assignment Application Form is received by the Association, staff should issue an acknowledgement letter to the tenant within two working days confirming that the application will be processed and a response issued within one month. The acknowledgement letter will also enclose an appointment time for the Association to carry out an inspection of the property.

During the property inspection, staff will inspect the property and outline any repairs that the tenant is responsible for carrying out.

Where the Assignment Application is complete and all supporting documentation has been provided and the property is found to be satisfactory, staff must then decide whether or not the application should be approved and notify the tenant in accordance with sections 4 and 5 of this procedure.

Where the Assignment Application is incomplete, staff should ask the tenant to provide the missing information during the home visit. Where there is missing supporting documentation such as proof of residency, staff should request that this information be provided within seven days of the visit (seven days is recommended as this will allow staff to carry out necessary tenancy checks and issue a decision letter within one month the application form being received). Where the tenant fails to provide the requested information the application should be refused in accordance with section 5 of this procedure.

When considering whether or not approval for an Assignment Application should be granted, staff should consider the following:

- The age of the proposed assignee;
- Whether the proposed assignee qualifies in accordance with section two of this procedure;
- The tenancy history of the proposed assignee; and
- Whether the house will become under-occupied or overcrowded if approval is granted.

4. Approving an Application to Assign a Tenancy

Where an Assignment Application is approved, staff must notify the tenant of this decision in writing within one month of the date that the application was received. Staff must issue an approval letter confirming that the application has been successful. The letter must contain an office appointment for the tenant to attend to sign a termination notice and for the assignee to sign a tenancy agreement. This appointment date will normally be the date of entry for the new tenancy agreement. The date prior to the new tenancy date will be the termination date for the previous tenancy.

5. Refusing an Application to Assign a Tenancy

Assignment Applications will not be refused unless the Association has reasonable grounds for doing so. The legislation does not clearly define what is regarded as "reasonable grounds" for refusal, however, the following grounds are considered reasonable for refusing an Assignment Application:

- The Association would not award the proposed assignee reasonable preference under the Letting Policy;
- The Association is of the opinion that the assignment would result in the property becoming under-occupied;
- The property has not been the tenant's only or principal home during the twelve months immediately before the application is received;

5. Refusing an Application to Assign a Tenancy (Continued)

- The person the tenant wishes to pass their tenancy has not lived at the property as their only or principal home for the twelve months before the application is received;
- The tenant, joint tenant or person they wish to assign the tenancy have failed to notify the Association that the person they wish to assign to is living in the property.
- A Notice of Proceedings for Possession has been served on the tenant specifying any of the 'conduct' grounds set out in paragraphs 1 to 7 of the Schedule 2 of the Housing (Scotland) Act 2001;
- A Decree for recovery of possession has been granted by the court;
- The tenant has outstanding debts with the Association or other social landlord amounting to more than one month's rent and has not adhered to a reasonable repayment arrangement for a minimum of three consecutive months;
- The proposed assignee has outstanding debts with the Association or other social landlord amounting to more than one month's rent and has not adhered to a reasonable repayment arrangement for a minimum of three consecutive months;
- The tenant has been evicted for anti-social behaviour within the last five years (this includes eviction by other social landlords);
- The proposed assignee has been evicted for anti-social behaviour within the last five years (this includes eviction by other social landlords);
- An Anti-social Behaviour Order (ASBO) has been granted against the tenant or a member of the tenant's household;
- An Anti-social Behaviour Order (ASBO) has been granted against the proposed assignee;
- The approval of the application would lead to overcrowding;
- The Association has been provided with an incomplete application or false and misleading information about the application;
- In the case of a joint tenancy, one or more tenant(s) has not given consent to assign the tenancy;
- The Association believes that the tenant is to receive a payment, in return for making the application;
- The pre-termination of tenancy property inspection is unsatisfactory; and
- The Association proposes to carry out work to the house or the building and the proposed work would affect the accommodation that would be occupied by the proposed assignee.

The grounds for withholding permission are not exhaustive and the Association may refuse to grant permission where it believes that there are other reasonable grounds for doing so.

Where an Assignment Application is not approved, staff must notify the tenant of this decision in writing within one month of the date that the application was received. Staff must issue a refusal letter confirming that the application has been unsuccessful. The letter must detail the reason(s) for refusal and also detail how the tenant can appeal the Association's decision.

6. Appeals

Tenants wishing a review of the decision made by the Association should write to Housing Management within fourteen days of the date of the decision letter giving their reasons for appeal. The application will then be reviewed by a staff member not involved in the original decision and a written response will be provided within five working days outlining any new decision. If the tenant is still dissatisfied then he / she should write to the Association's Director who will investigate all circumstances and will respond to the applicant in writing within five working days. If the tenant is still dissatisfied then the Association's complaints procedures will apply.

7. Assignment Register

The details and outcomes of all Assignment Applications received must be recorded in the Assignment Register.

8. Allocation to Governing Body / Staff Member Arrangements

Where the tenant or proposed assignee is defined as a relevant person under the Association's Allocations to Governing Body / Staff Members Policy, the decision must be reported and recorded at the next scheduled Management Committee meeting. The report should be produced and presented in accordance with the Association's Allocations to Governing Body / Staff Members Policy.