

WISHAW AND DISTRICT HOUSING ASSOCIATION

END OF TENANCY POLICY

As with all the Association's policies and procedures, this document, where required, can be translated into other community languages on request. For people with visual impairment, taped, large print or Braille versions can also be provided. Further information on the implementation of this policy is available at the office.

Wishaw and District Housing Association acknowledges that, under the Housing (Scotland) Act 2001, it is required to consult with residents on policies that directly affect the management of the properties. The consultation process on the End of Tenancy Policy took place between January and February 2010.

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1.0 INTRODUCTION

Wishaw and District Housing Association understands that there are a variety of reasons and circumstances that require tenants to end their tenancy with the Association. Unfortunately, there are also occasions when the Association itself feels it necessary to bring a tenancy to an end and recover the property.

The Housing (Scotland) Act 2001 states the grounds and methods for either party to end a tenancy and this policy is intended to clarify these as well as to outline the obligations and responsibilities of both parties when a tenancy is to be ended and to give guidance to tenants and staff on the process of ending a tenancy.

2.0 LEGAL FRAMEWORK

In all aspects of the process of ending a tenancy, by either party, the Association will seek to conform and comply with all legislation, performance standards, guidance and good practice that directly and indirectly affects the process.

THE HOUSING (SCOTLAND) ACT 2001:

Section 12(1) stipulates the ways in which a tenancy can be ended by either the tenant or the Association.

Section 13 provides that a joint tenant may terminate his or her interest in the tenancy.

Section 14 sets out the grounds on which the Association may seek a court order for recovery of possession of a property and sub sections (2) to (5) set out the procedures which the Association must follow in repossession action.

Section 17 allows the Association to take action to secure and take possession of a house which appears to have been abandoned by the tenants and **Section 18** sets out the procedures that the Association must follow in taking possession of an abandoned property.

Section 20 allows the Association to bring to an end the interest of a joint tenant where that joint tenant appears to have abandoned the joint tenancy and subsections (2) and (3) set out the procedures that must be followed in ending the tenancy of a joint tenant that has abandoned the property.

SECTION 6 of THE SCOTTISH SECURE TENANCY AGREEMENT lays out the ways the tenancy agreement between the tenant and the Association can be ended and the responsibilities of the tenant when ending the tenancy.

SECTION 18 of THE MATRIMONIAL HOMES (FAMILY PROTECTION) ACT 1981 provides that a spouse/civil partner of a tenant has the right to remain in the property where the tenant wishes to end the tenancy. Co-habitees of the tenant are required to apply to the court to grant them occupancy rights under the Act.

THE RACE RELATIONS ACT 1974, THE RACE RELATIONS (AMENDMENT) ACT 2000 AND THE RACE RELATIONS ACT 1976 (AMENDMENT) REGULATIONS 2003 make it unlawful for an Association to discriminate on the basis of colour, ethnic or national origin, race or nationality.

THE SEX DISCRIMINATION ACT 1975 makes it unlawful for the Association to discriminate on the basis of sex.

THE DISABILITY DISCRIMINATION ACT 1995 as amended and extended by THE DISABILITY DISCRIMINATION ACT 2005 makes it unlawful for the Association to discriminate against disabled people by treating them less favourably than someone else.

THE DATA PROTECTION ACT 1998 imposes obligations on the Association not to disclose personal information held on computer or certain types of non-computerised data.

ACCESS TO PERSONAL FILES ACT 1987 gives individuals the right to have access to personal information about themselves in files held by the Association.

THE CIVIL PARTNERSHIP ACT 1999 obliges the Association to ensure that civil partners are given the same rights as married couples.

3.0 AIMS AND OBJECTIVES

The primary aim of the End of Tenancy Policy is to put a structure in place which ensures that tenancies are ended correctly and that all parties fulfil their respective responsibilities. The policy is also intended to provide guidance to staff on implementing the correct procedures and to tenants on the requirements placed on them.

Arising from these overall aims, the key objectives of the End of Tenancy Policy include:

- Ensuring that all tenants ending their tenancies are treated in a fair and equitable manner.
- Recognising and protecting the legal rights of other members of a tenant's household.
- Ensuring that the Association, at all times, meets its legal obligations and operates in accordance with good practice guidance.
- Promoting the Association as an understanding and supportive organisation.
- Protecting the Association by minimising rent loss and void periods.

4.0 ENDING THE TENANCY BY NOTICE OR AGREEMENT

4.1 Written Notice

A tenant, together with a joint tenant, may voluntarily end their tenancy by giving the Association AT LEAST 28 days written notice. Written notice should be given on the prescribed form and be signed by the tenant and all joint tenants named on the tenancy agreement.

Where applicable the spouse, civil partner or co-habitee of the tenant will be required to sign the termination notice to confirm that they do not wish to invoke their Occupancy Rights under the Matrimonial Homes Act. Where the spouse/civil partner is no longer living in the property, the tenant will be required to take all reasonable steps to get a written declaration from their ex-partner that he/she does not wish to invoke their occupancy rights.

4.1.1 *Termination Date*

The tenancy will be terminated 28 days from the date the written notice is received at the office. The tenant/joint tenant(s) will be held liable for the rent on the property until the tenancy is terminated.

The Association may agree not to hold the outgoing tenant to the full 28 days notice only where the Association has a new tenant for the property who wishes to move into the property before the 28 days notice expires. The outgoing tenant(s) will only be held liable for the rent on the property to the termination date.

The Association will confirm the tenancy end date in writing no later than 2 weeks prior to the date the tenancy is due to end.

4.2 Written Agreement

A tenancy may be ended with the consent of both the tenant/joint tenant and the Association by way of a written agreement that details the conditions of both parties agreeing to the tenancy ending. The written agreement must be signed by all joint tenants named on the tenancy agreement and the Association and, where applicable, the spouse, civil partner or co-habitee of the tenant and joint tenants as confirmation that they do not wish to invoke their Occupancy Rights under the Marital Homes Act. Where the spouse/civil partner is no longer living in the property, the tenant will be required to take all reasonable steps to get a written declaration from their ex-partner that he/she does not wish to invoke their occupancy rights.

Where one or more of the joint tenants is no longer residing in the property and all reasonable steps have been taken to have them end their interests in the tenancy, the Association's Abandoned House Policy and Procedures will be implemented. The tenancy for the remaining tenants will not end until the abandonment notice period has expired.

4.2.1 Termination Date

The date on which the tenancy will end will be agreed by both parties but will normally be no longer than 28 days from the date of the written agreement. In agreeing a date to end the tenancy, the Association will take into consideration:

- The likely void period and loss of rent
- The tenant's personal and financial circumstances
- The best interests of the neighbours
- The best interest of the Association

The outgoing tenant(s) will be held liable for the rent on the property to the agreed termination date.

4.3 Invoking Occupancy Rights

Where a tenant's spouse/civil partner wishes to invoke his/her occupancy rights and remain living in the marital home or where a co-habitee applies to the court for occupancy rights, an application must be submitted to the Association prior to the termination date. The application will be dealt with in accordance with the Association's Assignment Policy.

4.4 Pre-termination Inspections

Tenants voluntarily ending their tenancy by either notice or written agreement will be required to provide access to the property for a pre-termination inspection within one week of notification of the tenancy ending. All repairs and works identified during the inspection that are required to be carried out by the tenant will be confirmed in writing and the tenant given the opportunity to carry out the works at their own expense prior to the tenancy end date. Tenants also have the responsibility to make good any damage to the property that they are aware of, even if this is not visible to the inspector.

The Association may consider supplying items such as doors, work surfaces etc at cost and/or carrying out certain repairs on behalf of the tenant on the condition that all costs incurred are either paid in advance or an acceptable repayment arrangement is agreed.

The outgoing tenant is required to advise the Association when the identified repairs and works are complete to allow a further inspection to determine that the works have been carried out to the expected standard.

Works identified and not carried out by the termination date will be carried out by the Association and the costs recharged to the former tenant in line with the Association's policies on Void Management and

4.5 Void Property Inspection

It must be accepted that there is likely to be repairs required to the property that can only be seen once the house is empty of furniture, floor coverings and fixings. A void property inspection will therefore be carried out as soon as practical after the property has been vacated. The former tenant will be advised in writing of any further repairs identified as their responsibility.

All additional works identified at the void inspection will be carried by the Association and the costs recharged to the former tenant.

4.6 Keys

All keys for the property must be handed into the Association's office before 12.30pm on the date of termination.

The same number of keys that were given out at the start of the tenancy should be returned when the tenancy is ended. Where keys have been lost, stolen or otherwise not available, the outgoing tenant(s) will be responsible for getting new keys cut or for the cost to the Association of replacing the keys.

Where no keys are returned to the office, the outgoing tenant(s) will be held liable for the costs of replacing all the locks in the property.

4.7 Rent Arrears or Other Monies Owed

Any monies still owed to the Association that pertain to the tenancy will be pursued as a former tenant arrear in accordance with the Association's policy and procedures.

4.8 Credits

The Association will repay any credit in the outgoing tenant's rent account or any other account pertaining to the tenancy only where it has been confirmed that there is no overpayment of Housing Benefit to be repaid. Any monies owed to the Association by the tenant will be deducted from the credit and the balance repaid by cheque.

5.0 DEATH OF THE TENANT

5.1 Notification

The Association will require a photocopy of the death certificate as official notification that the tenant has died and that the tenancy should be ended. At the time of notification the next-of-kin of the deceased should be identified and all future correspondence and communication directed to that person.

5.2 Termination Date

Where there is no joint tenant or person in the house that would qualify to succeed to the tenancy or where no succession application has been received by the Association within 28 days of the tenant's death, the tenancy would normally end on the date of the tenant's death. However, the Association recognises that this can be a distressing time for the family and does not wish to make the situation more difficult. At the same time the Association also has a responsibility to minimise the loss of rent and time a house is left empty.

The Association will therefore agree to grant the family a period of 2 weeks after the date of death to allow them to clear the house and hand in the keys. This period will be rent free and will be granted on the condition that the family allows the Association access to the property to carry out an inspection and any necessary repairs in order that the property is ready for allocation as soon as possible.

If the family of the deceased wish to have a longer period for clearing out the house, the family would normally be held liable for the full rent for the extended period. Granting of an extended period will be entirely at the discretion of the Housing Operations Manager.

5.3 Keys

All keys for the property must be handed into the Association's office before 12.30pm on the date the tenancy is ended unless an alternative arrangement has been agreed by the Association.

5.4 Rent Arrears and Monies Owed

Where the deceased tenant has an arrear relating to his/her tenancy owed to the Association consideration will be given to pursuing payment from the deceased's estate. No arrear or monies owed will be pursued without the approval of the Housing Operations Manager.

5.5 Credits

Any credit left in any account pertaining to the deceased's tenancy shall, in the first instance, be used to clear any other monies owed to the Association. Thereafter, the Association will pay any credit to either the executor of the estate or the identified next-of-kin. Before any monies are paid to the next-of-kin s/he will be required to state in writing that they are the deceased's legal next-of-kin and that they are receiving the money on that basis.

6.0 COURT ORDER

The Association can only end a tenancy without the tenant's consent by way of a court order or via abandonment procedures.

A court order, in accordance with our Rent Arrears and Evictions Policy will only be sought as a last resort. By granting an order the court is giving the Association permission to remove the tenant from the property and repossess the house. Before the court can grant an order for eviction the Association must serve legal notice on the tenant and all members of the household aged 16 or over, stating the reasons the action is being taken. The grounds on which legal action can be raised are stated in Section 16 and Schedule 2, Part 1 of the Housing (Scotland) Act 2001 and are summarised in the Association's Scottish Secure Tenancy Agreement.

Where a repossession order has been granted by the court and the eviction is to be carried out, the tenant will be notified both in writing and in person, where possible, of the date of eviction no later than 1 week prior to the date the tenancy shall end. The Association will fully comply with the requirements of Section 11 and advise North Lanarkshire Council that the household is to be evicted from the property and request that advice and assistance be offered to the household.

The Association will appoint Sheriff Officers to carry out the eviction and hand the property over to the Association. The tenant will not be required to complete an end of tenancy notification and the tenancy will be ended on the date of eviction.

The details of the legal action and the eviction will be recorded as part of the tenancy file and any request for a tenancy reference from another landlord will highlight that the tenancy was ended by repossession.

7.0 ABANDONMENT BY THE TENANT(S)

7.1 Abandonment by all Tenants

Where the Association has reasonable grounds for believing that the property has been abandoned by the tenant(s), the Abandonment Policy and Procedures will be invoked.

7.2 Abandonment by one Joint Tenant

Where the Association has reasonable grounds for believing that one of the joint tenants has left the property and is no longer using the house as their only or principal home, the Abandonment Policy and procedures will be invoked.

At the end of the full notice period the tenancy of the remaining joint tenant(s) will continue on the same terms and conditions.

7.3 Application Against Repossession

Any tenant or joint tenant whose tenancy has been ended on the grounds of abandonment has the right to make an application to the sheriff against the repossession. This application must be made within 6 months of the second abandonment notice being served.

8.0 SALE OF THE PROPERTY TO THE TENANT(S)

Where a property is sold to the tenant(s), the tenancy shall be ended on the date of transfer of ownership where the Association has received formal notification of the completion of the sale from its solicitor.

9.0 CONVERSION TO A SHORT SCOTTISH SECURE TENANCY AGREEMENT

Where an Anti-Social Behaviour Order has been served against a tenant, joint tenant or any member of the household, the Association may serve notice on the tenant(s) converting the tenancy to a Short Scottish Secure Tenancy. Although the tenancy under the Scottish Secure Tenancy agreement will end on the date the notice is served, the household will not be required to leave the property on that date and will be only required to do so if the Association serves the legally required notices to bring the Short Scottish Secure Tenancy to an end. The process for ending a Short Scottish Secure tenancy is outlined in section 10 of this policy and in the Association's Short Scottish Secure Tenancy agreement.

10.0 ENDING A SHORT SCOTTISH SECURE TENANCY AGREEMENT

10.1 By Notice from the Tenant

The tenant may give written notice that they wish the tenancy to end on the termination date. Where applicable, the spouse, civil partner or co-habitee of the tenant will be required to sign the termination notice to confirm that they do not wish to invoke their Occupancy Rights under the Matrimonial Homes Act. Where the spouse/civil partner is no longer living in the property, the tenant will be required to take all reasonable steps to get a written declaration from their ex-partner that he/she does not wish to invoke their occupancy rights.

10.2 By Notice from the Association

When seeking to bring a Short Scottish Secure Tenancy to an end the Association will serve the tenant with a notice to quit which will expire on the termination date of the Short Scottish Secure Agreement. The notice to quit will be serviced at least 40 days before the termination date.

The notice has the effect of ending the Short Scottish Secure Tenancy and prevents the tenancy under the Short Scottish Agreement from automatically renewing. If however the tenant does not vacate the property by the termination date the Association will seek a court order for repossession.

10.3 By Written Agreement

The Short Scottish Secure Tenancy may be brought to an end by written agreement between both parties.

10.4 By Court Order

Where the Association believes that there has been a breach of the Short Scottish Secure Tenancy Agreement it may apply for a court order to repossess the property under Section 14 of the Housing (Scotland) Act 2001. Repossession action can only be raised on one or more of the grounds detailed in Schedule 2 of the Act and summarised in the Short Scottish Secure Tenancy Agreement.

Before the Association raises the action written notice will be given to the tenant, the joint tenant and any other member of the household that is over 16 years of age.

10.5 By Abandonment by the Tenants

Where the Association has reasonable grounds for believing that the tenant(s) or one or more of the joint tenants is/are no longer living in the property it shall instigate the same abandonment procedures as for a Scottish Secure Tenancy.

10.6 By Death of the Tenant

A Short Scottish Secure tenancy can not be inherited by any other person after the tenant dies. However where there is a joint tenant s/he will become the sole tenant on the death of the other tenant. Where there is no joint tenant the tenancy shall be ended under the same procedures as for a Scottish Secure Tenancy.

10.7 By Conversation to a Scottish Secure Tenancy

If the Short Scottish Secure Tenancy was given for one of the three reasons stipulated in Section 6.10 of the Short Secure Tenancy Agreement the tenancy will normally automatically convert to a Scottish Secure Tenancy 12 months after the creation of the Short Scottish Secure Tenancy.

11.0 MUTUAL EXCHANGES

Where a tenant of the Association is exchanging houses with either another tenant of the Association or the tenant of another registered social landlord, the tenancy of the outgoing tenant will be ended on the same day as the tenancy of the new tenant starts.

12.0 ASSIGNATIONS

Where the Association approves an assignment of a tenancy, the tenancy will not be ended and the new tenant will not be required to sign a new tenancy agreement. Rather, the tenancy will be transferred to the new tenant on the agreed date for the assignment.

13.0 POWER OF ATTORNEY & ADVOCATES

Where the tenant is unable to sign an end of tenancy notification due to ill-health, disability or because they have been deemed incapax under the terms of the Adults with Incapacity (Scotland) Act 2000, the Association will accept an end of tenancy notification from the tenant's court appointed advocate or a legal power of attorney.

The Association will not normally accept the signature of a non appointed family member or carer.

14.0 DELEGATION OF RESPONSIBILITIES

The practical implementation of the policy and the day-to-day operation of the procedures for terminating tenancies will be undertaken by members of the Association's Tenancy Services Department.

15.0 CONFIDENTIALITY

All personal information provided to the Association during the course of processing an end of tenancy will be treated with the strictest confidence and no details such as a forwarding address will be divulged to any other body or person other than those mandated by the tenant or allowed under the Association's Data Protection Policy or the Data Protection Act 1988.

Personal details provided in the course of implementing the end of tenancy procedures will only be disclosed to the Association's staff on a 'need to know' basis as determined by the Assistant Chief Executive and in line with the End of Tenancy Policy and Procedures.

16.0 ACCESS TO INFORMATION

The Association maintains computerised tenancy records. In line with the Data Protection and Access to Information legislation the Association will therefore respond to written requests by a tenant for access to any records stored pertaining to their own tenancy. Under normal circumstances there will be a fee of £10.00 made for requests for copies of information. This fee is to cover administration, stationary, postage and incidental expenses. However, the Association reserves the right to waive the fee where it is felt appropriate to do so.

In line with the Association's Equal Opportunities Policy no charge will be made in respect of charges incurred by the Association in providing information in alternative formats such as large print, Braille and languages other than English.

17.0 EQUAL OPPORTUNITIES

Wishaw and District Housing Association is committed to Equal Opportunities and will endeavour to ensure that all functions within the end of tenancy process are carried out in a fair and undiscriminating manner in line with both the End of Tenancy Policy and the Equal Opportunities Policy.

In particular the Association will not discriminate on the grounds of race, colour, culture, age, gender, religious beliefs, sexual orientation, national or ethnic origin, political affiliations or beliefs, disability, marital status or social background and medical conditions (including those with AIDS or are HIV positive).

To ensure that the Association's end of tenancy procedures are understood by all affected parties and that everyone concerned has access to the relevant information and advice, translation and interpretation services will be provided where required and, where appropriate information will be made available in other formats including tape, Braille and large print. These services will be provided in line with the Association's Translating & Interpreting Policy.

18.0 THE RIGHT TO APPEAL

Tenants, joint tenants and members of the household over 16 years of age have the right to appeal any decision made by the Association in relation to ending a tenancy and will be advised of this right in writing where applicable. They may also make a formal complaint if they feel aggrieved at the treatment they have received from staff during the process of having their tenancy ended.

Appeals and complaints will be dealt with in accordance with the Association's Complaints Procedures. A copy of the Association's Complaints Procedures is available from the office on request.

19.0 INFORMATION & ADVICE

A summary of the Association's End of Tenancy Policy will be made available on request and, where necessary, will be made available on tape or in Braille or will be translated into other languages as required.

20.0 POLICY REVIEW

The full End of Tenancy Policy will be reviewed at least once every three years. However, elements of the policy may be reviewed within this timescale if required.

21.0 CONSULTATION

The Association will seek to carry out a consultation exercise prior to final approval being given for any proposed review and/or amendment to the Association's End of Tenancy Policy and, where appropriate will seek comments and views of interested and affected parties including tenants and other partners. All comments and views formally expressed and notified to the Association as part of the consultation exercise will be considered prior to final implementation.

However, in order to allow the Association to provide as high a standard of service as possible the proposed reviewed and/or amended policy may be implemented as an interim policy during the consultation period, pending final approval.

Document History

First Adopted by Management Committee	-	1990/1991
First Revision by Management Committee	-	16 December 1997
Second Revision by Board of Management	-	28 January 2003
Third Revision by Board of Directors	-	4 July 2006
Fourth Revision by the Assistant Chief Executive	-	26 January 2010

Written by EL