
Abandonment and illegal occupation

Introduction

Sutton Housing Society (SHS) has a responsibility to ensure that its homes are properly managed and occupied and that the named tenant (resident) and their family are living in the property. This policy outlines how SHS will manage long term absences and what action SHS can take when a home appears to have been abandoned. The policy also addresses unauthorised and illegal occupation of our homes.

It may be appropriate to review our succession and assignment policy when addressing concerns relating to abandonment and illegal occupation.

Abandonment

A home is abandoned when it appears that the tenant has left the property intentionally and permanently without telling us and they do not have any intention to return and nobody else is living there. Abandonment is a breach of tenancy and is considered fraudulent misuse of property under the Housing Act 1985.

Abandonment of a property or the unauthorised / illegal use of our homes not only costs money (potential rent arrears, void costs etc) but also has social consequences such as transient occupation of the property and anti-social behaviour.

It is a key principle of the tenancy agreement that all tenants must live in their home as their “only or principal home”. The tenancy will end if the tenant is living elsewhere as SHS can take possession of the home.

A tenant is in breach of their tenancy, and may lose their tenancy if:

- The tenant is away from their home for more than four weeks without telling us, and
- The evidence confirms they do not intend to return to the home.

We recognise that individuals may need to be away from their home for long periods for many reasons e.g. family illness, hospital stay, short-term imprisonment*. Tenants planning to be away from their home for more than four weeks must inform us and provide relevant contact details for the period of their absence.

*For any imprisonment, we will consider the nature of the crime. Any serious offence that is listed in the Anti-social Behaviour, Crime and Policing Act, schedule 2a, will be deemed a serious breach of the tenancy and we will seek possession of the property if the tenant does not first terminate their tenancy.

We will consider a home abandoned if:

- The tenant confirms they have left and have no intention to return or
- It appears either nobody is living in the property or people other than the named tenant are living in the property as the tenant and we are unable to contact the tenant after having made appropriate checks (please note that these checks are listed in the procedure).
- There is a clear and obvious lack of furniture, curtains etc.
- Neighbours report that a property is not lived in / the tenant has left and no termination form or notification has been received
- The Housing Fraud Partnership has found evidence to suggest that the tenant is no longer living at the property
- No access is obtained, despite the SHS's best efforts
- The exterior of the property is in poor condition
- The tenant has died, and no NOK has come forward to make it known that they will be taking responsibility for terminating the tenancy
- No access to numerous visits and contacts to complete gas safety checks and fixed wire test.

If we continue to believe a home has been abandoned, we will take legal action to repossess the property and continue to contact the tenant to bring the matter to a conclusion ahead of any court action.

Illegal occupants / unauthorised occupants

Illegal occupants / unauthorised occupants are intrinsically linked with potential tenancy fraud. Tenancy fraud includes actions such as:

- Illegally subletting all or part of their home – this is different to taking in a lodger
- A tenant moving out of their home and knowingly letting someone else live there.
- A tenant not living in their home as their only or main home
- Someone new takes on the home when a tenant dies, without our permission
- A tenant lies or gives misleading information so that someone can become a joint tenant
- A tenant exchanges their home with someone else without telling us and/or before we have agreed that the exchange can take place
- A person who has gained unauthorised access to an empty property
- A person who has not been granted permission for a mutual exchange but has exchanged properties.

An unauthorised occupant can be:

- A lodger, partner or family member who remains in occupation after the tenant has vacated or dies and is not pursuing the right to succeed.
- A sub-tenant who rents the whole of the property from a tenant (unlawful subletting)
- A sub-tenant or lodger who occupies part of the property without the tenant obtaining written permission (breach of tenancy)
- Someone who is assigned a tenancy without our permission.

Please note that sub-letting is now a criminal offence, and individuals can be prosecuted. Any financial gain can be recovered through the court via an Unlawful Profit Order.

Sometimes a tenant may not want the people living in their home to be there. This is called 'cuckooing' and can be connected to illegal activity. If someone has moved into a resident's home or SHS suspects that someone may have taken over another residents' home, they must liaise with the local authority to have the situation investigated.

Preventing unauthorised occupation

We carry out several checks before and during a tenancy to make sure we pick up any cases of unauthorised occupation as quickly as possible. If we receive reports of a person living in a home isn't the tenant, we will treat these reports as confidential and investigate the situation.

Unlawful occupation is a criminal offence and, if confirmed, will result in legal action to bring the tenancy to an end. Whilst unauthorised occupation is not a crime, it is a breach of the tenancy conditions, and we will act to bring this to an end and may repossess the property.

Squatting

A squatter is someone who occupies a residential building, which includes temporary or moveable structures e.g. a caravan or squatting on unoccupied land, without obtaining legal permission from the owner or person legally entitled to occupy it. Squatting became a criminal offence on

1 September 2012. This is set out in subsection (1) of section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act outlining that the offence is committed when:

A person is in a residential building as a trespasser having entered it as such; the person knows or ought to know that they are a trespasser; and the person is living in the building or intends to live there for any period.

This offence carries a maximum penalty of six months imprisonment, and / or a £5,000 fine.

A person ending their tenancy or license is not considered to be a squatter, even if they leave the property and then re-enter.

Once a report is made about squatters, SHS will investigate and take the appropriate action, often involving legal proceedings to regain possession of the property.