

RUTHERGLEN & CAMBUSLANG HOUSING ASSOCIATION

Policy Name	Rent Arrears
Policy Category :	Housing Management
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Next Review Date	April 2012

RENT ARREARS POLICY

Introduction

The Association affords a high priority to the control of rent arrears ensuring maximisation of rental revenue for the Association which is our main source of income and crucial to the ongoing financial viability of the organisation. The Association will endeavour to help our tenants suffering serious debt issues to manage their rent payments, thus assisting in wider issues such as the prevention of homelessness, etc. Detailed procedures for staff to follow in relation to rent arrears recovery are contained within a separate procedure note to staff.

The Association aims to review this policy every three years, or as necessary, to accommodate any changes required to Policy or Practice in arrears recovery.

Legal Context

The current legal context for the recovery of possession is contained within Section 14 of the Housing(Scotland) Act 2001, and grounds are detailed within the Scottish Secure Tenancy agreement. In writing this Policy staff have been mindful of Communities Scotland, Activity Standard 1.8 “We act to prevent arrears of rent and service charges building up. We recover any arrears fairly and effectively”. We have also referred to S.F.H.A - Raising standards in Housing “Rent Arrears: Prevention, management and recovery”(February 2002), Scottish Homes “Managing Rent Arrears – Getting the balance right” (June 2000) and Communities Scotland “Evictions in Practice” (March 2005) .

In implementing our approach to arrears recovery the Association is also mindful of our rights and responsibilities contained within the following corresponding legislation:-

- The Disability Discrimination Act 1999 – To ensure general accessibility of service provision, varying options for payment methods etc.
- The Data Protection Act 1998 – Responsibilities in terms of gathering and sharing information with others. Staff will refer to CIH and other guidance on this issue.

- The Human Rights Act 1998 – Responsibilities in terms of safeguarding existing human rights, freedom of expression, freedom of thought, conscience and religion etc.
- The Children Scotland Act 1995 – Consider implications and options prior to undertaking recovery action.
- Debtors Scotland Act 1987 – Enables the Association to seek wage arrestment from a debtor.

This policy document can be produced in Braille, audio tape, and other language formats on request.

General Approach

Arrears recovery is a sensitive area and staff are always mindful of the particular circumstances surrounding an individual's situation. Issues such as confidentiality, sensitivity of information, data protection etc will always be considered to ensure the tenant is not placed in a compromising situation as a result of the Association's enquiries. However, a firm, but fair approach will be employed by staff in our efforts to investigate and pursue arrears recovery.

The Association aim to identify arrears as early as possible, within a target timescale of 2 weeks. Early intervention is employed by staff through regular checking of arrears cases and ongoing monitoring of serious arrears cases which are reported each month to the Housing Management Sub Committee.

The Association checks every arrears account at the end of each monthly payment cycle to identify Technical arrears, cancelled H/B, broken arrangements etc (this exercise forms the basis of the written reports that are presented to the monthly Housing Management Sub Committee). Weekly/Fortnightly checking of individual accounts is done as required, particularly in serious arrears cases to ensure compliance with arrangements.

Prevention of Arrears

Housing Management Staff recognise the importance of prevention as an important method in keeping arrears levels to a minimum. A key principle in this approach is the advice offered to tenants at the sign up of their tenancy and the Association's commitment to assist in completion of Housing Benefit forms with tenants at this time, if appropriate. – Alongside advice offered by staff on payment of Rent, Service charges and Housing Benefit, an information leaflet issued guides the tenant on our policy approach, changes in circumstances etc. A rent card for Post Office payment is also issued to all new tenants and tenants are encouraged to consider using the standing order mandate which is included in the new tenant information pack.

An annual consultation exercise takes place relating to the rent and service charge review and tenants are afforded the opportunity to engage in debate with the Association about issues such as affordability of rents etc at that time.

Within the above consultation exercise the Association also provide a rent factsheet to tenants on what the rent charge covers and the importance of payment to maintain the Associations service provision. The rent notification letter itself also advises tenants to:-

- Consider applying for Housing Benefit, where appropriate, to help with any arrears issues. A form can be obtained from the Association office, or direct from South Lanarkshire Council.
- To notify the office, as well as South Lanarkshire Council of any change in circumstances which would affect entitlement to Housing Benefit avoiding the possibility of an overpayment occurring .
- To ensure those tenants paying by standing order remember to change the amount payable following the rent increase or a change in circumstances and also to ensure the bank has the correct rent account reference number. The Association points out that a standing order is a trouble free way to ensure rent is paid automatically to the Association via a bank account. The necessary paperwork to set up a standing order can be obtained from the office.
- A reminder to ensure that if tenants envisage any problem with their rent, it is important that they contact one of the Association's Housing Officers to discuss the matter as soon as possible.
- To request a statement of the rent account from the office if currently in arrears or unsure about the current rent account balance.

Housing Management staff will endeavour to try to recognise where a tenant may have an entitlement to an additional benefit which may assist their financial situation. Tenants should also be encouraged to mandate payment of housing benefit direct to the Association. When a tenant is in arrears and known to be receiving Housing Benefit but this is not being paid to the Association, the tenant should be urgently contacted. If no response is received, the Housing Benefit section should be advised and asked to make future payments direct to the Association.

Communication

Good communication also plays an important part in preventing arrears and staff will use the Newsletter etc to publicise our policy and procedure in arrears recovery, emphasising the importance of arrears recovery to the Association and how this impacts on our tenants and general business. This means of communication will also be used to convey our commitment to being approachable, our willingness to help, and to encourage early contact from any tenant in arrears. Staff will also use the Newsletter as a vehicle to deploy information to our tenants from other relevant agencies, ie Money Advice.

Where a tenant appears to be suffering financial hardship and/or has multiple debts, they should be advised of assistance which can be offered from other Independent agencies (e.g. SLC Q+A, Money Advice Centre, Citizens Advice Bureau or Social Work Department).

Liaison with Housing Benefits and other agencies is an integral part of the Housing

Management service. Staff will liaise with the Housing Benefit Section and other agencies on behalf of tenants to ensure that benefit claims are dealt with promptly and tenants income is maximised. Staff also respond immediately to any daily written communication from South Lanarkshire Council to report cancellation of, or changes in a claimants Housing Benefit entitlement.

Close and effective liaison with South Lanarkshire Councils Housing Benefit section is crucial and while staff liaise regularly at a local level, a Central Liaison meeting every 6 months is also ongoing to improve standards. Housing Benefit performance is also discussed at the South Lanarkshire Housing Managers forum, of which the Association participate. Liaison with the following external agencies takes place on a regular basis to assist in the prevention of rent arrears and income maximisation for tenants.

The accessibility of the Associations arrears service is also an important principle to ensure tenants can access arrears advice or assistance quickly. Tenants can phone the office at any time(Tel 0141 647 4917) during the working week or call in to the office at any time(other than Wednesday p.m.) to speak to a member of the Housing Management team. We can arrange home visits at an agreed time to discuss arrears if there are mobility issues or where confidentiality is an issue with the tenant. We can be reached via email(admin@randcha.co.uk) and there is also useful information and advice on arrears contained within the Associations website(www.randcha.co.uk).

South Lanarkshire Council,

Rutherglen Housing Benefits		613 5539
Cambuslang Housing Benefits	01698 527307	01698 527343

Question & Answer

Cambuslang	613 5400	Rutherglen	613-5300
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Money matters

Cambuslang	613 5445	Rutherglen	613-5308
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Internal communication and record keeping are important to ensure a comprehensive case history is developed to improve effectiveness of the service and ultimately assist at any future legal stage. All communication with tenants in arrears is recorded via the Associations computerised notepad facility within the “Miracle” computer database. Rent arrears procedure also forms part of the agenda at section meetings between the Housing Management staff. This ensures the sharing of good practice information takes place, consistency of approach and allows any necessary recommendations for changes to policy to be identified.

Payment Options

The Association normally expects rent payments to be made monthly in advance(on or around the 28th of each month), however, individual arrangements will of course be considered with tenants, depending on their individual financial situation. Tenants will

be issued with a post office payment card at their sign up and advised in relation to their initial and future payments. The use of Standing Orders is encouraged where a tenant is working and has wages paid into a bank account.

Housing Management Staff will endeavour to make a payment arrangement which is as flexible as possible for the tenant, to avoid arrears accruing - e.g. a tenant who is paid weekly should be allowed to make weekly rent payments if this is more convenient. Payments will not normally be accepted in the Association's office, however, ad-hoc or any regular arrangements for office payments can be considered by a Senior Housing Officer where this assists the tenant. Generally, the minimum acceptable payment towards arrears of rent should be £5 per week (£10 where working), although arrangements should always be considered individually to suit the circumstances of the tenant. Where a tenant pays late in the month they should be encouraged, where affordable, to pay extra towards the rent to try to establish an advance rent position in accordance with responsibilities in the tenancy agreement.

If the tenant is in arrears and in receipt of Income Support, then weekly deductions should be requested at the earliest possible stage, which at the present time is when 4 weeks rent is outstanding from ongoing benefit to clear the arrears. The tenant should also be encouraged to make additional weekly payments where possible, to reduce the debt, especially where the debt is likely to take a considerable time to be clear.

The Legal Process

Notice of Proceedings

The Association's procedure on arrears recovery will be followed, but where this fails to address an individual arrear accruing, then the legal action process should be initiated. In the event of a tenant owing 2 full months rent and having failed to co-operate with staff, a Notice of Proceedings should be issued. In accordance with section 14(2) of the Housing(Scotland) Act 2001 the landlord must have:-

- served on the tenant and any qualifying occupier a notice in a form prescribed by Scottish Ministers (the notice to be served on the qualifying occupier is exactly the same as that to be served on the tenant);
- ensure the proceedings are raised on or after the date specified in the notice; and
- the notice is in force at the time when the proceedings are raised.

Where there are joint tenants, the names of all the joint tenants should appear on the notice, as joint tenants are jointly and severally liable. Only one notice is required to be served on the joint tenants provided it is addressed to all of them. Should a landlord consider that it is more appropriate to serve a copy of the same notice on all of the individuals, there is nothing in the legislation to prevent this course of action. It is entirely at the discretion of the landlord.

Subsection 14(3) requires that before serving the notice, the landlord must make all reasonable enquiries to establish whether there are any qualifying occupiers of the house and, if so, their identities. Such reasonable enquiries would generally be by letter to the tenant and/or visits to the tenant's home. Landlords should, in any event, make sure that

they have an audit trail which clearly establishes attempts made to identify and notify any qualifying occupiers.

Landlords should, so far as is possible, send out the Notices to the tenant and the qualifying occupier(s) on the same date.

The ground for recovery relating to arrears of rent is detailed as “Rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy has been broken”.

Legal Action

Failure by the tenant to respond to the notice of Proceedings, or to make a satisfactory agreement towards the arrears will result in the Association’s Solicitor being instructed to book the case into court.

Effective liaison with the Associations legal representative is required, as the reasonableness of the Associations actions will require to be justified before a Sheriff will grant any order to evict(if appropriate). If the tenant has made no contact by this stage or failed to make a satisfactory agreement the Association will seek a conjoined action for re-possession of the property and recovery of the debt plus legal expenses.

The implications of legal action starting include the tenant being liable to pay most of the cost of the legal action, which only serves to make the financial situation worse(Average legal expenses are usually set at around £240). If legal expenses are awarded against an individual this may affect the persons credit rating in the future, causing problems if they try to take out a loan etc.

Section 11 of the Homelessness etc (Scotland) Act 2003 requires landlords to notify the relevant local authority when they raise proceedings for possession in a court from 1.4.2009.

The aim of placing a duty on landlords to inform local authorities of repossession proceedings is to alert authorities to households at risk of homelessness. Local authorities have statutory duties to people who are homeless or threatened with homelessness and early notice of potential homelessness means that they may be able to respond on an individual basis.

If the tenant appears at court and makes an offer to pay, the case will usually be continued by the court for a period (usually 6 weeks) to give the tenant the opportunity to reduce the arrears. If the Association is certain that an arrangement is being maintained the case can be sisted (put on hold) at the Court until a conclusion is reached. Where a case is previously sisted by the Court it can be recalled by the Association at any time if arrears problems reoccur.

If the payment arrangement is adhered to and arrears cleared the case can be closed, with legal fees calculated at the end of this process. If the arrangement is broken and no contact or new arrangement can be agreed the Association’s solicitor will return to court and ask for a decree for repossession of the property and recovery of the debt plus

expenses. The tenant should be kept informed at every stage and given every opportunity to make an arrangement to clear the arrears.

Eviction is obviously the absolutely last resort and every other option should be looked at to avoid this.

If a Decree is awarded then the tenant will be expected to clear the total outstanding arrears and any appropriate court expenses to prevent the decree from being enforced. At no time will an eviction decree be enforced without the prior consent of the Housing Management Sub-Committee. Following the award of a decree a Senior Housing Officer will prepare a report for the Housing Management Sub Committee to enable a decision to be taken with regard to ultimate eviction of the tenant. Any arrangement offered to clear a majority of the money owed by the tenant should be detailed for consideration by the Housing Management Sub Committee and must be accompanied with an agreement to clear the remaining arrears and court expenses outstanding within a reasonably short timescale, (each case will of course be considered individually). After award of any decree the procedure relating to “violent profits” should be closely followed by staff to ensure that any payments received are not treated as payments towards on-going rent(to prevent a new tenancy being created).

If a Decree is enforced the Association will liaise with South Lanarkshire Council, Social Work Department and Homelessness Sections to ensure that any transitional preparations can be made to assist with the families next step towards obtaining emergency accommodation

Sequestration(Trust Deeds)

Sequestration is the legal process of someone being declared bankrupt following an order by the Court. A Trustee is appointed to act on the persons behalf and a Trust deed would be signed with the individual. Prior to the Trust deed becoming live, Creditors(including the Association) have 5 weeks to object and the court decides based on number of objections, level of debt etc whether the Trust deed is approved.

At the point where the Trust deed becomes live the persons debts are suspended and no arrears can be pursued by the Association, although ongoing financial expenditure such as rent must continue to be paid. Following a period, usually 3 years, there may be a payout to the original creditors following deduction of the Trustees expenses. Legal advice will be sought by the Association in all cases of Sequestration.

Confidentiality

The Association stresses that the tenant’s privacy must be safe guarded. As detailed earlier, the Association has various legal responsibilities which must be adhered to in this respect.

All information regarding arrears is to remain confidential to the Staff and tenant unless the tenant installs a 3rd party to negotiate with the Association on their behalf. A signed mandate must be provided before staff will enter into discussions regarding an individual case.

Reporting of arrears cases to the Housing Management Sub Committee will be by number code only. No tenant's name or address is to be revealed at any time.

Committee Members in Arrears

As detailed earlier, confidentiality will be observed at all times in any discussion. Persistent actual arrears (3 months or more, and greater than £50) or legal action being initiated, will mean involvement of the Management Committee to discuss termination of individual Committee membership.

Where arrears exist in a Committee Members rent account, that member must declare an interest in any Committee business pertaining to arrears recovery and related Policy – The Committee member concerned would then require to leave the particular meeting until the item for discussion has been concluded.

Improvements to property

Tenants who are in breach of the tenancy agreement, in this case serious arrears of rent, will not be included in the Association's programme of renewal of kitchen, bathrooms or windows etc, unless they are keeping to an agreed arrangement. Exemptions from any contract will be discussed on an individual basis and authorisation to exclude will be jointly agreed between Housing Management and Maintenance staff.

Former Tenant Arrears

In cases of former tenant arrears, Housing Management Staff will pursue by letter to the forwarding address if known. This will be followed up by a second letter from the Association or its solicitor whenever possible and practical to do so. In some cases it may also be possible to obtain deductions from Income Support.

Staff have delegated responsibility to consider write off of any Former tenant cases below £50.

Former tenant arrears should be pursued until it is no longer cost effective to do so. The writing off of Former tenant debts is authorised by the Housing Management Sub Committee, following the recommendation from a Senior Housing Officer, when the tracing/recovery process has been deemed to have been exhausted. If the property is abandoned, and arrears are outstanding, the debt should only be written off where we cannot trace the tenant.

Following previous Committee approval it was agreed that a minimum arrears limit be introduced for former tenant traces, and debt recovery actions under which it would be impractical to proceed. It is recommended that this limit be set at £100. For cases above this level the Association may employ a debt recovery agency who will trace and recover former tenant debts on a no trace/no fee basis on behalf of the Association.

Refunds

Occasionally the Association may refund a payment to a tenant, e.g. where a tenant makes a payment towards rent whilst awaiting settlement of a Housing Benefit Claim and

back-dated payment is made, any credit balance will be refunded to the tenant. Any refund request must be authorised by a Senior Housing Officer.

Overpayments

Refunds of Housing Benefit to South Lanarkshire Council(Overpayments) should only be made when an appropriate invoice has been received from the Council and only after the tenant has been made aware of the proposed Debit from the rent account to ensure any corresponding arrangements towards arrears can be made. Tenants will be encouraged to appeal directly to the Council if they disagree with the calculation of any overpayment.

There have been a number of tenants penalised by having large amounts of Housing Benefit reclaimed by South Lanarkshire Council because of failure to report changes in circumstances. This situation leads to the tenant being in arrears and in some cases facing legal action as a result of the large balance within their account.

Anyone who experiences a change in their circumstances must report the change immediately to the Association and South Lanarkshire Council, Housing Benefit Section to avoid the possibility of an overpayment occurring.

Where the overpayment is due to a failure on the part of the tenant to report a change in circumstances or fraudulent action then the council should be encouraged to pursue the tenant direct, as per Housing Benefit regulations. Effective communication and a flexible approach with SLC at this time is essential and staff should be mindful of South Lanarkshire Councils ability to deduct from “blameless tenants” in cases of protracted payment of overpayments.

Appeal Procedure

Any applicant who feels aggrieved by their treatment under the Rent Arrears policy has the right of appeal to a Senior Housing Officer and thereafter to the Association’s Housing Management Sub-Committee.

Appeals should be made in writing within 10 working days of the notification, and should be responded to within a further 10 working days. The Associations Complaints Policy can be referred to for further guidance on this issue. A copy of the Complaints Policy is available on request from the office.

Reporting

It is the Committees responsibility via the Housing Management Sub Committee to set arrears Policy and ultimately monitor the quality and effectiveness of the service delivery. To enable this role to be effectively exercised, detailed reporting on Rent Arrears will be made to the Housing Management Sub Committee bi-monthly.

Confidentiality is observed at all times and reports are coded to protect the anonymity of the tenants in arrears. The Senior Housing Officers have delegated responsibility to manage arrears cases up to the award of a Decree. At this point a report should be prepared for the Housing Management Sub Committee to enable a decision to be taken with regard to Eviction or Arrangement in line with the process outlined within this

policy.

Performance Monitoring

A range of statistics are provided monthly to allow the Committee to carry out effective monitoring of arrears levels and trends. Monthly reporting to Committee on performance issues includes:-

- Comparison from previous month of monthly Actual, Technical and Former tenant arrears. The Association has an annual target of 2% for total arrears as a % of gross annual debit.
- Comparison from previous month of numbers of arrears cases by value, broken down to show cases under £100, £100-£250 and cases over £250.
- Breakdown of technical arrears outstanding.
- Detailed narrative of all “serious” arrears cases outstanding each month detailing the position of the case, arrangement progress, details of total monthly debit due, contact with the tenant, involvement of other agencies, details of any legal action and comparison from previous month (serious cases are defined by staff and include all legal cases, all cases where NOP is served, persistent/historical arrears accounts, all cases where two months rent is outstanding and all cases where the net amount payable is low in comparison to the arrears balance outstanding).
- Progress on all former tenant arrears outstanding.

Appendix 1

Home Owners facing Eviction

According to recent government statistics repossession of homes due to owners being in mortgage arrears is on the increase. Losing your home can be devastating but the Mortgage to Rent Scheme may be able to help you if you are an owner occupier in mortgage difficulties and you are in danger of having your home repossessed. The scheme can arrange for a social landlord (such as the Housing Association) to buy your home and for you to continue to live there as a tenant. The scheme is administered by the Scottish Government and they deal with the initial processing of applications before referring them to the local Housing Association.

Mortgage to rent will not be the best option for everyone. To find out if it is right for your situation you should seek advice. You must get advice before you can apply and you can get this from; Citizens Advice Scotland; They will give you the nearest contact number of your local Citizens Advice Bureau; Tel; 0845 4500 351 or www.cas.org.uk Money Advice Scotland; They will give you the name and number of a money advice outlet. Tel; 0141 572 0237 or www.moneyadvicescotland.org.uk Consumer Credit Counselling Service; CCCs offers a structured programme on how to manage your money and can offer a structured repayment plan to creditors. Tel; 0800 138 1111 or www.cccs.co.uk

A leaflet with more details of the scheme is also available from the Associations office.