

RENT ARREARS POLICY

1. Introduction

Ayrshire Housing's main source of income is rental income which enables the association to provide services to tenants and to meet its revenue and loan payments arrangements. Maximising rental income helps safeguard the association's ability to meet its financial commitments.

Sustaining tenancies is a very important objective for the association and our general approach to rental income and arrears recovery is to try and assist tenants meet their rental obligations and avoid being faced with losing their tenancies and possible homelessness.

The association's Rent Arrears Policy aims to meet our commitments to providing quality services, maintaining our properties, meeting financial obligations and sustaining tenancies.

2. Aims, Objectives and Principles

Ayrshire Housing aims to minimise the loss of rental income by implementing efficient and effective procedures which will be consistently applied by the association's staff. While we will be sympathetic to tenants' financial needs and demands we also recognise that the overall importance to the association in maximising rental income requires us to adopt a firm approach to arrears recovery.

2.1 The association's overall approach to the management of rent arrears will be based on applying the following principles:

- The term "rent arrears" applies to both rent and service charge arrears;
- We will ensure that staff are adequately and appropriately trained and resourced to carry out their duties and that associated systems to manage and administer this service are maintained and regularly reviewed;
- We will promote a "payment culture" amongst our tenants;
- Early contact with tenants in arrears will be a fundamental principle in our procedures;
- We will aim to keep rent arrears within target figures specified in the association's Corporate Plan KPI's;
- We will endeavour to maximise tenants' incomes by making them aware of their possible entitlement to a range of benefits, and to ensure that tenants, who are in arrears, are given adequate debt counselling and advice about welfare benefits, in addition to information on independent advice agencies;
- We will support tenants through the transition to Universal Credit;
- We will, where appropriate, apply for direct payments to us as the landlord;
- We will provide a wide range of payment methods to ensure that tenants are not inconvenienced by the method of payment they choose;

- We will ensure that repayment arrangements are realistic and affordable by using an assessment of tenants' incomes and expenditure;
- We will make appropriate arrangements for tenants who have special needs such as mental disability or learning difficulties. In such cases, with the permission of the tenant, we will liaise with carers or other members of the tenants' families;
- We will ensure that our tenants are treated fairly, sensitively and equally;
- We will pursue legal action for the recovery of the debt and repossession of the tenancy only as a last resort.

3. Legal and Regulatory Context

The association will conform and comply with all relevant legislation and performance standards that apply to the maximising the association's rental income and to the recovery of rent arrears.

The legal and regulatory requirements and obligations include, though are not restricted to, the following:-

- Housing (Scotland) Act 2001;
- Housing (Scotland) Act 2010;
- Statutory Instrument 2012 No 127 Pre Action Requirements Order 2012;
- Homelessness, etc (Scotland) Act 2003;
- Equality Act 2010;
- Data Protection Act 1998;
- The Scottish Social Housing Charter;
- Welfare Reform Act 2012.

4. Equality and Diversity

- 4.1 Ayrshire Housing is committed to equal and fair treatment of all sections of the community. Accordingly, no person will be discriminated against during the implementation of this Policy on the grounds of sex, marital status, family circumstances, race, ethnic or national origins, disability, age, religion, political or sexual orientation. In delivering this policy, Ayrshire Housing's staff and contractors will comply fully with the requirements of the association's Equality and Diversity Policy.

5. Responsibilities and Roles

- 5.1 All responsibilities for operational arrears management is delegated to the association's staff, including the serving of Notices of Proceedings; and the commencement, continuance and termination of legal actions. The association's Tenancy Matters Panel (see Board Members' Handbook) is, however, delegated the authority to approve actions in individual cases where this would involve approving the eviction of a tenant.

5.2 The association's Board will receive a monthly report on rent arrears management performance.

5.3 The roles and responsibilities of Board members and officers of the association will be as follows:

Board

- To agree and approve rent arrears policy;
- Agree targets for arrears management each year;
- Monitor implementation and performance.

Tenancy Matters Panel

- Consider recommendations following award for Recovery of Possession

Head of Housing Services

- Overall responsibility for performance and management of the services in accordance with policy and performance targets;
- Approve instigation, continuation and termination of legal/Court action;
- Approve legal action in accordance with procedures;
- Manage the implementation of all activities relating to enforcement of decrees, evictions, or other means of pursuing debt that involves legal action;
- Manage the implementation of the Tenancy Matters Panel's decisions.

Senior Housing Officers

- Day to day operational management responsibility for implementation of policy;
- Monitor performance of individual Housing Officers;
- Provide support and assistance to housing management team;
- Identify any appropriate training requirements.

Housing Officers

- Control of rent arrears on an area basis in accordance with this Policy and the association's Rent Arrears Procedures;
- Preparation and completion of Pre-Action Protocol requirements;
- Preparation of any proposals for the Tenancy Matters Panel's consideration of Decrees for Recovery of Possession;
- Instigate, continue and termination of Court actions;
- Activities required to implement rent arrears management decisions.

Money Advice Officers

- Work alongside housing management team to ensure tenants maximise their income and are in receipt of all eligible benefits;
- Ensure that tenants are made aware of the need to prioritise debts and that maintaining rent payments is appropriately prioritised.

Housing Assistants

- Provide administrative support, where required, to other members of the Housing Management section in the carrying out of their respective duties.

6. Arrears Prevention and Management

Adopting a Payment Culture

New Tenants

- 6.1 At the start of the tenancy we will ensure, through personal contact and provision of information, that new tenants receive guidance on the association's rent payment requirements and the implications of accruing rent arrears. They will be advised that payment of rent and rent arrears management practices are clearly linked to the level of services provided by the association. Housing benefit forms will be provided and assistance will be given to complete the forms. This will initially start at the sign-up stage. New tenants will be asked to sign a mandate agreeing that their housing benefit is paid directly to the association.

New tenants who will be required to claim Universal Credit will be assisted to do so. Confirmation of tenancy and rent details will be provided by the association to DWP to help ensure Universal Credit claims are submitted timeously. All tenants claiming housing benefit or Universal Credit will be advised that it is their responsibility to ensure claims are submitted with all required information. Tenants in receipt of housing benefit or Universal Credit will be advised that it is their responsibility to pay their rent in accordance with their tenancy agreement.

- 6.2 At the sign-up, tenants will be informed of the amount of rent payable, including service charges, where appropriate. Tenants will also be informed of when the rent is due and also be given details of the name of the housing officer to contact if they are having difficulties in paying their rent. Tenants will also be informed of our Money Advice service. We will make tenants aware of the range of payment methods available and the method they intend to use to pay their rent. We will encourage and promote the use of Direct Debits as a preferred method of payment.

Where it is likely that a new tenant will not receive full housing benefit an assessment will be made of the anticipated level of benefit that they will receive and they will be advised that they will be required to pay the remaining balance in advance.

- 6.3 We will ensure regular and effective communication on these matters between tenants and the association throughout their tenancy. This will include individual contacts as well as regular items in the association's newsletters and information on the association's website.
- 6.4 We will aim to visit all new tenants within 6 weeks from the start of their tenancy. Checks will be made to establish that the tenant has started paying rent and that housing benefit or Universal Credit has been claimed and rent due is being received by the association.
- 6.5 We will aim to develop effective communications between the association and other agencies assisting our arrears management activities, including housing

benefit administration, the Department for Work and Pensions (DWP), welfare benefit advice services and housing aid and advice services.

All Tenants

- 6.6 All tenants will be advised that their Tenancy Agreement clearly states that payment of rent is the responsibility of the tenant.
- 6.7 Tenants whose full rent will not be paid through housing benefit will be encouraged to pay their rent by Direct Debit as our preferred method. Tenants will also be given details of other payment options. As with new tenants, we will ask tenants to agree that their housing benefit is paid direct to the association.
- 6.8 Details of changes to the rent payable will be provided by the association to tenants in writing. This is likely to follow the annual review of the association's rents and service charges carried out as part of the budget setting process each year. Tenants will be advised to contact the housing benefit section at the local authority or the DWP to ensure that their benefit or entitlement to housing costs is reassessed and takes account of the new rent. Ayrshire Housing will also inform the local authority and the DWP of any changes to rents or service charges.
- 6.9 The association's staff will liaise closely with housing benefit teams and the DWP to ensure that all relevant information is available from the association to allow claims to be submitted and processed without delay.

7. Arrears Control and Recovery

- 7.1 Arrears recovery will be based on a staged process of escalation of actions, up to and including repossession. The separate stages will be based on timescales that are achievable. Emphasis will be placed on intensive management and personal contact at the earliest possible stage whilst arrears are at a relatively low level, in order to prevent the escalation of arrears. However, there will be clearly defined stages and circumstances at which legal action will be pursued, with a view to minimising the overall timescale required to successfully complete recovery action, if this is necessary.
- 7.2 The association's computerised rent accounting systems will be used to identify late or missed payments and will allow for new arrears cases to be noted along with updated information on existing cases.
- 7.3 Rent accounts will be monitored weekly to identify cases where arrangements have been broken, allowing for prompt follow-up action. We will aim to make realistic and affordable arrangements with tenants for repayment of arrears. The agreement will be confirmed in writing and will state the level of current arrears and specify the size and frequency of payments that the tenant has agreed to pay towards the arrears.
- 7.4 Where arrangements have been broken we will act quickly to implement the next stage of recovery.

7.5 We will keep accurate records of all arrears actions taken. These will be timeously recorded and detailed in the tenant's rent account history on the association's rent management information system.

7.6 Letters to tenants will be personalised using the tenant's name rather than "sir / madam". The letter will always contain the name of the housing officer who is responsible for the area where the tenant stays and will encourage the tenant to contact that officer. Tenants in arrears will also be informed of other sources of help and debt management advice.

8. Qualifying Occupiers

8.1 We will seek to maintain accurate records of the household composition for each tenancy in order to identify all qualifying occupiers. The term qualifying occupiers refers to anyone over the age of 16 years staying in the house of the tenant. In accordance with the Housing (Scotland) Act 2001 qualifying occupiers must be given the opportunity to be included in any legal action for the repossession of the property concerned. This will involve a notice being served on the tenant and any qualifying occupiers at least four weeks before the association seeks a court order. Any qualifying occupiers, by applying to the court, can be included in any legal proceedings for recovery of possession and have their interests, as well as the tenant's rights, considered by the court. Information on household composition will be reviewed on a regular basis to ensure that up to date information is available on who is living in the association's properties. We will also record details of household composition when we are interviewing the tenant regarding their rent arrears.

9. Legal Action

9.1 Where the tenant either fails to co-operate in reducing the arrears or continuously breaks an arrangement, the association will consider taking legal action. Such action may involve the following options:

- **Sist (or suspend) the case** – this might be appropriate if the tenant has a firmly established pattern of maintaining regular and acceptable payments since the legal action was instructed and it is considered that these payments are likely to continue.
- **Continue the case** – this might be appropriate where the tenant has engaged positively with the association and agreed a repayment arrangement but it has not been in place long enough or has been erratic and further time is considered to be appropriate to allow for the repayment arrangement to be monitored.
- **Seek Decree for Repossession and Payment of the arrears** – this would usually be the recommended action where the tenant has not engaged positively with the association and payments towards the arrears have been unacceptable.

Legal action is not a course, which will be embarked on lightly, and throughout the arrears recovery procedure there are opportunities where the tenant can respond

in a way that would mean that legal action was not necessary such as agreeing to a repayment arrangement and adhering to this arrangement.

Should the tenant make a suitable repayment arrangement even once the case has been booked at court then the association will consider all options including sisting or continuing the case.

9.2 Where there has been a pattern of persistent non-payment the association may issue a Notice of Intention to Raise Proceedings (NOP). 4 weeks after serving this Notice the association can then proceed with raising an action at court. The association must also meet a number of conditions prior to commencing legal action to repossess a tenancy. These conditions are referred to as the Pre-Action Requirements and are listed below:

- Give clear information about the tenancy agreement and the unpaid rent or other financial obligations;
- Make reasonable efforts to give help and advice on eligibility for housing benefit and other types of financial assistance;
- Give information about other sources of help and advice with the management of debt;
- Make reasonable efforts to agree with the tenant a reasonable plan for future payments;
- Consider the likely result of any application for housing benefit that has not yet been decided;
- Consider other steps the tenant is taking which are likely to result in payment within a reasonable time;
- Consider whether the tenant is complying with the terms of an agreed plan for future payments;
- Encourage the tenant to contact their local authority (where the local authority is not the landlord).

The association will not commence legal action to repossess the tenancy unless these requirements have been met.

Flexibility may be applied however, where there are exceptional circumstances and there are good reasons for delaying such actions e.g. if the tenant has been ill or in hospital or where there are known mental health or learning disability issues.

9.3 Before the issue of a NOP the association will make reasonable enquiries to establish, as far as is reasonably practical, whether there are any qualifying occupiers in the house. (See Section 8 above).

9.4 The Notice must be in a prescribed format and must specify:

- The grounds for recovery;
- A date four weeks from service of the Notice, or the date on which a Notice to Quit could have brought the tenancy to an end had it not been a Scottish Secure

Tenancy. The later of these dates applies and we can raise proceedings on or after that date.

This Notice will either be hand-delivered and its delivery witnessed by another staff member or will be sent Recorded Delivery.

The relevant ground for recovery of possession for Rent Arrears is:

- **Ground 1, Schedule 2, Part 1: “Rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy has been broken.”**

9.5 Where a Decree has been granted the Court will stipulate a date 4 weeks from the case being heard from when the Decree can be enforced. The Decree can be enforced anytime during the 6 months following this date.

If Decree is awarded a report will be prepared for the Tenancy Matters Panel to consider whether it should be enforced. A recommendation will be made by Officers for the Panel to consider.

The Tenancy Matters Panel may agree to one of the following actions:

- Enforcement of the Decree;
- Enforcement of the Decree unless the arrears are cleared prior to the eviction date;
- Enforcement of the Decree unless a significant lump sum payment is made towards the arrears – the Panel may consider delegating the responsibility for determining what would constitute a significant and/or acceptable amount to the Head of Housing Services;
- Continue to monitor further payments towards the arrears while the Decree is enforceable (6 months). If satisfactory payments are made then the Decree will not be enforced.

10. Poinding

10.1 Poinding describes a method of enforcing an unpaid debt under a Decree of court. It involves the seizure of goods followed by a warrant sale to realise the value of the goods.

It will be the policy of Ayrshire Housing that poinding (or pinding) will not be used to recover arrears or expenses.

11. Sequestration

11.1 It is not considered competent to pursue possession action for pre-sequestration arrears. The association will be entitled to lodge a claim against the sequestered tenant's estate which will be considered along with other creditors.

Arrears which arise following sequestration can be pursued in the normal way including taking action for repossession.

12. Performance Review

- 12.1 The association will monitor developments in best practice in rent arrears management, and will regularly review staff training needs in this area. We will endeavour to improve the quality of systems for managing rent arrears, and to improve the quality of management information required to deliver this service. Policies and procedures will be reviewed regularly taking account of changing legislation, guidance and good practice.