

SUB-LETTING POLICY

1. Introduction

- 1.1 The Housing (Scotland) Act 2001 provides for the right for tenants to sub-let all or part of their property to another person. This right is detailed in the Scottish Secure Tenancy Agreement.
- 1.2 The Housing (Scotland) Act 2014 introduces changes to the eligibility criteria for persons who wish to sub-let their home.
- 1.3 Sub-letting normally refers to a situation where the tenant is not residing in the property.

Where the tenant continues to reside in the property they should apply for permission to take in a lodger.

2. Application to Sub-Let to Another Person

Current Position

Before a tenant can sub-let their home to someone else they must apply in writing to Ayrshire Housing (the association) for permission and get written consent from the association.

Permission will only be granted providing the house has been the tenant's only or principal home during the 6 months immediately before the application is submitted to Ayrshire Housing.

Position from 1 November 2019

- 2.1 Before a tenant can sub-let their home or part of their home to someone else they must apply in writing to the Ayrshire Housing (the association) for permission and get written consent from the association.
- 2.2 Permission will only be granted providing:

The tenant has been the tenant of the house throughout the 12 months immediately before they apply for written permission to sub-let 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 person was not the

tenant throughout the 12 months but during this period succeeded to the tenancy and now wishes to sub-let it.

- 2.3 There are no residency conditions for the person who wants to live in the house as a sub-tenant.

3. Notification and Consent to Reside

- 3.1 The 12 month qualifying period (as detailed above) will not begin until the association has been notified and given consent for the person to reside.

Any period before we have been notified or after we have been notified but before we have given consent will not count as part of the 12 month qualifying period.

- 3.2 The association will accept notification in writing or by email or by the tenant updating their household information on MyHome, their “tenancy portal”. Verbal notification will not be accepted.

In the case of children in the household reaching the age of 16, who were part of the household when the property was allocated and it is their long term and principal home, no further notification is required.

4. Conditions for Approval or Refusal of Consent to Sub-Let the Tenancy

- 4.1 The association may refuse permission to the sub-letting request if it is considered reasonable to do so.

Grounds for refusing consent are listed in Section 32 of the Housing (Scotland) Act 2001 and as amended by Section 12 (2) of the Housing (Scotland) Act 2014, and include the following:

- 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.
- 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.
- Ayrshire Housing 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 Ayrshire Housing 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.
- The property was designed or substantially adapted for a person with special needs, for example Wheelchair Adapted properties or Elderly Amenity properties, and the sub-tenant, or any other member of the household, does not require this type of property.
- There are current outstanding rent arrears or rechargeable repair charges outstanding to the association.
- Where the association would not give the person the tenant wishes to sub-let to "reasonable preference" under our Allocations Policy.
- The sub-letting would lead to the property being overcrowded.
- Where, in the association's opinion and based on the occupancy standards set out in our Allocations Policy, the sub-letting would result in the home being under-occupied
- Where the association would not allocate a tenancy to the proposed sub-tenant for any other reasons set out in the association's Allocations Policy.

4.2 The rent that is proposed to be charged by the tenant to the sub-tenant must be no more than the rent charged by the association to the tenant.

A deposit may be charged by the tenant to the sub-tenant e.g. for security of furniture and fittings but this must not exceed two months' rent payable by the tenant to the association where the whole property is being sub-let, or a proportionately lesser amount if it is part of the property that is being sub-let.

4.3 The tenant will be required to provide the sub-tenant with a lease, tenancy agreement or occupancy agreement detailing the terms of the sub-let. This should include information on the rent and any other charges payable e.g. Council Tax, the extent of the accommodation the sub-tenant will have use of, behaviour expected and notice period required.

A copy of this agreement must be provided to the association as part of the application for permission. No permission will be approved without the association being satisfied with the terms of the agreement.

5. Notification of Decision to Approve or Refuse Request to Sub-Let

- 5.1 The association will notify the tenant in writing of the decision to approve or refuse consent to their application to sub-let the tenancy within 28 days of receiving the application. Where the decision is to refuse consent, the association will provide the tenant with the reasons for refusing consent.
- 5.2 If Ayrshire Housing has not notified the tenant of their decision, in writing, within 28 days from receiving the written application then they will be deemed to have consented to the application.
- 5.3 Although the association cannot withhold permission unreasonably, it may set reasonable and appropriate criteria for any sub-let to be permitted.
- 5.4 Appeals against any decision made under the terms of this policy should be submitted to the Head of Housing Services.
- 5.5 A tenant who is aggrieved by a refusal to approve their request may challenge the decision by raising proceedings at the Sheriff Court by way of a summary application.

6. Sub-Letting and Tenant's Responsibilities

- 6.1 The tenant shall remain fully responsible for adhering to and meeting the terms and conditions as detailed in their Scottish Secure Tenancy agreement with Ayrshire Housing including their obligations and responsibilities with regards to payment of rent to the association and responsibility for any damage, unauthorised alterations or non-standard fittings caused by or carried out by their sub-tenant.
- 6.2 The tenant must notify the association of any proposed increase in the rent which was payable by the sub-tenant at the start of the sub-let.
- 6.3 The tenant must not increase the rent if the association objects to the increase.
- 6.4 A sub-tenant approved under this policy does not become a tenant of the association therefore if the tenancy is terminated, either by the tenant or as a result of a Possession Order, the sub-tenant has no legal right to the tenancy or to continue to occupy the property.

7. Equality and Diversity

- 7.1 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 will comply fully with the requirements of the association's Equality and Diversity Policy.

8. Complaints

- 8.1 Any individual who is dissatisfied with the service experienced should be encouraged to provide feedback. Complaints regarding the implementation of this policy will be dealt with in accordance with the association's corporate Customer Complaints Policy and associated procedures.