



Putting People 1st

## Tenancy Management Policy

H.05

Date of review: June 2022

Date of next review: June 2025

This policy document can be produced in various formats, for instance, in larger print or audio-format; and it can also be translated into other languages, as appropriate.

Our equality and diversity policy statement describes our key equality commitments that we use to develop all organisational services; this includes employment services and services to tenants and other customers.

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## **1. Introduction**

The purpose of this policy is to outline the way in which Pineview Housing Association will meet the requirements of the Housing (Scotland) Act 2001 (and subsequent amendments) with regard to aspects of tenancy rights and obligations.

This policy is supplemented by detailed working procedures which will be used by staff in implementing the policy.

## **2. Policy Aims and Objectives**

The overall aim of this policy is to provide clear guidance on what tenancy agreements will be offered by Pineview Housing Association and what action we will take when there is a change of tenancy.

The specific objectives of this policy are,

- To make the most effective use of the housing stock and resources to meet housing need.
- To ensure effective, efficient and accountable management of our properties.
- To ensure that clear information is provided to tenants in respect of their rights
- To comply with legal duties, regulatory requirements and good practice requirements.
- To provide a clear statement for staff and tenants of the level of service and standards to which we will work.

## **3. Legal Framework and Regulatory Compliance**

Pineview Housing Association will have full regard to legislation, contractual obligations, good practice guidance and the requirements of the Scottish Housing Regulator (SHR) in its approach to tenancy management.

### **Legal Requirements:**

This policy and its implementation will reflect our statutory and contractual obligations. This includes (but is not an exhaustive list):

The Scottish Secure Tenancy Agreement

The Housing (Scotland) Act 2001, 2010 & 2014

The Family Law (Scotland) Act 2006

The General Data Protection Regulation and Data Protection Act 2018

### **The Scottish Social Housing Charter (SSHC)**

The Housing (Scotland) Act 2010 made provision for the establishment of the Scottish Social Housing Charter in which the Scottish Government sets out the standards and outcomes that social landlords should aim to achieve when carrying their housing activities.

The SHR has responsibility to monitor and assess registered social landlords' performance towards the SSHC.

In terms of tenancy management, the SSHC states as follows:

- **Outcome 1: Equalities** – Social landlords should perform all aspects of their housing services so that every tenant and other customer has their individual needs recognised, is treated fairly and receives fair access to housing and housing services.
- **Outcome 2: Communication** - Social landlords should manage their business so that tenants and other customer find it easy to communicate with their landlord and get the information they need about their landlord, how and why it makes decisions and the services it provides.

### **The Scottish Government and the Scottish Federation of Housing Associations (SFHA)**

Specific guidance and model documents have been developed by the Scottish Government and / or the SFHA on the work areas / issues covered by this policy. Regard has been taken of these in the development of this policy and associated procedures.

## **4. Tenancies**

### **4.1 Scottish Secure Tenancy (SST)**

The majority of the tenancies that we will offer applicants will be Scottish Secure Tenancies.

The Scottish Secure Tenancy (SST) was introduced by Section 11 of the Housing (Scotland) Act 2001. A tenancy will be a SST where:

- The house is let as a separate dwelling
- The tenant is an individual and the house is the tenant's only or principal home
- The landlord is a local authority, a registered social landlord or a water or sewerage authority
- The tenancy was created on or after 30<sup>th</sup> September 2002

The Association will use the Model Scottish Secure Tenancy Agreement as a template for the terms and conditions contained within our Scottish Secure Tenancy Agreement. The revised Model, which takes into account the provisions of the Housing (Scotland) Act 2014 which came into effect in 2019, will be used as a template for tenancies created from 1<sup>st</sup> May 2019.

Prior to signing the Tenancy Agreement, a summary copy of the main terms and conditions will be provided.

At the tenancy sign up the terms and conditions will be explained at length to each new tenant.

We will also provide other useful information/leaflets regarding tenants' rights and responsibilities e.g. Right to Repair etc.

The new tenant will be given the opportunity to bring someone along to support them should they wish to do so and also to ask any questions in relation to their tenancy at this time.

In specifically defined circumstances, however, it will not be appropriate for a Scottish Secure Tenancy to be offered and the Association will be able, but not obliged, to offer a Short Scottish Secure Tenancy

#### **4.2 Short Scottish Secure Tenancy (SSST)**

A Short Scottish Secure Tenancy (SSST) was introduced by the Housing (Scotland) Act 2001 ('The 2001 Act') and amended by the Housing (Scotland) Act 2014 ('The 2014 Act').

It can only be applied in circumstances as defined in the legislation.

A SSST has similar terms and conditions to a SST but has no right to succession and security of tenure is limited.

Due to these circumstances the Housing Services Manager will determine whether a Short Scottish Secure Tenancy is to be offered.

The Association will use the Model Short Scottish Secure Tenancy Agreements as templates for the terms and conditions contained within our Short Scottish Secure Tenancy Agreements. The revised models, which take into account the provisions of the Housing (Scotland) Act 2014 which came into effect in 2019, will be used as a template for tenancies created from 1<sup>st</sup> May 2019.

The basic conditions which must be met for this type of tenancy to apply are:

- The Association has served a statutory notice on the prospective tenant before the creation of the tenancy (i.e. before the tenancy agreement is signed).

The notice must state that the tenancy will be a Short Scottish Secure Tenancy and must detail the provisions of the tenancy. We will also give our reason(s) for offering a SSST.

The circumstances where a SSST may be offered are as follows:

- Where the prospective tenant or anyone intending to live with him/her is subject to an Anti Social Behaviour Order (ASBO)

- Tenant(s) who have had an order for repossession / eviction made against them on the grounds of anti social or similar behaviour in the previous 3 years.

- Temporary accommodation for people taking up employment in the area.

- Temporary accommodation for tenants who have to move because of work being carried out on their house.

- Temporary accommodation for a homeless person for 6 months or more

- The prospective tenant requires or is in receipt of housing support services.

There are also new grounds introduced in the 2014 Act to grant a SSST:

- A new or existing tenant may be issued with a SSST if there has been anti-social behaviour within the previous 3 years.
- A SST may be converted into a SSST. This can be based on the anti-social behaviour of not just the existing tenant but also any joint tenant, anyone residing or lodging at the property, any sub tenant and any visitors to the property.

- Granting a SSST on the anti-social behaviour of not just the prospective tenant but also any prospective joint tenant, any visitor to a property currently occupied by the prospective tenant or by anyone who will be living with them as well as anyone who might be living with the prospective tenant.
- Homeowners who cannot occupy their home on a short-term basis.

Tenants have a right of appeal to the courts against a decision to either offer or a conversion to a Short Scottish Secure Tenancy.

We will ensure that the term of individual SSSTs meet legislative requirements. This will vary depending on the ground used for the creation of the SSST:

- Part 2, Section 9 of the 2014 Act sets a minimum period of 12 months for SSSTs that are created on any of the anti-social behaviour grounds. This can be extended by 6 months to 18 months where the tenant is in receipt of housing support services.
- Section 34 of the 2001 Act sets 6 months as the standard minimum period for SSTs on all the other remaining grounds in Schedule 6 of the 2001 Act.

The term will start from the date the SSST is granted or the date the tenant is served with a notice to convert the tenancy from a SST to a SSST.

A SSST can be terminated by any of the following methods:

- By termination by the tenant
- By notice from the Association
- By written agreement
- By abandonment of the tenant
- On the death of the tenant
- By Court Order once the fixed period of tenancy has ended; or
- By Court Order in accordance with Section 14 or Schedule 2 of the Housing (Scotland) Act 2001

In accordance with the legislation, we will issue the tenant with a notice to recover possession

We can seek recovery on the same grounds applicable to Scottish Secure Tenancies.

In these circumstances, the Court **must** grant an order for recovery of possession provided:

- The tenancy has reached its term
- Tacit relocation is not operating (i.e. it will not automatically be renewed for a further period)
- No further contractual tenancy has been entered into.
- A notice of proceedings in accordance with the legislative requirements has been served.

Where a tenant / prospective tenant is not satisfied with any of the following they may request a review of the decision:

- The decision to offer a SSST;
- The decision to convert a SST to a SSST; or
- The decision to recover possession of the property. Section 11 of the 2014 Act amends Section 36 of the 2001 Act. This gives every tenant the right to request a review of the decision to take action to recover the property before the case goes to court.

### **4.3 Joint Tenancies**

The Housing (Scotland) Act 2001 Section 11 states that any tenant is entitled to a joint tenancy with one or more individuals.

The tenant must apply to the Association in writing, providing details of the individual(s) to be included as joint tenant(s) on the Tenancy Agreement.

Such tenants will be jointly and severally liable for the responsibilities under the tenancy, including rent. All joint tenants must live in the property as their only or principal home.

Consent must be given by us unless there are reasonable grounds for not doing so. These reasonable grounds are similar to those noted under subletting and assignation

We may refuse permission for a joint tenancy if the property would be overcrowded or where the proposed joint tenants have had legal action taken against them for anti social behaviour or substantial rent arrears.

The circumstances of each application for a joint tenancy will be assessed on its own merits.

From 1<sup>st</sup> November 2019:

- The person requesting to be a joint tenant must have lived in the property for 12 months and
- Pineview Housing Association must have been notified in writing of them being in the property and the 12-month residency period starts when we have been notified.

#### **4.4 Lease/Occupancy Agreements**

In accordance with our Void Management Policy and to ensure we make best use of our housing stock we may enter into leasing arrangements with our partner agencies.

In order to maximise the rights of both the occupants and our partners, we will use the Scottish Federation of Housing Associations Model Lease Agreement and associated guidance notes as a template for the terms and conditions contained within our Lease Agreement.

Management Committee approval will be sought and given before the Association enters into any lease agreement concerning our properties.

#### **5. Termination of the Tenancy**

When a tenant wishes to terminate his/her tenancy, this will be actioned in accordance with the Housing (Scotland) Act 2001, as amended by the 2014 Act.

The 6 ways to end a tenancy are as follows:

- When we have successfully brought an action under one of the grounds for possession and obtained a court order for possession.
- When we have repossessed the property in accordance with our Abandoned House Policy
- On the death of the tenant
- When it has been converted to a Short Scottish Secure Tenancy because an ASBO has been granted against the tenant.
- By written agreement between the Association and the tenant
- By 28 days written notice given to us by the tenant

From 1<sup>st</sup> May 2019:

## Serious Anti-social behaviour

If a tenant or anyone living or visiting the property are convicted of using the property or allowing it to be used for immoral or illegal purposes or of an offence punishable by imprisonment committed in or in the locality of the property, Pineview Housing Association is entitled to seek a court order to evict. The tenant has a right to challenge that decision. From 1<sup>st</sup> May 2019, the 2014 Act removed the need for the court to consider whether it is 'reasonable' to make an order for eviction where we are using this ground for eviction.

## Adapted properties

From 1<sup>st</sup> May 2019 Pineview Housing Association is able to apply to the Court to recover a property if it is not being occupied by anyone who needs the adaptations. We will only do this if we need the property for someone who needs the adaptations, give notice before applying to the Court to do this and also offer suitable alternative accommodation. The individual concerned would be able to ask the Court to consider whether our actions were reasonable and challenge the suitability of the alternative accommodation.

### **5.1 Termination of a joint tenant's interest in the tenancy**

A joint tenant may end their part of a tenancy by giving 28 days written notice to us and to each of the other tenants.

Under the Family Law (Scotland) Act 2006 the consent of a 'non entitled' spouse of any joint tenant giving up a tenancy is also required. A joint tenant's liability for the tenancy finishes at the end of the 28 days.

### **5.2 Abandonment of a tenancy**

We can recover possession of a tenancy which we believe not to be occupied by the tenant and that he/she does not intend to occupy it as their home. Our Abandoned House Policy explains how we do this.

## **6. Houses under Temporary Accommodation**

The tenancy rights of Scottish Secure tenants who have been temporarily housed elsewhere due to their tenancy not being available for occupation is protected under Section 11 (9) of the Housing (Scotland) Act 2001.

## 7. Succession

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

- The tenant must be deceased
- There must be a qualified person to succeed

A request for a succession will be considered by us in accordance with Section 22 and Schedule 3 of the Housing (Scotland) Act 2001, as amended by the 2014 Act.

There are 3 priorities in determining who should succeed to a tenancy:

The first priority is to the surviving spouse, co-habitee of either sex or a joint tenant.

The second priority is to members of the tenant's family provided they are aged 16 or over and that the house was their only or principal home at the time of the tenant's death.

The third priority is given to a carer who is providing or who has provided care for the tenant or a member of the tenant's family. The carer must be aged 16 or over and have given up their previous or principal home, to be qualified for succession.

More than one person can succeed to a tenancy. If there is more than one qualifying successor then they must reach agreement as to who will succeed. If they cannot agree then the Association will decide.

When a house has been designed or substantially adapted for the use of persons with special needs, only spouses, co-habitees, same sex partners, joint tenants or persons with special needs can succeed to the tenancy. Other persons who would otherwise be qualified to succeed will have a right to suitable alternative accommodation.

The Act places a limit of two occasions in which a tenancy may be succeeded.

Where a qualified person succeeds to the tenancy, then that person is required to pay the rent for the period following the death of the tenant.

If the qualifying person declines the succession, then they will be charged a fee equivalent to the amount of rent in respect of any period in which they have occupied the house after the tenant's death.

From 1<sup>st</sup> November 2019 there is no set residency requirement for spouses, civil partners and joint tenants other than they have to be living in the property at the tenant's death.

For all other categories of successors (i.e. partners/ cohabitees, family members and carers) they:

- must have lived in the property for 12 months and
- Pineview Housing Association must have been notified in writing of them being in the property and the 12-month residency period starts when we have been notified.

## **8. Assignment**

An assignment of tenancy occurs when a tenant who intends to leave the house conveys all rights and obligations under the tenancy agreement to another person.

A request to assign a tenancy is considered under Section 32 and Part 2 of Schedule 5 of the Housing (Scotland) Act 2001.

Consent to the assignment may only be withheld under the following reasonable grounds:

- A notice of possession has been served against the tenant specifying one of grounds 1 to 7 in Part 1 of Schedule 2
- An order for recovery of possession has been made against the tenant
- A payment other than a reasonable rent or a deposit has been received by the tenant in consideration of the assignment
- The assignment would lead to overcrowding
- We propose to carry out work on the house or building

From 1<sup>st</sup> November 2019 under the 2014 Act there are additional grounds to refuse as follows:

- New residency and notification period not satisfied (see below)
- The property would be under-occupied
- The assignee would not be in a reasonable preference category under our Allocation Policy

A tenant who wishes to assign their tenancy must request to do so in writing.

We will give our consent or reasons for refusal within 28 days of receiving an application. If a reply is not given within 28 days, it can be assumed that consent has been given.

The circumstances of each application for an assignation of tenancy will be assessed on its own merits.

From 1<sup>st</sup> November 2019:

- The tenant and the proposed assignee must have lived in the property for 12 months and
- Pineview Housing Association must have been notified in writing of the proposed assignee being in the property and the 12-month residency period starts when we have been notified.

## **9. Request for a Lodger or Sublet**

A request from a tenant to take in a lodger or sub let their home will be considered in accordance with Section 32 and Part 2 of Schedule 5 of the Housing (Scotland) Act 2001.

All tenants with a Scottish Secure Tenancy Agreement have the right to ask for permission from us if they wish to take in a lodger or sublet their home. The only exception to this is where the tenancy has been converted to a Short Scottish Tenancy.

Normally only members of the tenant's household are allowed to live in the house. In order to ensure properties do not become overcrowded or misused, our permission must be sought before a tenant allows other people to live there.

For the purpose of this policy a lodger is defined as a person (not a member of the tenant's household) who has the use of one or more rooms within the property and who may have a formal financial arrangement with the tenant.

Subletting is defined as the tenant nominating another responsible person to take care of the property, due to the tenant wishing to leave their home for a temporary period but intending to return to it.

A tenant who wishes to sublet their house or take in a lodger must give details of the proposed transaction, including any payment to be received by the tenant.

Reasonable grounds to refuse permission for subletting or taking in a lodger are:

- A notice of recovery of possession has been served against the tenant/proposed lodger or sub-let person

- A Decree of Repossession has been obtained against the tenant/ proposed lodger or sublet person.
- The rent or deposit that the tenant proposes to charge is unreasonable
- Overcrowding would result
- We propose to carry out work on the house or the building.

If permission is given, the tenant cannot increase the rent or other payments made by the lodger or sublet person without our permission.

We will give our consent or reasons for refusal within 28 days of receiving an application. If a reply is not given within 28 days, it can be assumed that consent to the application has been given.

It is not the intention of the Association to allow lodgers or subletting indefinitely. A period of up to one year will be considered. A tenant may re-apply for permission at the end of this period.

From 1<sup>st</sup> November 2019:

- The tenant must have lived in the property for 12 months.

## **10. Mutual Exchange**

Section 33 of the Housing (Scotland) Act 2001 gives tenants the right to apply for a mutual exchange.

A mutual exchange occurs when two tenants of either a local authority or registered social landlord, exchange houses with the agreement of the Landlord(s).

We will encourage mutual exchanges wherever possible as they assist in making the best use of our housing stock, can relieve pressure on the transfer list and provide an additional opportunity for tenants to move to more suitable accommodation.

Requests for a mutual exchange must be made in writing by both tenants and our approval granted before an exchange can proceed.

Reasonable grounds for refusing a mutual exchange are:

- A notice of recovery of possession has been served

- A Decree for repossession has been granted by the courts
- Overcrowding would result
- Under occupancy would result
- One of the houses will be affected by works due to be carried out by the landlord e.g. demolition
- Requests for exchanges as a result of financial inducement on the part of either of the applicants (in advertisements or by any other means) or where there are grounds to believe that either party has attempted to mislead the other. Particular attention would be given to applicants who would worsen their circumstances by mutual exchange
- Either party gaining access to a special needs facility to which they are unsuited or have no need.
- Either party giving up a special needs facility that they require and would be moving to a less suitable house.
- More than one month's rent is owed to the landlord (or other debt in relation to the tenancy)

Requests for mutual exchanges will be considered and assessed on their own merits.

## **11. Training and Development.**

The training requirements of Management Committee and staff will be regularly assessed to ensure that they have the necessary skills to effectively implement and monitor this Tenancy Management Policy.

## **12. Performance Monitoring**

We are committed to continuously improving tenancy management practice. We understand that effective monitoring and reporting is fundamental to the process of evaluating and reviewing performance.

We will provide regular reports to Management Committee on:

- The number of tenancies allocated annually and what tenancy type
- The number of successions, assignments, mutual exchanges, sub-lets and lodger applications approved annually.

- Information (without disclosing personal details) about any tenant who formally initiates a right of appeal
- Details of any issues that may require to be considered for policy or procedural change

### **13. Links with Other Policies**

Pineview Housing Association recognises that the effective operation of this policy is dependent on policies and performance in a variety of service areas, some of these are:

Allocations Policy  
Abandoned House Policy  
Anti Social Behaviour Policy  
Rent Account Management Policy  
Void Management Policy  
Complaints Policy  
Equality and Diversity Policy

### **14. Risk Management**

Risk can arise from this policy as a result of:

- Unlawful tenancy agreements or tenancy changes
- Failure to address tenancy issues/requests timeously

### **15. Equality and Diversity**

Our core values include providing a fair and equal service for all people and this is detailed in our Equality and Diversity Policy. Our approach to managing tenancies will reflect that commitment.

### **16. Complaints**

Anyone who is not happy /satisfied with the service they have received as a result of this policy has a right to complain. Please see the Association's Complaints Policy for details on how to do this.

## **17. Review/Consultation**

This policy will be reviewed every 3 years unless amendment is prompted by a change in legislation or monitoring/reporting reveals that a change in policy is required sooner.

Procedures and working methods may be altered more frequently where this is needed.

Policy review will involve consultation with our tenants, our Customer Forum Group and any other relevant stakeholders. We will take account of any views or representations in revising our policy and service provision to assist in the development of effective service delivery.

We will regularly publish information about our performance in managing tenancies through annual reports or other appropriate methods.