



## Forced Access Policy

## 1. INTRODUCTION

- 1.1 This policy describes the Association's arrangements for ensuring that its properties are well maintained and kept in good and safe repair, for the benefit of existing and prospective tenants and to maximise the long-term life of the housing stock within its portfolio.
- 1.2 Yorkhill Housing Association (YHA) may be required to obtain entry to a property in certain circumstances; for example, to meet legal requirements. In these circumstances, if tenants will not voluntarily provide access, the Association will need to consider forcible access.

The Housing (Scotland) Act 2001 details the landlord's obligations and outlines the circumstances in which forcing access is permissible.

The Scottish Secure Tenancy Agreement (SST) states, *"We have the right to come into your house to inspect it and its fixtures and fittings or carry out repairs to it, or adjoining property, during reasonable times of the day. We will give you at least 24 hours' notice in writing. If you refuse us entry, we will have the right to make forcible entry provided we have given you every reasonable opportunity to let us in voluntarily"*.

### 1.3 Policy objectives:

Ensure that the Association complies at all times with all current legal and regulatory responsibilities and codes of good practice.

Ensure that all our tenants are given clear information on the division of responsibility for repair and maintenance between us as landlord and themselves as tenants.

## 2. Authority and Control

The Management Committee is responsible for setting the policy for Gaining Access to properties through the "Force Access Route".

The Services Sub-Committee is made aware of and monitors instances where Force Access has been necessary.

The implementation of policy together with the management and administration of the repairs and maintenance service are delegated to the Director of Property Services.

## 3. Aims

- 3.1 To ensure compliance with legislative requirements and best practice.

- 3.2 To define Policy for dealing with instances of forced access and to minimise risk.
- 3.3 To ensure The Association's Landlord obligations are assured in relation to damage caused as a result of a forced access.
- 3.4 To provide strong guidelines to staff and ensure a consistent approach.

#### **4. General**

- 4.1 Where circumstances allow, and in line with the terms of the SST, forced entry examples include the undertaking of the annual gas service, installation of smoke and heat detectors, carrying out electrical periodic safety inspections, inspection of any fixtures or fittings, to undertake emergency repairs, to undertake pest control works. In all such instances (except emergency situations) the Tenant will have been given at least two opportunities to facilitate access.
- 4.2 YHA reserves the right to access any unsecured property for the purpose of securing it, or its contents against vandalism or unauthorised entry. Such instances will be managed as an emergency repair.
- 4.3 YHA will endeavour to ensure that forced access is undertaken using the most cost-effective means, and that damage is minimised, as appropriate to the urgency of the situation.
- 4.4 YHA will endeavour to liaise with Police Scotland in advance of forced access in all cases where a potential risk has been identified, or where there is a concern for welfare. Risks will include the health, safety & wellbeing with respect to the tenant, occupants, surrounding residents, staff, contractors or animals within the property.
- 4.5 Forced accesses will be attended by no less than two staff members, with photographic evidence taken to record property contents and conditions at the point of entry. Evidence will be signed and dated by both parties and saved to the tenancy file.
- 4.6 The approval of the Chief Executive Officer or Deputy Chief Executive Officer is required to proceed with forced access in all instances.

#### **5. Emergency Repairs**

- 5.1 In an emergency YHA has the right to make forcible entry to the property without notice of attendance, as per the terms of the Tenancy Agreement. This includes forcing access for the completion of emergency repairs and forcing access to an adjacent property in the course of completing major works or improvements. Reasonable enquiries will be undertaken where possible, depending on the urgency of the situation, to contact the tenant prior to forcing access. Police Scotland will always be contacted and their

attendance requested before entering a property. If Police Scotland advise that they cannot attend, all details of this will be logged by the Association.

- 5.2 Tenants will not be held responsible for costs associated with forced access on emergency repairs grounds, unless it transpires that the emergency occurred as a result of the tenant's negligence (e.g. leaving a tap running, leaving property unsecured) or unacceptable conduct (e.g. vandalism, wilful damage, careless key management, interfering with pre-payment utility meters etc.)
- 5.3 In instances of negligence, YHA will recoup the cost of repairing the damage
- 5.4 In instances of unacceptable conduct, YHA will recoup the cost of repairing the damage in line with the terms of the Rechargeable Repairs Procedures AND will take further action for breach of tenancy.

## **6. Concerns for Welfare**

- 6.1 In an emergency YHA has the right to make forcible entry to the property without notice, as per the terms of the Tenancy Agreement. This includes forcing access where there are concerns for welfare. Police Scotland will always be contacted and their attendance requested before entering a property. If Police Scotland advise that they cannot attend, all details of this will be logged by the Association.
- 6.2 Tenants will not be held liable for the costs associated with forced access on concerns for welfare grounds, unless it transpires that the emergency occurred as a result of the tenant's negligence (e.g. absence from property and leaving vulnerable occupant or pet unattended) or unacceptable conduct (e.g. assault on occupant within the property).
- 6.3 In instances of negligence, YHA will recoup the cost of repairing the damage via its Rechargeable Repairs Policy. Tenants will be considered to be liable in the event their absence from the property was due to detainment via Police Scotland or HM Prison Service. Tenants will not be considered to be liable in the event their absence was due to hospital admittance, so long as the hospital admittance was not the result of criminal activity on their part. YHA reserves the right to undertake reasonable enquiries to verify details of this nature.
- 6.4 In instances of unacceptable conduct, YHA will consider both recouping the cost of repairing the damage via its Rechargeable Repairs Procedures AND taking further action for breach of tenancy and/or anti-social behaviour.

## **7. Public Utilities**

- 7.1 Utility companies have statutory rights of access to a property for the purpose of accessing public utilities. These rights can be extended to YHA by utility companies to allow access to installations which rely on the use of a public utility.

7.2 If access is forced by an agency responsible for managing and maintaining public utilities the tenant will not be held liable for the cost of the damage caused, unless access was required as a result of the tenant's negligence (for example: leaving gas on, failure to pay bills resulting in disconnection etc).

## **8. Police Access**

8.1 Where Police Scotland force access to a property in possession of a warrant, the tenant will be held liable for the cost of forced access, lock change and repairing any damage. The tenant will be advised to direct any challenges concerning the validity of the warrant or forced access to Police Scotland.

8.2 Where Police Scotland force access to a property in error (e.g. incorrect address), or without possession of a warrant (e.g. Threat to life/concern for welfare), the tenant will not be held liable for the cost of repairing the damage. YHA reserves the right to pursue Police Scotland for the cost of forced access, lock change, and repairing any damage in such instances

## **9. Statutory and Regulatory Requirements**

- Annual Gas Servicing
- Enhanced Fire Detection and Environmental Monitoring Systems
- EICR Electric Periodic Inspection
- Other in accordance with tenancy agreements and future legislative requirements.

9.1 YHA will work with the tenant and provide opportunities to gain access for the above works. In the event the tenant fails to co-operate, YHA is empowered to force access to satisfy its' statutory and regulatory requirements and obligations.

9.2 In instances of forced access relating to Statutory or regulatory compliance above, YHA will re-coupe the cost of repairing the damage via its Rechargeable Repairs Procedures and consider further action for breach of tenancy.

## **10. Abandoned or Unsecured Properties & Acts of Tenancy Repossession**

10.1 Section 17 of the Housing (Scotland) Act 2001 empowers the landlord to enter the house at any time for the resolution of securing the house and any fittings, fixtures, or furniture against vandalism where they believe that the house is unoccupied and the tenant does not intend to occupy the house.

10.2 Section 18 of the Housing (Scotland) Act 2001 allows the landlord to serve notice where the landlord has reason to believe the house is unoccupied. Upon expiration of the notice, the landlord is entitled to force access and taken possession of the property. This process will be managed in adherence to YHA's Abandonment and Repossession of Properties Policy.

10.3 Where YHA have carried out a forced entry and lock change, YHA will seek to charge the tenant all costs associated with forced access and, where applicable, lock change, in line with the Rechargeable Repairs Procedure.

## **11 Access to non-YHA properties**

11.1 In the event access is required to non-YHA properties (owner occupier, HMO private let, etc.) the default course of action will be to submit an application for a court decree for access to the property.

11.2 In an emergency situation YHA will liaise with the relevant emergency services (Police/Fire/Ambulance Service) to facilitate forced access.

## **12. Complaints**

12.1 Tenants with a grievance arising from a forced access incident will be considered in accordance with YHA's Complaints Policy.

12.2 Once the Association's Complaints Policy is exhausted, there is a right of appeal to the Scottish Public Services Ombudsman (SPSO). As the SPSO is unlikely to comment on matters of a legal nature, a review will focus on the proper application of the Association's policy, rather than the legalities of forcing access.

## **13. Review**

13.1 This Policy will be reviewed every 3 years, or sooner, subject to a change in legislation or circumstance. The Policy, in parts, attempts to summarise current legislation. In any case of conflict between the two, legislation will always preside.

### **Related documents:**

- Scottish Secure Tenancy Agreement (SST)
- Gas Maintenance Policy
- Abandonment and Repossession of Properties Policy

## **Appendix. 1**

### **Regulatory Assurance & Scottish Social Housing Charter (SSHC) associated with this Policy**

#### Regulatory Assurance

- Standard 1 The Governing body leads and directs the RSL to achieve good outcomes for tenants and other service users.
- Standard 2 The RSL is open and accountable for what it does. It understands and takes account of the needs and priorities of tenants, service users and stakeholders. Its primary focus is the sustainable achievements of these priorities.
- Standard 3 The RSL manages its resources to ensure its financial wellbeing and economic effectiveness.
- Standard 4 The Governing Body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.
- Standard 5 The RSL conducts its affairs with honesty and integrity.
- Standard 6 The Governing body and senior officers have the skills, experience, knowledge and training to successfully lead and manage the organisation

#### Scottish Social Housing Charter (SSHC)

The SSHC sets out the standards and outcomes that all social landlords should endeavour to achieve when carrying out their housing activities. The following outcomes can be related directly to maintenance:

Outcome 2 - Communication - Social landlords should manage their business so that tenants and other customers find it easy to communicate with their landlord and get the information they need about their landlord, how and why it makes decisions and the services it provides

Outcome 4 - Quality of Housing – Social landlords should manage their business so that tenants' homes, as a minimum, meet the Scottish Housing Quality Standard by April 2015 and continue to meet it thereafter, and when allocated, are always clean, tidy and in a good state of repair.

Outcome 5 - Repairs, maintenance and improvements – Social landlords should manage their business so that tenants' homes are well maintained with repairs and improvements carried out when required and tenants are given reasonable choices about when work is done.

Outcome 13 - Value for money - Social landlords should manage all aspects of their business so that tenants, owners and other customers receive services that provide continually improving value for the rent and other charges they pay.

## **Appendix 2**

### **Definitions**

References are made in this policy to the following terms, defined as follows:

#### **Tenant**

The tenant or joint tenant(s) of the property, as named on the tenancy agreement.

#### **Occupant**

Anyone permitted access to the house by the tenant or joint tenant. This can include permanent household members, or visitors.

#### **Pest control**

A pest is a destructive insect or animal which has both human health and aesthetic implications. Pest control is the regulation or management of a species defined as a pest.

#### **Emergency**

Instances in which emergency repairs are required, or there are concerns for welfare (refer to 4.1.5 and 4.1.7 below)

#### **Emergency Repairs**

Any defects that put the health, safety or security of tenants, or anyone else, at immediate risk. Emergencies also include defects that can affect the structure of the building. Examples may include, but are not limited to: suspected fire (or fire risk), flood, blocked or leaking main drain or soil pipe, serious water leak, serious roof leak, unsafe electrical fittings etc.

#### **Reasonable Enquiries**

The enquiries undertaken where required to contact the tenant, or to ascertain their whereabouts. Examples may include, but are not limited to enquiries via: family, friends, neighbours, known contacts, employers, or agencies such as Police Scotland, Social Work, GP or other Health Services, Hospitals, or HM Prison Services, dependent on the individual circumstances.

#### **Concerns for Welfare**

Concerns about an individual's physical or mental health. Examples may include, but are not limited to injury, a fall within property rendering the Occupant unable to answer the door, threat to life, self-harm, threat of physical violence, negligence, abuse etc. Concerns for welfare can apply to both humans (tenants, Occupants or other), and animals



## **Public Utilities**

Electricity, gas or water authorities.

## **Works**

Investment or repair works within a tenanted property or the common parts of property aimed at bringing it up to Scottish Housing Quality Standards (SHQS), towards Energy Efficiency Standard for Social Housing (ESSH) obligations; disposal, demolition, cyclical maintenance, or other regulatory requirement for either Health and Safety or effective asset management, as informed by regulatory changes, property survey, or life cycle investment. This could include but is not limited to repair / modernisation / replacement of windows, bathrooms, kitchens, heating or electrical safety systems, monitoring / surveying property conditions or common utility services, and any treatment programme identified in the case of prolonged water damage.

## **Survey**

Inspection of property for purposes of ascertaining condition, informing scope of planned works, verifying compliance with statutory obligations / asbestos management records, evaluating Energy Performance, and general sustainment purposes in line with tenancy agreement obligations.

## **Abeyance**

Circumstances beyond landlords' control that sometimes prevent completion (or commencement) of a programme of planned works. In these circumstances works to bring relevant SHQS elements up to standard may be delayed or considered to be in "abeyance" when people-related, behaviour-related, or social factors prevent them from being progressed. In such instances, to be considered as an abeyance, every reasonable effort must have been made to inform and explain to the tenant why the work is necessary, when it is being done and why their involvement and co-operation is important. Landlords should be able to explain to the Scottish Housing Regulator that they have made such efforts. In these cases, the SHQS abeyance might last as long as the individual's or individuals' tenancy or tenancies.