

TOPIC: Transfer/Assignment of Tenancy & Subletting Policy

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1. Introduction

Shettleston Housing Association operates in accordance with;

- Statutory requirements,
- The standards set down in the Scottish Social Housing Charter,
- The requirements of the Scottish Housing Regulator,

In the formulation and implementation of all its policies. SHA seeks to fulfil its Corporate Aims through the development and implementation of its policies and all SFA's policies operate to achieve its Strategic Objectives as set out in its Business Plan.

2. Equalities

SHA is committed to providing equality of opportunity to all persons or groups within its area of operations in every aspect of its activities. We will seek to ensure that this policy and its associated procedure is applied in a manner that is fair to all sections of the community regardless of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation. This policy, and any summary or information leaflet can be made available free of charge in a variety of formats including large print, translation into another language or, audio tape.

3. Access To Policy Information

SHA will ensure that its policies are made fully available to all tenants, applicants, members, persons or groups within its areas. Every effort will be made by SHA to support access and promote awareness of its policies by posting these on its website, developing summaries, guidance and information leaflets as appropriate.

4. Tenant Involvement and Consultation

SHA is committed to meeting the requirements of the Housing (Scotland) Act 2010 in all of its policies and to meet the requirements of the Scottish Social Housing Charter. It will involve tenants in the development of its policies in all cases where proposed changes in standards of service and/or will significantly impact on service users. It will also seek feedback in appropriate circumstances. It will ensure at all times that any material change to services affecting tenants in this and other policies will be the subject of consultation.

5. Policy Monitoring

SHA is committed to ensure that adequate monitoring of the implementation of its policies is undertaken. This will be achieved through regular review by The Management Committee, customer/tenant feedback surveys, and regular consultation with tenant/resident groups.

6. Risk Management and Assessment

SHA has a detailed Risk Management Policy in place and it will assess the risks to the Association in the implementation of each of its policies as part of its risk management strategy.

7. Procedures

SHA will develop a detailed set of procedures identifying actions, roles and responsibilities in the implementation of its policies. These procedures will be subject to regular review and audit.

8. Training

SHA will ensure that its staff are properly trained in terms of their knowledge and understanding of statutory requirements and the requirements of the Scottish Social Housing Charter pertaining to its policies. It will ensure that appropriate staff are kept up to date with all procedures pertaining to the implementation of policies.

9. Purpose of this Policy

The purpose of this policy is to outline the Association's requirement to accept and consider any application for the assignment/transfer of tenancy or subletting of a tenancy as set out in the Housing (Scotland) Act 2014 and detailed within sections 4 and 10 of the Association's Scottish Secure Tenancy Agreement.

10. Legal Requirements

This Policy aims to be consistent with all relevant legal and regulatory requirements, including those set out below; is designed in compliance with the following:

The Housing (Scotland) Act 2014

The Housing (Scotland) Act 2001, as amended

The Housing (Scotland) Act 2001 (Scottish Secure Tenant etc.) Order 2002

Scottish Secure Tenancy Agreement

Matrimonial Homes (Family Protection) (Scotland) Act 1981, as amended

The Civil Partnership Act 2004

Allocation Policy

11. Eligibility Criteria Assignment/Transfer of Tenancy

Each written request for assignment/transfer of tenancy will be considered by the Association on its individual merits.

All tenants of the property (if a joint tenancy) and/or any person who has occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 must agree in writing to the assignment/transfer request.

Assignment/Transfer of Tenancy will normally only be considered if the tenant(s) requesting permission:

- has been occupying the property as his or her only or principal home during the 12 months immediately before the written request.
- has notified Shettleston Housing Association in writing on the date the assignee moved in to the property as his or her only or principal home and this must have been at least 12 months from the request for transfer of tenancy.

Assignment/Transfer of Tenancy will only be considered if the proposed **assignee**:

- is at least 16 years old; and
- is a close relative of the tenant or has some other close association with the tenant; and
- has been occupying the property as his or her only or principal home during the 12 months immediately before the date of the written request.
- has notified Shettleston Housing Association that he or she is living in the property as his or her only or principal home and is registered with SHA for at least 12 months prior to the request.

12. Eligibility Criteria for Subletting

Each written request to sublet a tenancy will be considered by the Association on its individual merits.

Subletting of Tenancy will only be considered if:

- The tenant has been the tenant of the house throughout the 12 months immediately before applying for written permission to sublet the property; or
- If they were not the tenant throughout the whole of that period, the house must have been their only or principal home during those 12 months; and the tenant must have told SHA that they were living there prior to the start of those 12 months.

13. Reasons why consent may be withheld

The Association may refuse such consent only if it has reasonable grounds for doing so. Grounds for refusal are as follows: -

- A notice under Section 14 (2) of the 2001 Act has been served on the existing tenant specifying a Ground set out in paragraphs 1 to 7 of Schedule 2 of the 2001 Act.
- An order for recovery of possession of the house has been made against the tenant under Section 16 (2) of the 2001 Act.
- The assignment/sublet would be to the inappropriate financial benefit of either party or someone connected to them in some way.
- The Assignment/Transfer of Tenancy or Sublet will lead to overcrowding or would result in the property being under occupied.

- The tenant has an outstanding rent account balance, or other outstanding debt to SHA including former tenant arrears, tenant recharges or legal costs.
- The proposed assignee or sub tenant has any outstanding debt to SHA including former tenant arrears, tenant recharges or legal costs.
- The Association proposes to carry out work in the house or on the building of which it forms part so that the proposed work will affect the accommodation likely to be used by the assignee who would reside in the house as a result of the Assignment.
- The proposed assignee would not be given priority under our allocations policy.
- Where the proposed assignee/subtenant has pursued a course of anti-social conduct, or has been convicted of using a previous tenancy for illegal or immoral purposes or has had an interim or full ASBO granted against them or a member of their household within the last three years.
- The proposed assignee or sub tenant has been violent or has used abusive or threatening behaviour to an Association member of staff.
- The tenant would be transferring tenancy rights to a property with special design features and the proposed assignee for such accommodation does not have an appropriate housing need.
- After inspection, it is clear that there are rechargeable repairs outstanding.

The above contains only some examples of where requests for transfer of tenancy may be considered to be unreasonable. The list is not intended to be exhaustive and each case will be considered on the individual circumstances involved.

There may be circumstances where the Association will not grant assignment of the tenancy to the existing member of the household, but make an offer of an alternative Housing Association property more suited to the individual housing circumstances involved.

14. Transfer of Tenancy of Matrimonial Home

This is a compulsory assignment that can be imposed in appropriate circumstances by the courts, for example, where there is a history of domestic violence.

The court does not require the consent of either the landlord or the principal tenant. If there is a joint tenancy, the court has the power to grant the tenancy to one party only. In these circumstances, the tenancy is transferred from one spouse to another. The new tenant takes on all the liabilities of the tenancy, apart from the existing rent arrears, which remain the responsibility of the spouse who was the original tenant.

15. Approval

We will not unreasonably withhold consent to requests for tenancy changes as long as the appropriate criteria are met. Any decision to refuse or accept an application for a tenancy change will normally be made by the Housing Manager, or Senior Housing Officer in the absence of the Housing Manager.

The Housing Manager also has the discretion to refuse an application for reasons other than those set out specifically in this policy. The key principle to apply when deciding if the application should be refused is whether the refusal is reasonable.

16. Notification of Decision

The Association will notify the tenant in writing of our decision within one month of receiving their application.

Where consent has been refused the Association will advise the applicant of the reasons for refusal, what action should be taken to address the reasons for refusal and the applicant's rights to appeal.

17. Review of Decision

Shettleston Housing Association recognises that applicants may wish to have decisions taken against them to a review stage therefore the following procedure is available.

We will offer tenants or applicants under the terms of this policy the opportunity to appeal against any decision relating to assignment or subletting. Any such review will be heard by the Director of Customer and Community Services or other appropriate senior member of staff who has not previously been involved in making a decision on the case.

If the tenant is still dissatisfied after the outcome of the appeal, then they may make a complaint which will be dealt with under our complaints handling procedure.

The applicant is also entitled to appeal to court by summary application on decisions relating to assignment and subletting. The court may consider any refusal to be unreasonable and direct us to consent to the application.

18. Policy Review

This policy will be reviewed every 3 years unless an earlier review is required due to legislative changes.