



# **RUCHAZIE HOUSING ASSOCIATION TENANCY MANAGEMENT POLICY**

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This policy recognises tenancy changes as prescribed in the Housing (Scotland) Act 2014, effective from 1<sup>st</sup> November 2019. Any requests prior to that date will be dealt with in accordance with the Housing (Scotland) Act 2001.

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## **1. INTRODUCTION**

- 1.1 Ruchazie Housing Association will manage their homes in accordance with legal provisions and contractual terms contained within their tenancy agreements and best practice guidelines.
- 1.2 This policy outlines Ruchazie Housing Association's policy in relation to management of our tenancies.
- 1.3 This policy sets out our approach to managing changes to a tenancy in respect of :
  - Scottish Secure Tenancy
  - Short Scottish Secure Tenancy
  - Termination of Tenancy
  - Mutual Exchange
  - Joint tenancy changes
  - Assignment
  - Succession to tenancy
  - Sub-let
  - Permission to reside / Lodger
- 1.4 The following legislation is relevant to this policy
  - The Housing (Scotland) Act 2001, 2010 and 2014
  - Scottish Secure Tenancy and Short Scottish Secure Tenancy
  - Data Protection Act 1998
  - General Data protection Rules 2018

## **2. SCOTTISH SECURE TENANCY (SST)**

- 2.1 Most of our tenants will be offered/ or will have a Scottish Secure Tenancy (SST) agreement. Other tenants may be offered a Short Secure Tenancy (see 3.). The SST applies to houses let by local authorities, RSLs, water or sewage authorities in an order by the Scottish Ministers.
- 2.2 The tenancy agreement sets out our responsibilities as a landlord and tenants' obligations.
- 2.3 The Association can only vary the terms of the tenancy agreement in consultation with all tenants affected.

### **3. SHORT SCOTTISH SECURE TENANCY (SSST)**

- 3.1 A Short Scottish Secure Tenancy (SSST) has limited security of tenure and no succession rights. It can only be applied/offered in certain circumstances. The tenancy lasts for a specified period of time, of at least six months, which can be terminated as soon as it reaches its end.

We will serve a notice on the prospective tenant to advise that it will be a SSST before any agreement is signed.

There are two types of SSST that may be offered

1. SSST (Antisocial behaviour related grounds) offered for a period of at least six months.
2. SSST(Grounds unrelated to antisocial behaviour)

#### 3.2 Tenants with a Short Scottish Secure Tenancy:

- Only have security of tenure (the right to live in the house) for the period of the tenancy
- Do not have certain statutory rights like sub-letting the home, or on death, for anyone to take over the tenancy.

- 3.3 The association can grant an SSST where there has been a history of anti-social conduct on the part of the tenant, or a member of their household, or where the Association is allowed to grant a temporary let, or to new tenants on a trial basis.

### **4. TERMINATION OF TENANCY**

#### 4.1 A SST can only be terminated:

- By four weeks' notice given by the tenant to the landlord
- By written agreement between the landlord and tenant
- Conversion to a SSST because an anti-social behaviour order has been granted against the tenant
- On the death of a tenant where a qualifying person succeeds to a tenancy on the death of a previous tenant.
- Where the property has been abandoned and notice has been served
- Where the landlord has successfully brought action under one of the grounds for possession and has secured a court order for possession.

- 4.2 Tenants who are temporarily accommodated in another house because their house is not available for occupation have their security of tenure protected.

#### 4.3 A SSST can only be terminated:

- By Notice from you (1 & 2)

- By Notice from us (2 only)
- By written agreement ( 1 & 2)
- By Court order once the fixed period of the tenancy has ended (1 & 2)
- By Court order on Other grounds (1 & 2)
- By Abandonment 1 & 2)
- By death (1 & 2)
- By abandonment by joint tenant (1 & 2)
- Termination by joint tenant alone (1 & 2)

4.4 The Association will not bring any tenancy to an end in any other way than those stated in 4.1 and 4.3.

## 5. MUTUAL EXCHANGE

5.1 Scottish secure tenants have a legal right to exchange their tenancy with other Scottish secure tenants. This applies also where tenants are tenants of different landlords, including council tenants but not private landlords.

5.2 There is no definitive list for grounds for refusing consent. Each case requires to be assessed on its own merits. Specific reasons mentioned in the Act where it is deemed reasonable to refuse consent are detailed below. It is stressed that there is no legal definition of reasonableness and each case must be assessed on its own merits. Further the list is not definitive and other reasons may exist for refusing exchange applications, for instance, the new tenant is unable to meet the terms of the tenancy such as payment of rent.

### 5.3 Reasons to refuse consent:

- **A notice of proceedings has been served** - It is clearly reasonable to refuse consent where the Association has served a Notice of Proceedings and is considering raising court action for recovery of possession. The Housing Officer must check the details of each case. A Notice may be in force, for example, for a breach that has been remedied, for example , repayment of rent outstanding. In such cases, the Officer should withdraw the Notice and proceed with the exchange request accordingly.
- **Order for recovery of possession** - where the Association has been granted an order for recovery of possession, no exchange request should be granted as the association will be seeking to evict the tenant(s) by the date specified in the extract decree.
- **Tied Accommodation** – where the tenant occupies accommodation as part of his/her contract of employment, exchange requests should be refused, as this would have adverse effects upon the tenants ability to fulfil work duties.

- **Housing designed/adapted for persons with special needs-** This provision is to ensure that accommodation provided for people with special needs continues to be reserved for this purpose. It is important to note that the Act does not specify that it must be the tenant who has special needs. For example, the house could have been adapted for a member of the tenant's family with special needs such as a wheelchair user. When considering requests, it is necessary to check if any member of the incoming tenants household may have the special needs requiring such accommodation.
- **Substantially larger accommodation-** The legislation empowers landlords to refuse applications where, as a result of the exchange, the accommodation being taken up would be substantially larger than that required by the tenant and the tenant's family. There is no definition of substantially larger and each case must be assessed on its merits. For example, a single person wishing to exchange into a 5 apartment would probably satisfy this criteria.
- **Accommodation unsuitable to tenants' (and tenants' family) needs –** This is not defined in statute and the Housing Officer must assess each case on its merits. In carrying out any assessment the Housing Officer should consider medical and other factors.
  - Medical factors – house may not be suitable because of its location, for example, a member of the incoming tenants household has serious medical problems and is unable to manage stairs.
  - Special needs -. Where a property may be unsuitable for the incoming tenant at present, the Association will consider provision of a ramp for example where that would make the accommodation suitable.
- **Overcrowding –** The statutory overcrowding standard is laid down by the Housing (Scotland) Act 1987. When applications to exchange are received the Housing Officer should assess household size to evaluate whether it fails to meet the legal standard. This is also reflected in our Allocations Policy.
- A payment has been made in cash or in kind by any of the applicants to each other in consideration of the proposed exchange.

#### 5.4 Right to Appeal

Any applicant, who is dissatisfied, following refusal of consent of their request for a mutual exchange, and wishes to make a complaint, has the right to do so. The applicant will be advised on the association's Complaint procedures.

## 6. JOINT TENANCY

- 6.1 Ruchazie Housing Association will ensure that joint tenancy applications are processed in accordance with legal provisions; contractual terms contained within the tenancy agreement and best practice guidelines.

Legal provisions exist that govern the right to a joint tenancy, (Housing (Scotland) Act 2001, Section 11 as amended by the Housing (Scotland) Act 2014).

- 6.2 Ruchazie will permit a joint tenancy to be created at the commencement of a tenancy between any two persons who were joint housing applicants.
- 6.3 Where an application is made for the creation of a joint tenancy after the commencement of a tenancy then the Association may permit a joint tenancy if the existing tenant applies in writing and supplies relevant additional information at the time of applying for permission. A form is provided for tenants to submit details of the proposed joint tenant.
- 6.4 In accordance with 5.2 Section 12 (1) of the Housing (Scotland) Act 2014 the proposed joint tenant must have lived at the property as their only or principal home for the 12 months before the tenant applies for them to become a joint tenant and the tenant, or any one of the joint tenants, or the person who has moved in must have notified the Association that the person has moved in and that the property is the person's only or principal home.
- 6.5 The 12 month qualifying period (as set out above) does not begin until the Association has been notified and has given consent for the person to reside. Any period before we have been notified but before we have given consent will not count as part of the 12 month qualifying period. The 12 month qualifying period applies to everyone including the tenant's spouse, civil partner or co-habiting partner.
- 6.6 Reasons for which an application for a joint tenancy may be refused is not exhaustive , some of the grounds where an application may be refused are:
- A Notice of Recovery of Possession has been served on the tenant on any of the 'conduct grounds' set out in paragraphs 1 -7 of Schedule 2 of the Housing (Scotland) Act 2001.
  - An Order for Recovery of Possession has been made against the tenant.
  - A payment has been received by the tenant , in cash or in kind, in consideration of the joint tenancy request.
  - Ruchazie HA intends to carry out substantial work on the property.

- There is damage or disrepair to the property caused by the tenant, a member of the household or a visitor to the property.
- The tenant has outstanding debt owed to the Ruchazie HA in terms of their tenancy being either arrears of rent, rechargeable repairs or any other debt related to their occupancy of the property.
- The Association has been given incomplete or false information about the application.
- The house is unsuitable for the prospective joint tenants needs.
- The prospective tenant has pursued a course of anti-social behaviour or has been convicted of using a previous tenancy for illegal or immoral purposes or has an Anti-social Behaviour Order.
- The property in question has substantial adaptations or design features which are not required by the joint tenant, or a housing development or a specific property has been designated for a particular type of tenant, such as a person requiring support to sustain their tenancy.

6.7 We will respond within 28 days to all requests.

6.8 Ruchazie HA will notify the tenant in writing of its decision within 28 days of receiving their application. Where consent for the joint tenancy has been refused we will advise the applicant of the reason(s) for refusing consent. If Ruchazie HA have not made a decision within 28 days of receiving the application Ruchazie HA will have deemed to have consented to the same under and in terms of Schedule 5, Part 2, Para 12 of the Housing (Scotland) act 2001 Act.

6.9 When the tenant or the proposed joint tenant is within the definition of a \* relevant person, the decision to grant or refuse permission shall only be by the Director following receipt of an appropriate report by the Housing Officer.

6.10 Any applicant who is dissatisfied, following refusal of consent of their request, and wishes to make a complaint, has the right to do so. The applicant will be advised on the association's Complaint procedures.

## **7. ASSIGNATION**

7.1 Ruchazie Housing Association will consider applications to assign a tenancy as set out in the Housing (Scotland) Act 2001, as amended by the Housing (Scotland) Act 2014 and in our Scottish Secure Tenancy Agreement.

7.2 Before a tenant can assign the tenancy of their home to someone else they must apply in writing to the Association for permission to do so and get our written consent, we will permit assignation only when:

- The house has been the tenant's only or principal home during the 12 months immediately before the tenant applies to assign their tenancy **and**
- The person that the tenant wishes to assign their tenancy to must have lived at the property as their only principal home for the 12 months before the application to assign is made **and**
- The tenant, joint tenant or person they wish to assign their tenancy to must have notified the landlord that the person they wish to assign the tenancy to is living in the house. The 12 month period does not start unless the landlord has been notified that the person is living in the property as their only or principal home.

7.3 The 12 month qualifying period (as above) does not commence until the Association has been notified and has given its consent for the person to reside. In the case of children in the household reaching the age of 16, who were part of the household when the property was allocated and it is their long term or principal home, no notification is required.

7.4 The assessment of the application for permission to reside will take account of both the tenant and the proposed assignee's circumstances and in all cases , must satisfy the criteria set down in Section 32 and Part 2 of Schedule 5 of the Housing (Scotland) Act 2001.

7.5 Reasons for which an application for an assignation may be refused is not exhaustive , some of the grounds where an application may be refused are

- A Notice of Recovery of Possession has been served on the tenant on any of the 'conduct grounds' set out in paragraphs 1 -7 of Schedule 2 of the Housing (Scotland) Act 2001.
- An Order for Recovery of Possession has been made against the tenant.
- A payment has been received by the tenant, in cash or in kind, in consideration of the joint tenancy request.
- Ruchazie HA intends to carry out substantial work on the property.
- There is damage or disrepair to the property caused by the tenant, a member of the household or a visitor to the property.
- The tenant has outstanding debt owed to the Ruchazie HA in terms of their tenancy being either arrears of rent, rechargeable repairs or any other debt related to their occupancy of the property.
- The Association has been given incomplete or false information about the application.

- The house is unsuitable for the prospective assignees needs.
- The prospective assignee has pursued a course of anti-social behaviour or has been convicted of using a previous tenancy for illegal or immoral purposes or has an Anti-social Behaviour Order.
- The property in question has substantial adaptations or design features which are not required by the joint tenant, or a housing development or a specific property has been designated for a particular type of tenant, such as a person requiring support to sustain their tenancy.
- Where giving the tenancy to the Assignee would result in under – occupancy.
- Where the Association may not give the person the tenant wishes to pass the tenancy to, reasonable preference under our Allocations Policy.

7.6 We will respond within 28 days to all requests.

7.7 Ruchazie HA will notify the tenant in writing of its decision within 28 days of receiving their application. Where consent for the assignation has been refused we will advise the applicant of the reason(s) for refusing consent. If Ruchazie HA have not made a decision within 28 days of receiving the application Ruchazie HA will have deemed to have consented to the same under and in terms of Schedule 5, Part 2, Para 12 of the Housing (Scotland) act 2001 Act.

7.8 When the tenant or the proposed assignee is within the definition of a \*relevant person, the decision to grant or refuse permission shall only be by the Director following receipt of an appropriate report by the Housing Officer.

7.9 The association works in partnership with the appropriate authorities to minimise fraud and overpayment in payment of financial support with housing costs. We are required to notify the appropriate authorities of any change in circumstances that may affect their entitlement to financial support.

7.10 Any applicant who is dissatisfied, following refusal of consent of their request, and wishes to make a complaint, has the right to do so. The applicant will be advised on the Association's Complaint procedures.

## **8. SUCCESSION**

8.1 Succession is the passing of a tenancy from a tenant who has died to another person who becomes the new tenant – known as the successor. Succession cannot take place unless a tenant dies.

- 8.2 To ensure rights to succession are protected the tenant must have told us that the person wishing to succeed to a tenancy has moved in to the property at the time they do so.
- 8.3 If there is no person to succeed the tenancy, or if every person who is qualified does not wish to succeed the tenancy is terminated.
- 8.4 The terms of which a tenancy can succeed are set out in Section 7 of the Association's tenancy agreement, and amended by the Housing (Scotland) Act 2014. Section 13(a) and 13(d) of the 2014 Act make changes to the rules on succession for unmarried partners, family members and Carers.
- 8.5 The tenancy may be inherited by one of the following persons in the following ways:

Level One – Spouse or Partner

- (a) In the case of a partner or co-habitee, they must have occupied the house as their only or principal home for at least 12 months immediately prior to the tenant's death. The 12 month period cannot begin unless we have been told the individual is living in the property as their only or principal home. We must have been told by the tenant, joint tenant or the person who wishes to succeed to the tenancy.
- (b) A partner or co-habitee is a person living with the tenant as husband and wife or in a relationship with the tenant which has the characteristics of a relationship between husband and wife except that the persons are of the same sex.
- (c) The Association must have been notified of, and have given consent to the proposed successor's residency.
- (d) If more than one person qualifies for the tenancy as a Level One successor they should, in the first instance, decide among themselves who will become the tenant. If they cannot agree, the Association will decide who will become the tenant.

8.6 Level Two- members of the tenant's family and

- Are at least 16 years of age at the date of death **and**
  - The house was their only or principal home at the date of death of the tenant and had been so for a period of not less than 12 months prior to the date of death.
- a) If more than one person qualifies to succeed the tenancy at Level Two, they should, in the first instance, decide among themselves who will

become the tenant. If they cannot agree, the Association will decide who will become the tenant.

- b) The 12 month period cannot begin unless we have been told the family member is living in the property as their only or principal home. We must have been told by the tenant, joint tenant or the person who wishes to succeed to the tenancy

8.7 Level Three – Carers , if no one qualifies at level One or level Two, or a qualified person at Level One or Level Two does not want to succeed to the tenancy, it may be inherited by a Level Three successor (a carer), if:

- The person is aged at least 16 at the date of death **and**
- The house was their only or principal home at the date of death of the tenant and had been so for a period of not less than 12 months prior to the date of death of the tenant **and**
- They gave up another only or principal home before the death of the tenant **and**
- They are providing, or has provided, care for the tenant or a member of the tenant’s family.

- a) The 12 month period cannot begin unless we have been told the individual is living in the property as their only or principal home. We must have been told that by the tenant or the carer.

- b) If more than one person qualifies to succeed the tenancy at Level Three, they should, in the first instance, decide among themselves who will become the tenant. If they cannot agree, the Association will decide who will become the tenant.

- c) The Association recognises the rights of genuine carers to succeed to a tenancy where qualifying conditions are met. The Association recognises ‘care’ as comprising ‘Personal Care’ as defined within Section 2 (28) of the Regulation of Care (Scotland) Act 2001 or Social Care as defined within Schedule 1 of The Community Care and Health (Scotland) Act 2002.

8.8 Adapted properties - Where the house has been designed or substantially adapted for a person with special needs -

- a) We may allow Level One successors to remain in the house whether or not they have a need to live in a property with special design or adaptation characteristics.

- b) If someone qualifies for the tenancy at Level Two or Level Three and does not have special needs requiring accommodation of that kind, we will terminate the tenancy and offer that person suitable alternative

accommodation . Where suitable accommodation is not available, we will allow the remaining residents to remain in the property on a Short Scottish Secure Tenancy.

c) At a second succession, where someone qualifies at Levels One, Two or Three and does not have special needs requiring accommodation of that kind, we will terminate the tenancy and offer that person suitable alternative accommodation. Where suitable accommodation is not available , we will allow the remaining residents to remain in the property on a Short Scottish Secure Tenancy.

d) Suitable alternative accommodation

Where we agree to offer/provide suitable alternative accommodation, we will offer a property in terms of Schedule 2, Part 2 of the Housing Scotland Act 2001, and consider-

1. the proximity to the place of work (including attendance at an educational institution) of the tenant and of members of the tenant's family, compared with the tenant's existing house,
2. the extent of the accommodation required by the tenant and the tenant's family,
3. the character of the accommodation offered compared to the tenant's existing house,
4. the terms on which the accommodation is offered to the tenant compared with the terms of the tenant's existing tenancy,
5. if any furniture was provided by the landlord for use under the existing tenancy, whether furniture is to be provided for use under the new tenancy which is of a comparable nature in relation to the needs of the tenant and the tenant's family,
6. any special needs of the tenant or the tenant's family.

8.9 If someone qualifies at any level to succeed to the tenancy but does not wish to become the tenant and they confirm in writing within four weeks of the death of the tenant and leave the house within 3 months, then rent shall be charged only for the actual period of occupation.

8.10 The Association will permit a tenancy to be inherited on a maximum of two occasions under the provisions of our Scottish Secure Tenancy Agreement. If a tenancy has already been inherited twice, the third death will normally end the tenancy. The tenancy will not end, however if there is a surviving joint tenant whose Scottish Secure Tenancy will continue. However, if there is still a person in the house who would otherwise qualify to inherit the tenancy under the tenancy agreement if it had not been previously succeeded on two occasions, the tenancy will continue for up to six months after the last death. The resident may be given a Short Scottish Secure Tenancy to occupy the property while alternative accommodation is secured.

- 8.11 Any offer of suitable alternative accommodation will be made following report made to the Management Committee. Any offer made will not be a succession but a new tenancy. Such an offer will be made in line with our Allocation Policy.
- 8.12 Any applicant who is dissatisfied, following refusal of consent of their request, and wishes to make a complaint, has the right to do so. The applicant will be advised on the Association's Complaint procedures.

## **9 SUB-LETTING**

- 9.1 Ruchazie HA will consider an application to sub-let a tenancy where the tenant has sought our permission to do so in writing. The tenant may also be asked for relevant additional information at the time of applying for permission.
- 9.2 A sub-let will only be considered when the tenant has been the tenant of the property throughout the 12 months immediately before an application is made, if they were not the tenant throughout that period, the house must have been their only or principal home and the person who was the tenant at that time must have notified the Association that the person who is now the tenant was living there.
- 9.5 The 12 month qualifying period will only begin when the Association has given permission for that person to reside. In the case of children in the household reaching the age of 16, who were part of the household when the property was allocated and it is their long term and principal home , no further notification is required.
- 9.6 The association will consider whether it is appropriate for that person to reside in the property. Reasons for refusal of an application to sublet are not exhaustive, some of the grounds under which an application may be refused are:
- A Notice of Recovery of Possession has been served on the tenant on any of the 'conduct grounds' set out in paragraphs 1 -7 of Schedule 2 of the Housing (Scotland) Act 2001.
  - An Order for Recovery of Possession has been made against the tenant.
  - A payment has been received by the tenant, in cash or in kind, in consideration of the sub-let that is not a reasonable rent or deposit.
  - Ruchazie HA intends to carry out substantial work on the property.
  - There is damage or disrepair to the property caused by the tenant, a member of the household or a visitor to the property.

- The tenant has outstanding debt owed to the Ruchazie HA in terms of their tenancy being either arrears of rent, rechargeable repairs or any other debt related to their occupancy of the property.
- The Association has been given incomplete or false information about the application.
- The house is unsuitable for the prospective sub-tenants needs.
- The prospective tenant has pursued a course of anti-social behaviour or has been convicted of using a previous tenancy for illegal or immoral purposes or has an Anti-social Behaviour Order.
- The property in question has substantial adaptations or design features which are not required by the sub-tenant, or a housing development or a specific property has been designated for a particular type of tenant, such as a person requiring support to sustain their tenancy.
- The sub-letting would lead to overcrowding or under-occupancy of the property.
- The Association has been advised by the Local Authority Sex Offenders Liaison Officer that the proposed sub-tenant or a member of their household's, occupancy is not compatible with appropriate risk management.

9.7 We will respond within 28 days to all requests.

9.6 Ruchazie HA will notify the tenant in writing of its decision within 28 days of receiving their application. Where consent for the sub-tenant has been refused we will advise the applicant of the reason(s) for refusing consent. If Ruchazie HA have not made a decision within 28 days of receiving the application Ruchazie HA will have deemed to have consented to the same under and in terms of Schedule 5, Part 2, Para 12 of the Housing (Scotland) act 2001 Act.

9.7 When the tenant or the proposed sub-tenant is within the definition of a \*relevant person, the decision to grant or refuse permission shall only be by the Director following receipt of an appropriate report by the Housing Officer.

9.8 The association works in partnership with the appropriate authorities to minimise fraud and overpayment in payment of financial support with housing costs. We are required to notify the appropriate authorities of any change in circumstances that may affect their entitlement to financial support.

9.9 Any applicant who is dissatisfied, following refusal of consent of their request, and wishes to make a complaint, has the right to do so. The applicant will be advised on the Association's Complaint procedures.

9.10 Tenants shall retain full responsibility for any damage, unauthorized alterations or non-standard fittings caused by a sub-tenant. The association will repair only those items that presents a risk to the safety of the tenant.

*\*relevant person*

- *A member of staff or a family member*
- *A Management Committee member or family member*
- *An elected person or family member*

## **10            POLICY REVIEW**

This policy will be reviewed every 3 years or sooner if required by a change in legislation.