



## **TENANCY SUCCESSION**

**November 2019**

## 1. Purpose

The purpose of this procedure is to provide clear guidance to staff on how we will manage succession rights of our tenants. These rights are set out by in the Housing (Scotland) Act 2001 section 22 and Schedule 3 as amended by the Housing (Scotland) Act 2014 and in the Association's Scottish Secure Tenancy Agreement. The main purpose is to ensure that qualifying partners or other people who have been living with the tenant prior to their death can continue living in the property. Staff should bear in mind that bereavement is a stressful and difficult time for individuals, succession should be dealt with sensitively. Whilst legislative rules are in place, staff should treat each case individually and be aware of exceptional circumstances. The procedure applies to all landlords within the Link Group.

## 2. What is succession?

Succession to tenancy takes place automatically when the present tenant dies **and** there is a qualifying person who chooses to succeed. There is no need for people to 'apply' to succeed. However, procedures are in place to ensure that we follow the legal rules. Only 'qualifying persons' can succeed to a tenancy and there are conditions and qualifying time periods set out in law before a succession can go ahead.

The 2001 Act stipulates the definition of 'qualifying person', and the 2014 Act made changes to qualifying periods stipulating that, apart from a spouse or civil partner, the qualifying person must have lived in the property as their only and principal home on a continuous basis for the 12 months prior to the tenants death.

Succession **only** applies to Scottish Secure Tenancies.

## 3. Qualifying period

When a tenant dies there is **no** qualifying period for:

- the tenant's spouse or partner
- an existing joint tenant.

The following groups are classed as qualifying persons **if** they have lived in the property as their only and principal home continuously for twelve months immediately prior to the tenant's death.

- Cohabitees or partners of either sex
- Members of the family aged 16 or over
- Carers over the age of 16 who have given up their only or principal home to move in with and care for the tenant

To have the right to succeed to the tenancy, the tenant or the qualifying person must have notified the Association in writing (either by letter or email) that they have moved into the house and are living in it as their only and principal home. The 12 month qualifying period does not start until notice is given.

Any change in household details must be recorded on Aareon with a clear note on the tenancy record about when this was notification received. A written acknowledgement must be issued to the tenant within 5 days of receipt.

The Association will not withhold 'permission to reside' unless this would lead to overcrowding and this should be discussed with the Housing Services Manager.

In exceptional circumstances, consideration may be given to granting a tenancy of the property to someone who has been residing with the tenant prior to their death but where the qualifying period has not been met. Such cases will be approved by the Operations Director in line with the Lettings Policy.

#### **4. Eligibility and priority for succession**

Legislation sets out three levels for qualifying successors to a tenancy in a mainstream property . It also allows for a tenancy to pass by succession on two occasions (different rules apply for purpose built or adapted properties – see section 7 below)

##### **Level 1**

The highest priority to succeed to a tenancy on the tenant's death goes to

- The tenant's spouse or civil partner **who is living with the tenant when they died**
- Any surviving joint tenant, **if the house was their only or principal home at the time of death**
- The tenant's partner or cohabitee where the house was their home for 12 months continuously prior to the tenant's death

If more than one person qualifies to succeed the tenancy as a level one successor (for instance if there was a joint tenancy between a parent and adult child but the deceased tenant also had a wife), they should be encouraged to decide amongst themselves who will take on the tenancy, or whether they wish a joint tenancy, within 4 weeks from the death of the tenant. Where they cannot decide who will succeed the Association will decide taking into account all the needs and circumstances of those involved. This decision will be taken by a senior manager.

## **Level 2**

If no-one qualifies, or chooses not to succeed at level 1, then a member of the tenant's family will succeed if

- They are aged 16 or over at the date of the tenant's death
- The property was their only or principal home throughout the 12 months prior to the tenant's death
- The landlord had been informed that they were living in the property

If more than one person qualifies to succeed the tenancy as a level one successor for instance if they had two more adult children they should be encouraged to decide amongst themselves who will take on the tenancy or whether to apply for a joint tenancy within 4 weeks from the death of the tenant, otherwise the Association will decide taking into account all the needs and circumstances of those involved, the final decision being made by a senior manager.

## **Level 3**

If no-one qualifies, or chooses not to succeed at levels 1 and 2 then a carer may succeed if

- They are aged at least 16 at the date of the tenant's death
- The property was their only and principal home at the date of the tenant's death AND for a continuous period of at least 12 months prior to the death
- They had given up another only or principal home to care for tenant
- They were providing care for the tenant

## **5. Carers**

The Association recognises the valuable and important role of carers and care will be taken to ensure that they are not disadvantaged by the 12 month qualifying period. There will be cases where a person has given up their home to care for a parent or other older relative and the tenant dies within 12 months, We recognise that there may be good reason why the Association has not been informed – they will have moved in following a medical emergency or at a time when a high level of care was needed, which left little time to seek advice or inform the Association they have move in. Where an applicant does not meet the qualifying period for succession, we will consider carefully the circumstances of the case and consider whether it is appropriate to allow them to be awarded the tenancy of the property or make them the offer of another property. This decision will be made by a senior manager in line with the Lettings Policy.

## **6. Right to decline succession**

If someone has the right to succeed a tenancy but does not want to become the tenant, they should give written notice within 4 weeks of the tenant's death and they should vacate the property with three months of the death of the tenant. They are not a Scottish Secure Tenant. The Housing Officer should write to tell them that they may remain the property for a period of three months but that they are liable to pay rent from the date of the tenant's death until they leave. The Housing should monitor the situation closely. If this person fails to adhere to the conditions of the tenancy (including rent payment) or fails to move out within 3 months then the issue should be raised with the Housing Services Manager who will contact our solicitor to raise legal action.

## **7. Limits on succession**

The law allows for two rounds of succession. If a tenancy has already been 'inherited' twice, the third death will normally end the tenancy. However, if there is a surviving **joint** tenant their tenancy will continue.

If there is a qualifying person left in the tenancy who wants to succeed (but is not entitled to since the tenancy has already been succeeded to twice) they are able to remain in the property for 6 months after the tenant dies. They are liable to pay rent from the date of the tenant's death until they leave. They should be given a copy of the original tenancy agreement as well as a letter which makes clear that they are not legally entitled to succeed but states that the Association will permit them to remain the property for a period of up to 6 months and that they must adhere to the conditions of the tenancy agreement in terms of paying the rent and other obligations of tenancy.

The Housing Officer should follow up this letter with a visit and provide advice and assistance to secure new accommodation as well as providing help to make housing benefit /UC claims for housing costs.

The Housing Officer should monitor this closely and keep in touch with the resident. If there is any breach of the tenancy agreement (i.e failure to pay rent or ASB) or they fail to move out within 6 months then the issue should be raised with the Housing Services Manager who will contact our solicitor to raise legal action.

Whilst there are no statutory obligations to do so, in exceptional circumstances we may grant a new tenancy to a person who would otherwise meet the qualifying criteria. Any such allocation must be approved by a senior manager in line with the Lettings Policy.

## **8. Specially Adapted Properties**

The legislative rules are different for properties that have been designed or substantially adapted for a wheelchair user or disabled person and there is only one

round of succession permitted. Persons qualifying under level 1 (spouse, civil partner or cohabitee) are entitled to succeed to the tenancy.

No qualifying person can succeed at level two or three UNLESS they also have special needs which that property is designed or adapted to meet (for instance if a family member who is living as part of the household also requires an adapted property).

Qualifying members at level two and three (family members or carers) are permitted to stay in the accommodation until suitable accommodation is provided but are liable for payment of rent from the date of death until they leave. The Housing Officer should write to such persons explaining this and should thereafter visit to discuss accessing alternative accommodation and to provide assistance and advice on paying rent.

The Association is required to provide such persons with suitable alternative accommodation. The Housing Officer should seek to ensure that they receive assistance to appropriate priority in line with our Lettings Policy and if appropriate seek to provide alternative housing for them as a special case in line with the Lettings Policy.

If these persons fail to adhere to the conditions of the original tenancy agreement or repeatedly refusals of appropriate alternative accommodation, the Association will move to raise eviction based on them having no right title or interest to the property

Housing Officers should always seek advice on such cases from their manager.

## **9. Under occupation**

Qualifying persons have a right to succeed even if they are under occupying the property.

## **10. Failure to meet criteria**

Where people meet the legislative criteria, succession is automatic- people do not have to 'apply' to succeed. However, if the Association does not believe that a person meets the criteria to succeed, a letter should be issued to this effect.

At no point in disputed cases should staff advise the person to leave the property. Removing of people who do not meet the legal rules relating succession should be carried out via our solicitors. We should initially ask our solicitors to write to the person informing them that they have no right to succeed and remain in the property. If the person fails to leave the property, an eviction action should be raised on the basis of them having no right title interest in the property. Housing Officers should discuss any such cases with their manager.

## **11. Following on from a succession**

**11.1** The Housing Officer should write to the qualifying person who has succeeded to the tenancy confirming that they are now the tenant from the date of the tenant's death and that they are now take on the responsibilities of the tenancy including payment of rent.

**11.2** A new tenancy agreement is not given as the successor tenant takes on the terms and conditions of the original tenancy as signed by the original tenant but will be required to sign a variation of tenancy document.

**11.3** The successor tenant cannot be held liable for rent arrears or any other housing debts. Any outstanding debts should be dealt with in line with the former tenant debt policy. However, where the tenancy was a joint tenant, the joint tenant is liable.

**11.4** The housing officer should arrange to meet with the successor tenant within 2 weeks of succession to

- Give them a copy of the original tenancy agreement and ask them to sign the variation of tenancy document.
- Discuss tenancy terms and conditions
- Discuss payment of rent and refer for welfare benefit advice where necessary
- Where appropriate, discuss housing options

**11.5** When a tenancy has been succeeded to the Association will not be responsible for carrying out repairs that were the previous tenant's responsibility. In addition, the re-let standard does not apply and there is no need for gas/electric checks where these are up to date.

## **12. Complaints**

Anyone who is dissatisfied with how the Association has handled the succession to tenancy can make a complaint in line with the Association's Complaint handling procedure and, if they remain dissatisfied, has recourse to the SPSO.