



## **SUBLETTING POLICY 2022**

### **1.0 OBJECTIVE**

The purpose of this policy is to set out Ochil View's arrangements for considering applications to sub-let an Ochil View property as set out in the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014 and in our Scottish Secure Tenancy Agreement and Short Scottish Secure Tenancy Agreements.

### **2.0 MAKING AN APPLICATION TO SUB LET A TENANCY**

Ochil View will consider an application to sub-let a tenancy where the tenant has sought our permission to do so in writing. The tenant must supply relevant additional information at the time of applying for permission.

The tenant should provide a copy of the proposed sub-let agreement between the tenant and the proposed sub-tenant. The sub-let agreement will be a Common Law Contract between the sub-tenant and tenant.

- 2.1 Permission to sub-let will be granted by the Association for not more than an initial 6 month period. However, following a request by our tenant, this initial period may be extended or renewed in exceptional circumstances.

### **3.0 ASSESSING AN APPLICATION TO SUB-LET A TENANCY**

The assessment of applications for permission to sub-let will take account of both our tenant's and the proposed sub-tenant'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. These criteria are set out as **Appendix 1**.

- 3.1 In accordance with Section 12(2) of the Housing (Scotland) Act 2014 Act we will permit an application to sublet only when the tenant has been the tenant of the house throughout the 12 months immediately before they apply for written permission to sublet their home or if they were not the tenant throughout that period, the house must have been their only or principal home during those 12 months 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. An example of this could be where the tenant was not the tenant throughout the previous 12 months but has during this period succeeded to the tenancy and immediately wants to sublet it.
- 3.2 Details on qualifying periods for household members to succeed or be assigned a tenancy can be found within the Succession Policy and Assigination Policy.
- 3.3 There are no residency conditions for the person that wants to live in the property as a sub-tenant.

#### **4.0 REASONS FOR WHICH AN APPLICATION TO SUB-LET A TENANCY MAY BE REFUSED**

4.1 Although this list is 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 (attached as **Appendix 2**).
- ✓ 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.
- ✓ Ochil View 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 owing to Ochil View 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-tenant’s needs.
- ✓ The prospective sub-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.
- ✓ Where the terms or the conditions of the sub-letting arrangement as set out in the Tenancy Agreement are deemed by the Association to be unreasonable.
- ✓ The sub-letting would lead to overcrowding 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 of the property is not compatible with appropriate risk management.
- ✓ The property was designed or substantially adapted for a person with special needs for example Wheelchair Adapted properties or Elderly Amenity properties as they are specially designed for persons over pensionable age and the sub-tenant does not require this type of property.
- ✓ That the Association would not grant a tenancy to the proposed sub-tenant, for reasons set out in the Association’s Allocations Policy

## **5.0 RECORDING AND PROCESSING OF APPLICATIONS**

The recording of applications to sub-let a tenancy is the responsibility of the Housing Services Section. We will respond within 28 days to all requests.

## **6.0 ENTITLEMENTS, PAYMENTS AND BENEFITS**

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 Customer Services Committee or Board of Management, following receipt of an appropriate report.

## **7.0 NOTIFICATION OF DECISION**

Ochil View will notify the tenant in writing of its decision within 28 days of receiving their application. Where consent has been refused we will advise the applicant of the reason/s for refusing consent. If Ochil View has not made a decision to refuse or to consent within 28 days of receiving the written application Ochil View will be deemed to have consented to the same under and in terms of Schedule 5, Part 2, Para 12 of the Housing Scotland 2001 Act. Where the applicant is dissatisfied with the Association's decision, the applicant may seek further information and explanation of our decision and may exercise their right to appeal as set out in the Complaints procedure.

## **8.0 SUB-LETTING AND FINANCIAL SUPPORT WITH HOUSING COSTS**

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 a significant change in the circumstances of any tenant that may affect their entitlement to financial support with housing costs. We will notify the local authority and where applicable the Department of Work and Pensions of any changes in household.

## **9.0 SUB-LETTING AND RECHARGEABLE REPAIRS AND THE CONDITION OF THE PROPERTY**

Tenants shall remain fully responsible for any damage, unauthorised alterations or non-standard fittings caused by their sub-tenant.

Where a property has tenant responsibility repairs, tenant damage, unauthorised alterations or non-standard fittings caused by a sub-tenant, the Association will repair only those items that present a risk to the safety of the tenant.

## **10.0 REVIEW OF THIS POLICY**

This policy will be reviewed at least every five years.

6<sup>th</sup> May 2022

Policy Review Process and Consultation

Reviewed by Senior Management Team on	31 <sup>st</sup> May 2022
Considered by the Customer Services Committee on	2 <sup>nd</sup> June 2022
Approved by the Board of Management	30 <sup>th</sup> June 2022
Date of next review	June 2027

APPROVED

**SECTION 32 OF THE HOUSING (SCOTLAND) ACT 2001**

- (1) It is a term of every Scottish secure tenancy that the tenant may assign, sub-let or otherwise give up to another person possession of the house or any part of it or take in a lodger—
  - (a) only with the consent in writing of the landlord, and
  - (b) In the case of an assignation, only where the house has been the assignee's only or principal home throughout the period of 6 months ending with the date of the application for the landlord's consent to the assignation under paragraph 9 of schedule 5.
- (2) A landlord whose consent is required under subsection (1) may refuse such consent only if it has reasonable grounds for doing so.
- (3) There are, in particular, reasonable grounds for refusing such consent if—
  - (a) a notice under section 14(2) has been served on the tenant specifying a ground set out in any of paragraphs 1 to 7 of schedule 2,
  - (b) an order for recovery of possession of the house has been made against the tenant under section 16(2),
  - (c) it appears to the landlord that a payment other than—
    - (i) a rent which is in its opinion a reasonable rent, or
    - (ii) a deposit which in its opinion is reasonable, returnable at the termination of the assignation, sub-letting or other transaction and given as security for the sub-tenant's obligations for accounts for supplies of gas, electricity, telephone or other domestic supplies and for damage to the house or contents, has been or is to be received by the tenant in consideration of the assignation, sub-letting or other transaction,
  - (d) The transaction for which consent is sought would lead to overcrowding of the house in such circumstances as to render the occupier guilty of an offence under section 139 of the 1987 Act, or
  - (e) The landlord proposes to carry out work on the house or on the building of which it forms part so that the proposed work will affect the accommodation likely to be used by the sub-tenant or other person who would reside in the house as a result of the transaction.
- (4) Where the landlord is a registered social landlord which is a co-operative housing association, any consent under subsection (1) is subject to the condition that the assignee, sub-tenant or other person is a member of the association when the assignation or sub-lease takes effect or, as the case may be, when possession is given to the other person.
- (5) The Scottish Ministers may by order modify subsection (3).
- (6) It is a term of every Scottish secure tenancy that, where the landlord has given consent to an assignation, sub-letting or other transaction under subsection (1), the tenant —

- (a) must notify the landlord of any proposed increase in the rent which was payable by the sub-tenant at the commencement of the assignment, sub-letting or other transaction, and
  - (b) Must not increase the rent if the landlord objects to the increase.
- (7) An assignment, sub-letting or other transaction to which this section applies is not—
- (a) a protected tenancy or a statutory tenancy within the meaning of the Rent (Scotland) Act 1984 (c. 58), or
  - (b) An assured tenancy, and Part VII (rent assessment) of that Act does not apply to such an assignment, sub-letting or other transaction.
- (8) In this section and schedule 5, “sub-tenant” means a person entitled to possession of a house or any part of a house under an assignment, sub-letting or other transaction to which this section applies, and includes a lodger.
- (9) The provisions of Part 2 of schedule 5, so far as relating to this section, have effect as terms of every Scottish secure tenancy.

Section 12(2) of the Housing (Scotland) Act 2014 Act makes the following changes:

- the tenant must have been the tenant of the house throughout the 12 months immediately before they apply for written permission to sublet their home or if they were not the tenant throughout that period, the house must have been their only or principal home during those 12 months; and the person who was the tenant at that time must have notified the landlord that the person who is now the tenant was living there.
- The 12-month period does not start until the landlord has been notified

**GROUNDS ON WHICH COURT MAY ORDER RECOVERY OF POSSESSION**

- (1) Rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy has been broken.
- (2) The tenant (or any one of joint tenants), a person residing or lodging in the house with, or sub-tenant of, the tenant, or a person visiting the house has been convicted of-
  - (a) using the house or allowing it to be used for immoral or illegal purposes, or
  - (b) An offence punishable by imprisonment committed in, or in the locality of, the house.
- (3) (1) The condition of the house or of any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant (or any one of joint tenants) or any person residing or lodging with, or any sub-tenant of, the tenant; and in the case of acts of waste by, or the neglect or default of, a person residing or lodging with, or sub-tenant of, a tenant, the tenant has not, before the making of the order in question, taken such steps as the tenant ought reasonably to have taken for the removal of that person.  
  
(2) In sub-paragraph (1), "the common parts" means any part of a building containing the house and any other premises which the tenant is entitled under the terms of the tenancy to use in common with the occupiers of other houses.
- (4) The condition of any furniture provided for use under the tenancy, or for use in any of the common parts (within the meaning given in paragraph 3(2)), has deteriorated owing to ill-treatment by the tenant (or any one of joint tenants) or any person residing or lodging with, or any sub-tenant of, the tenant; and in the case of ill-treatment by a person residing or lodging with, or sub-tenant of, a tenant, the tenant has not, before the making of the order in question, taken such steps as the tenant ought reasonably to have taken for the removal of that person.
- (5) The tenant and-
  - (a) the tenant's spouse or Civil Partner<sup>1</sup>, or
  - (b) any person with whom the tenant has, for a period of at least 6 months immediately prior to the commencement of the period referred to below, been living in the house as husband and wife or in a relationship which has the characteristics of the relationship between Civil Partners<sup>2</sup>, have been absent From the house without reasonable cause for a continuous period exceeding 6 months or have ceased to occupy the house as their principal home.
- (6) The tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by the tenant.

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<sup>1</sup> As amended by Schedule 28 Part 4 , Section 65 of the Civil Partnerships Act 2008

<sup>2</sup> As amended by Schedule 28 Part 4 Section 65 of the Civil Partnerships Act 2008

(7) (1) The tenant (or any one of joint tenants), a person residing or lodging in the house with, or any sub-tenant of, the tenant, or a person visiting the house has-

- (a) acted in an anti-social manner in relation to a person residing in, visiting or otherwise engaged in lawful activity in the locality, or
- (b) pursued a course of conduct amounting to harassment of such a person, or a course of conduct which is otherwise anti-social conduct in relation to such a person, and is not reasonable in all the circumstances that the landlord should be required to make other accommodation available to the tenant.

(2) In sub-paragraph (1)-

- "anti-social", in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,
- "conduct" includes speech, and a course of conduct must involve conduct on at least two occasions,
- "Harassment" is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).

APPROVED