



UNAUTHORISED OCCUPANTS AND SQUATTERS POLICY



1. INTRODUCTION

- 1.1 The Association at all times will aim to reduce the opportunity for unauthorised occupation in its properties. This policy sets out how the Association will deal with cases of unauthorised occupation and squatters.

2. POLICY STATEMENT

- 2.1 The Association is responsible for ensuring that all persons occupying its properties are authorised to do so. The Association will uphold its rights and responsibilities as a landlord to ensure proper use of its properties and to protect tenants from the effects of any unauthorised occupation of its properties. This policy aims to assist in the promotion of the Associations aims and objectives of achieving sustainable communities through best use of its housing stock.

- 2.2 Our aim is to:

- Ensure that the occupants of all our properties have a valid tenancy agreement
- Identify if any property becomes occupied without the Associations permission
- Take fast and effective action within the law and good practice to remove any unauthorised occupants and squatters

Before the Association takes legal proceedings against an unauthorised occupant or squatter it must prove that the original tenancy has come to an end. This will be done using the procedures, which accompany this policy.

The Association will then consider possession proceedings/further legal proceedings to recover possession of the property. There are different processes and legal considerations which are used in the case of both unauthorised occupation and squatters which must be followed at all times.

Legislative and Statutory Framework

- Housing Act 1985
- Housing Act 1988
- Housing Act 1996
- Criminal Law Act 1977
- Family law Act 1996
- Criminal Justice and Public Order Act 1994
- Tenant Services Authority Regulatory Standards (Formerly the Regulatory Code of the Housing Corporation)



3. IMPLEMENTATION

3.1. The definition of an Unauthorised Occupant or Squatter

Unauthorised Occupants

Unauthorised Occupants are those living in an Association property where a tenancy already exists (which is not their own), or where a property has void status.

Some examples of unauthorised occupants are:

- Those left in occupation following the departure of the tenant, or;
- Where subletting has occurred without the Associations permission.

Squatter

A squatter is defined as a person who is unlawfully occupying land without any right to do so. Squatters who occupy a property without permission are trespassers.

3.2. Rights of unauthorised Occupants and Squatters

Unauthorised occupants and squatters occupy property without the Association permission, but still have certain legal status. The Association will not:

- Harass or threaten occupants in anyway;
- Interfere with the services provided to the property; or
- Use force to obtain entry to the premises except with a court order

However, the Association will not undertake repairs to a property occupied by an unauthorised occupant, unless there are health and safety implications for other residents or unless effective asset management of the property requires the Association to do so.

The Association will ensure that unauthorised occupants and squatters are kept informed of any legal action the Association is taking. The Association will refer them to relevant agencies such as Local Authority Homeless Units and Advice Centres, Law Centres or the Citizens Advice Bureau for further advice and assistance. The Association will not advise unauthorised occupants and squatters of their rights.

3.3. Displaced Residential Occupiers (DRO)& Protected Intending Occupiers (PIO).

A **Displaced Residential Occupier (DRO)** is a person who was forced from their home, for the following reasons:

- The DRO was occupying the premises as a residence immediately prior to occupation of squatters
- The DRO was excluded by a person who entered as a trespasser



A DRO could be an Association tenant, who experiences a squatter entering and taking up occupation of their home, whilst the tenant is out of the property.

A **Protected Intending Occupier (PIO)** is a person who has already been offered and has accepted an Association property. For this reason it is essential that new tenants are allocated, offered and accept void properties as soon as possible after the property has become void or even before the previous tenant has left.

The law allows police to evict squatters immediately if they occupy property after it has been offered to and accepted by a prospective tenant.

3.4. **How to avoid Unauthorised Occupation**

The Association realises that it is essential to minimise the risk of squatting and vandalism by:

- Reducing the number of empty properties and the time they stand empty
- Securing all empty properties that are likely to be empty for long periods of time or are in areas of known risk
- Hanging curtains, fitting timed light switches, and fitting alarms with remote links to a central control
- The pre-allocation of properties before the outgoing tenant vacates
- Encouraging neighbours to report any signs of damage/illegal entry
- Regularly checking all void properties are secure
- Undertaking tenancy audits of all properties on a regular basis
- Working in partnership with other agencies to ensure correct tenant occupy premises and when taking action to recover possession

3.5. **Illegal Assignment of Tenancy**

No Association tenant is allowed to assign their tenancy without permission of the Association. Assignment means giving or selling their tenancy to any person or persons. The Association's tenants do not have the right to sell their tenancies.

There are a number of exceptions to this rule:

- When a secure tenant is allowed to assign their tenancy to a person who would be entitled to succeed to their secure tenancy on their death
- Where a mutual exchange has taken place
- Where an order has been made by the Courts under section 24 of the Matrimonial Causes Act 1973, section 17(1) of the Matrimonial and Family Proceedings Act 1984 and paragraph 1 of schedule 1 to the Children's Act 1989
- Where a joint tenant has assigned their part of the tenancy to the other joint tenant (Refer to Variation of Tenancy Procedure for further guidance)



3.6. **Payment of Damages (Rent)**

Unauthorised Occupants should be requested, to make weekly payments for as long as they occupy the property. These are legally called damages and should never be referred to as rent as this implies that the Association accepts that a tenancy exists. The damages are based on the rent that the Association has lost during that period. It is crucial that in all cases of unauthorised occupation no action is taken that could cause an implied tenancy to come into existence. Mesne Profit is a legal term that indicates that the amount charged is for “use and occupation” of the premises and is not rent. This is done to avoid any implication that rent is being accepted and that a tenancy has been granted by the Association.

3.7. **Common Law Tenants**

Were a tenant no longer resides at a tenancy as their principal home, then it will be considered abandoned (see Abandoned, Absent Tenants & Disposal of Goods Policy and procedure for further information)

The tenancy will be terminated by Notice to Quit. The tenant remains a common law tenant until the NTQ expires.

The following rules must be applied:

- Until the date of the Notice to Quit rent offered will be accepted from the new common law tenant.
- After the date of expiry of the Notice to Quit, any payments from the former common law tenant must be accepted as mesne profits. This means that any payments made, will be classed as for use and occupation only.

3.8. **Granting succession, assignment or a tenancy**

Guidance on succession and assignment can be found in the Association’s Variation of Tenancy Policy. However, the Association has the power to resolve unauthorised occupation without a court hearing, where this can be justified. The decision must be made by the Tenancy Management Coordinator, except in the circumstances where a new tenancy is being granted. Where this is the case the decision can only be made by the Operations Director.

The Tenancy Management Coordinator can decide that:

- the occupant has the right to succession to the previous tenancy;
- the occupant has the right to assignment of the previous tenancy;



The Operations Director can decide that:

- a new tenancy should be granted to the occupant in their own right starting from the end of the previous tenancy
- the occupant should be offered alternative accommodation

In all cases there must be clear reason recorded in the form of a management let report for the action taken. A new tenancy should be granted where:

- It would be unreasonable not to do so because of exceptional circumstances of the occupant (an example may be where a relative who does not have the right to succession was living with the tenant for many years);or
- Because there is legal advice recommending such action.

Where the property is too large for the occupant they should be offered alternative accommodation that meets their needs. If this is refused then the Association should take legal possession to recover possession of the property.

4. RESPONSIBILITY

- 4.1 .Overall responsibility for the implementation of this policy lies with the Operations Director.
- 4.2. The Tenancy Management Co-ordinator is responsible for the day-to-day management and implementation of the unauthorised occupants policy, for the application of the policy and procedures, monitoring and reviewing performance managing the budget, and making recommendations for improvement.
- 4.3. Tenancy Management Officers are responsible for the day-to-day operation of the Unauthorised Occupants Policy.

5. CONSULTATION

- 5.1. The Association will consult on a 3 yearly basis with staff, outside agencies and benchmarking groups to promote continuous improvement and develop good practice in this policy
- 5.2. Prior to making any changes to this policy the Association will consent and consider the view of:
 - All relevant staff
 - Senior Management Team
 - The Tenants' Forum
 - Board of Management
 - Residents, Tenants Groups, individual interested tenants
 - All relevant outside agencies



6. REVIEW

- 6.1. The Association will formally review its Unauthorised Occupants and Squatters on a 3 yearly basis, unless changes in legislation or regulation require an earlier review.
- 6.2.. Findings and recommendations will be presented to the Association's Board of Management after the views of the Forum have been considered. A review team will carry out each review.
- 6.3. Progress reports will be made to the Board of Management and Forum, to enable monitoring against strategic aims and objectives and agreed performance indicators. Performance data will be included in the annual report to tenants

7. TRAINING

- 7.1 The Association will provide all staff responsible for implementing this policy with comprehensive training.
- 7.2 Training will be given to:
 - New staff
 - Existing staff on an annual basis as a refresher/update as required
 - All relevant staff after change to policy/legislation
 - To relevant outside agencies

8. ASSOCIATED DOCUMENTS

- 8.1. The Association has the following relevant documents
 - Variation of Tenancy Policy
 - Rent Arrears Policy
 - Eviction Policy
 - Allocations Policy
 - Repairs Policy



9. POLICY REVIEW SUMMARY

Policy Title	Unauthorised Occupants and Squatters Policy
Dated Created	24 April 2007
Person Responsible	Operations Director
Version	2
Date last amended	September 2010
Authorised by	Board of Management
Review Period	3 years
Review Committee	Board of Management
Date of last review	September 2010
Date of next review	September 2013