

# ► POLICY:

## ASSIGNMENTS & OTHER TENANCY CHANGES

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### 1.0 Introduction

- 1.1 This policy relates to general needs stock owned and managed by Thames Valley Housing Association, as well as stock previously under the jurisdiction of Thames Valley Charitable Housing Association.
- 1.2 This policy is designed to give guidance on tenancy changes that may occur in our General Needs housing.
- 1.3 There are many reasons why tenancy changes are needed and this policy explains both legislation and the Association's policy around some of those changes.

### 2.0 Policy Statement

- 2.1 We will deal with all tenancy changes in line with relevant legislation.

### 3.0 Background Legislation

- 3.1 Matrimonial Causes Act 1973
- 3.2 Children Act 1989
- 3.3 Family Law Act 1996

### 4.0 Objectives

- 4.1 The aims and objectives of this policy are:
  - ▲ To set out clear expectations for tenants;
  - ▲ To be easily understood;
  - ▲ To ensure the policy makes best use of the Association's housing stock.

### 5.0 Termination of Tenancy by the Tenant

#### 5.1 Periodic Tenancies

- i) A tenant who wishes to end their tenancy must serve a Notice to Quit (NTQ) giving a minimum of 28 days notice, which is effective once the Notice is received by us. The NTQ must expire on the first or last day of a period of the tenancy. We have a standard NTQ form to help tenants and will inform residents where a valid NTQ has not been given.
- ii) If the tenancy is a joint tenancy, we encourage all tenants to sign the NTQ. However, if only one party to the tenancy signs the NTQ, it shall remain valid and will terminate the tenancy whether or not the other party is aware.

- iii) If a tenant has given a valid NTQ and wishes to extend the original date on which the tenancy is to end, we may agree in some circumstances taking all factors into account. If the tenant does not provide vacant possession on the date agreed, use and occupation will be charged after that date at the same rate as their most recent rent charge until vacant possession is given, and the keys are returned. All future correspondence will refer to the former tenancy and to use and occupation charges.

## 5.2 Fixed Term Tenancies

- i) If the tenancy is for a fixed term and the tenant wishes to end the tenancy before the end of the fixed-term they may do so by offering to surrender the tenancy giving at least four weeks notice. We will not unreasonably refuse to accept such offer to surrender. In the case of joint tenants both tenants must agree to the surrender.

## 6.0 Abandonment

- 6.1 Where a property has been abandoned by the lawful tenant and is not occupied, we will seek to recover possession as soon as possible. Where there is an unconfirmed suspicion of abandonment we will serve a Notice to Quit at the property.
- 6.2 On expiry of the NTQ if there is indisputable evidence that the property is unoccupied, we will arrange to change the locks and take possession of the property. If there is any uncertainty we will seek a Possession Order from the County Court.

## 7.0 Unauthorised Occupation

- 7.1 If a property is no longer the tenant's only or principal home the tenancy loses its security of tenure and may be terminated by a Notice to Quit served by us. We will then require any remaining occupier to leave and will seek possession by court action. Where possible the unauthorised occupier will be named as a defendant in the possession proceedings so that we can seek an order for damages for use and occupation after the Notice to Quit expires.
- 7.2 If the tenant has unlawfully sublet the whole of the property, the tenancy loses its assured or secure status and it can never be regained even if the tenant moves back in. The tenant may also be committing an offence under the Prevention of Social Housing Fraud Act 2013.

## 8.0 Relationship Breakdown

- 8.1 We advise couples who are permanently separating to seek independent legal advice in relation to tenancy issues.
- 8.2 Tenants who are going through a relationship breakdown need to tell us the following:
- ▲ The details of who is still living in the property;
  - ▲ What each tenant wants to happen to their home;
  - ▲ Whether they both agree;
  - ▲ Whether the tenants are married, in a civil partnership or co-habiting;
  - ▲ Whether there are any children living permanently at the property;

- ▲ Whether the household is in receipt of any benefits;
- ▲ Whether any domestic abuse or violence has occurred.

8.3 What we can do depends on:

- ▲ The name(s) on the tenancy;
- ▲ The type of tenancy;
- ▲ Whether there has been any previous assignment or succession.

8.4 If tenants are having difficulty coming to an agreement they may be able to apply to Court for a decision. The Citizens' Advice Bureau should be able to provide more information about this.

8.5 In the case of married couples any matrimonial occupation rights would apply whether or not the tenancy was in both spouses' names.

8.6 The County Court has the power to exclude a joint tenant from the home under the Family Law Act 1996. The Court may also transfer a tenancy to the former spouse or co-habitant of a tenant. It will not be necessary to deal with this by way of a Deed of Assignment. In such cases we should be served with the notice of application to the Court and would have the opportunity to make representations.

8.7 The Family Law Act 1996 provides that occupation of the matrimonial home by a spouse/Civil Partner of the tenant is a right and counts as occupation by the tenant. Therefore if a married couple separate and the tenancy is held in only one of their names, the spouse/Civil Partner will be allowed to remain in the home for as long as the tenancy continues i.e. until ended legally by the tenant or by us. We will not be able to terminate the tenancy simply because the tenant is no longer in occupation. These matrimonial rights will end on divorce unless the spouse/Civil Partner applies to the Court during the marriage for those rights to continue, or to resume the rights after a divorce.

## 9.0 Changing the Names on a Tenancy

9.1 We will not allow the subletting of the whole of the property to another person in any circumstances.

9.2 Unless the tenancy agreement says otherwise we will only allow assignments (transfers) to another person if there is a transfer order made by the Court under the Matrimonial Causes Act 1973, the Children Act 1989 or the Family Law Act 1996, or we have given our written consent for a mutual exchange.

9.3 In relation to requests to mutually exchange please refer to our Mutual Exchange Policy.

9.4 Some of our tenancy agreements permit assignments to another person who would be qualified under the tenancy agreement to succeed to the tenancy. All such transfers must be done by a Deed of Assignment. This right is limited and the tenant should contact us to check whether the person they propose transferring the tenancy to meets the qualification criteria. Only one succession or assignment is permitted.

9.5 In exceptional cases we will consider requests for the tenancy to be assigned from joint names to a sole name and from a sole name to joint names even where there is no right under the tenancy agreement to transfer the tenancy. We are not obliged to consent to the request, but will act reasonably when considering such requests.

9.6 Reasons for refusing a request include, but are not limited to:

- ▲ Where there has already been a previous assignment or a succession (including succession by a surviving joint tenant) we will not allow another change unless there is a Court Order directing us to do so;
- ▲ Where there are outstanding rent arrears or other debts owed to us;
- ▲ Where legal proceedings of any kind have been initiated against the current tenant or there are other tenancy breaches;
- ▲ Where the person who is applying to join the tenancy does not have the right to rent, has no recourse to public funds or no right to remain in the country;
- ▲ Where the person applying to become a joint tenant or the person applying to have the tenancy in their own name would not qualify to join the housing register, for example, if they already hold an assured tenancy, own a property elsewhere, or they do not meet the financial criteria;
- ▲ Where the person applying to be joined as a tenant is not the current tenant's spouse or partner;
- ▲ Where there is a valid Court Order for possession of the existing tenant's home;
- ▲ Where there is reason to believe that one of the parties is being pressured into changing the names on the tenancy;
- ▲ Where the property is not suitable.

9.7 If we agree to change the named tenants on a tenancy agreement, this will be done by assignment.

## 10.0 Payment of Rent and Management of Arrears

10.1 If a tenancy is in the name of one person they will be responsible for any arrears. If a tenancy is in joint names, all tenants are equally responsible for any arrears or debts owed to the Association.

10.2 In the event that the change in names on the tenancy agreement is the result of a Court order then any arrears will apply to both joint tenants.

10.3 There may be instances when a Court will decide who is responsible for outstanding arrears i.e. in matrimonial cases. We will abide by the ruling of the Court Judgement.

## 11.0 Death of Tenant

11.1 A tenancy does not automatically end with the death of a tenant. If there is no statutory successor the tenancy will become part of the deceased tenant's estate.

- 11.2 A Notice to Quit will be served by us on the Personal Representatives of the deceased tenant. Such NTQ will be served at the property and on the Public Trustee's office, unless there has been a formal Grant of Probate obtained by Executors/Administrators in which case the NTQ will be served on them.
- 11.3 If someone who is not entitled to succeed occupies the property, proceedings for possession will be taken after serving a Notice to Quit. If the property remains occupied on expiry of the Notice to Quit, we will issue legal proceedings and obtain an order for possession that would be enforced by a warrant for possession if necessary.
- 11.4 Any debts owed to us will be recovered from the deceased tenant's estate.

## 12.0 Information Sharing

- 12.1 All applications and tenants are subject to Data Protection Act 2018. At the point of interview applicants are asked to sign a S171 declaration within the terms of the 1996 Housing Act. This declaration warns that it is an offence to knowingly withhold or provide false information. In addition, applicants are made aware that information can be shared with other housing providers or relevant agencies. This can include information sharing protocols with public bodies.
- 12.2 Where specific permissions are required to make enquiries with individual support workers, the applicants are required to sign a declaration giving their permission. Identification markers on our computer databases are also used to denote risks, vulnerability or for regard to be given to special requirements.

## 13.0 Appeals Procedure

- 13.1 Residents may make an appeal with regard to tenancy changes which have been refused. Additional information should be provided in support of their appeal. The appeal should be in writing or dictated over the phone to a member of staff within five working days (weekdays not including public holidays) from the date of refusal. The Housing Services Manager will investigate the reasonableness of the refusal and will advise the applicant in writing of the decision. This process will be concluded in ten calendar days (not including public holidays) unless a mutually agreed alternative timescale is agreed.
- 13.2 If the applicant disputes this decision there is a second right of appeal to the Director of Residential Services. This must be made within five working days of the initial appeal outcome and will include the reasons for the appeal. The Director of Residential Services will give a written response based on a review of the initial appeal decision within ten working days. The decision of the Director of Residential Services will be final.
- 13.3 This appeal procedure does not interfere with an individual's right to make a complaint to the Independent Housing Ombudsman or to request an agency or organisation to make the appeal on their behalf.

## 14.0 Other Useful Policies

Tenancy Policy

Lettings Policy

Mutual Exchange Policy

Transfer Policy

Succession Policy

## 15.0 Policy Information

**Policy owner:** Housing Services Manager

**Approved by:** Director of Residential Services

**Last review date:** May 2016

**Next review date:** May 2019