

# TENANCY CHANGES POLICY

## **1. Purpose**

- 1.1 This policy sets out our approach to dealing with requests for changes of tenancy. This includes:
- sole tenancy to joint tenancy
  - joint tenancy to sole tenancy
  - mutual exchange
  - assignment
  - succession
- 1.2 The purpose of this policy is to provide clarity to both us and our customers on the type of changes that may take place, and our approach to these. Further details are in relevant procedures.
- 1.3 We recognise the importance of ensuring that both the current tenant(s) and any prospective new tenant fully understand the implications of any changes before these are finalised, and that the tenancy is sustainable. This policy explains the process when we consider such requests including when a request may be refused.

## **2. References**

- 2.1 The Regulator of Social Housing sets out its expectations of Registered Providers (RPs) in its Regulatory Standards. The standards relate to providers being viable, properly governed and properly managed. The Tenancy Standard sets out specific expectations for RPs in the management of tenure, allocations and mutual exchange.
- 2.2 The Housing Transfer Offer document sets out protected rights following transfer from Wycombe District Council e.g. additional right of succession.

## **3. Responsibilities**

- 3.1 To manage tenancies in a fair, transparent and efficient manner, meeting legislative requirements and following guidance laid out in the Regulatory Code.
- 3.2 To be transparent and helpful to tenants to ensure they understand their responsibilities and our responsibilities when signing a tenancy agreement.
- 3.3 To ensure that our homes are managed effectively and that our customers are able to meet their responsibilities and reach their potential.

## **4. Legal Framework**

- 4.1 Relevant legislation includes:
- Housing Act 1985

- Housing Act 1988
- Fraud Act 2006
- Housing and Regeneration Act 2008
- Localism Act 2011
- Prevention of Social Housing Fraud Act 2013
- Marriage (Same Sex Couples) Act 2013
- Civil Partnership Act 2004
- Equality Act 2010
- Immigration Act 2016

## **5. Definitions**

- 5.1 Secure Tenancy (ST): this was the name given to the tenancies issued to tenants when they were Wycombe District Council tenants. None of our customers have this type of tenancy any longer.
- 5.2 Assured (non-shorthold) Tenancy (AT): all tenants whose tenancies began on or after the date of transfer - 12 December 2011 - have this kind of tenancy.
- 5.3 Assured 'protected' rights Tenancy AT (P): all tenants whose tenancies predate the transfer have this kind of tenancy. It protects and preserves some of the rights contained in the ST.
- 5.4 Assured (shorthold) 'starter' Tenancy (AST (S): all new tenants to social housing are issued with this tenancy, which is usually for a period of 12 months. Those issued with this type of tenancy prior to the introduction of the fixed term tenancies in May 2016, will convert to an Assured (non-shorthold) Tenancy after 12 months unless a notice is served within the first 12 months to end the tenancy. Those issued with this tenancy after 16th May 2016, will have their starter tenancy reviewed by the 12-month anniversary and be advised whether they will be granted a fixed term tenancy.
- 5.5 Assured Shorthold Tenancy (AST): this short-term tenancy is issued where there is a need for a short-term tenancy, for instance tenants who are temporarily decanted for major works, or those who are temporarily housed as part of a development project or as part of our arrangement with Buckinghamshire Council for homeless applicants etc.
- 5.6 Assured (shorthold) Fixed Term Tenancy (FTT): all new tenants who have completed a starter tenancy whether with us or another landlord, will be granted this tenancy which will usually be for a period 5 years, and 2 years in exceptional circumstances. The FTT was introduced on 16th May 2016.

- 5.7 A sole tenancy is where one person has legal responsibility for a tenancy.
- 5.8 A joint tenancy is defined as one tenancy between two or more tenants, with each tenant being jointly and individually responsible for the tenancy. In a joint tenancy both individuals are responsible for keeping to the obligations set out in the tenancy agreement. If one person in an assured joint tenancy serves notice to terminate their tenancy, then the tenancy as a whole terminates (Case Law: Hammersmith and Fulham LBC v. Monk [1992]).
- 5.9 In a fixed term joint tenancy, both tenants must submit their 'intention to surrender' their tenancy and it must be accepted in writing by us for the tenancy to end.
- 5.10 Mutual exchanges are direct exchanges of tenancies which are arranged by tenants themselves.
- 5.10.1 Assured tenants who hold an AT are eligible under the Housing Act 1985 to exchange their tenancy with:
- other assured tenants of the same landlord
  - other assured tenants of other registered providers secure tenants of local authorities

The above changes are made via a Deed of Assignment, without creating a new tenancy.

- 5.10.2 Where a tenant with an AT(P) exchanges with an AT holder, they will take on the rights and responsibilities of that tenancy via a Deed of Assignment and will be protected from the post-April 2014 de-pooled service charge.
- 5.10.3 Section 158 of the Localism Act 2011 creates a new mechanism for mutual exchanges (by surrender and re-grant) to protect assured 'lifetime' tenants who were granted their tenancy prior to 1<sup>st</sup> April 2012, from losing their security of tenure if they exchange with a fixed-term (FFT) tenant at a social rent. This will allow them to retain the Right to Buy in their new home (if it is not a property that is excluded from the RTB). However, this protection only applies for the first exchange and will be lost if further mutual exchanges take place. The implications on their tenancy status and rights will be fully explained to tenants prior to a decision being made.
- 5.11 Assignments: these occur when a tenant gives their interest in a tenancy to another person, who must be eligible to succeed to their tenancy. The tenancy of the property then continues on the same basis and the new tenant takes on all the rights and responsibilities of the original tenancy. Our assured tenancy agreement only allows one assignment (other than by mutual exchange) and only to a potential successor with our consent. Our fixed term tenancy allows for assignment only by court order or an agreed mutual exchange.
- 5.12 Succession: Succession rights are clearly laid down in legislation and vary depending on the relationship of the applicant to the deceased tenant and the type of tenancy that was held. It is important that the full facts are established, and any

necessary evidence is obtained before succession is granted or refused. There can be only one statutory succession. Although our tenancy agreement does give us discretion to allow more, this would not be our normal practice.

- 5.13 Our fixed term tenancy does not allow for discretion in succession. A joint tenant or a successor would succeed to the remainder of the fixed period.

## **6. Policy Statement**

- 6.1 We are committed to providing excellent services for all tenants.
- 6.2 We will provide a clear and transparent way in which tenants are able to request changes to their tenancy, which is in line with relevant legislation. As the landlord, we must be satisfied that the person who requests the change understands their obligations and that the new person qualifies for the change requested and will be a suitable tenant.
- 6.3 We will advise tenants that they should seek independent legal advice on the implications of the tenancy change they are requesting.
- 6.4 To determine the suitability of a non-tenant who will become a tenant if the change is agreed, there will be an application process. We will carry out checks on that individual, requesting evidence and verification where necessary.
- 6.5 We may also consider how changing the tenancy fits in with the way housing is allocated through Bucks Home Choice, as well as our own Allocations Policy. This is to ensure we continue to provide homes to people who would normally qualify.
- 6.6 The circumstances in which we may refuse the request for a tenancy change will be outlined in the specific procedure, will depend upon the specific individual circumstances of the case, and may include any or all of the following:
- There are rent arrears or other charges or recharges owing
  - There is an outstanding possession order or Notice Seeking Possession for either rent, antisocial behaviour or other tenancy breach including an injunction for gas servicing access
  - There are arrears which relate to a previous tenancy
  - There are outstanding complaints about anti-social behaviour, hate crime or domestic abuse
  - The proposed tenant owns or has a legal interest in another property including another tenancy
  - The proposed tenant has previously been convicted or has voluntarily relinquished a tenancy for an offence under the Prevention of Social Housing Fraud Act 2013

- We are concerned about a potential risk to the tenant or someone else in the household in terms of vulnerability/harm
- The tenant is already a successor or there has been a previous change of tenancy or assignment
- An FTT has less than twelve months to run
- The tenant is a starter tenant
- We do not have a satisfactory standard of evidence to agree to the change such as proof of residence or immigration status
- The proposed tenant does not have capacity and/or there are other concerns relating to the sustainability of the tenancy

6.7 Where we agree a tenancy change and subsequently find one or both parties have not declared all relevant details or have falsified information when applying, we will investigate and may take legal action to recover possession of the property.

6.8 Where one party to a joint tenancy dies, the remaining tenant is the beneficiary of the succession right. If a new person joins the tenancy, they do not have the right of succession.

6.9 When assessing an application for a tenancy change we will require applicants to undergo a risk assessment, which will include credit checks and exchange of payment information. The applicant must demonstrate their ability to meet their financial obligations, such as sustaining rent payments and meeting other essential living costs. The assessment will also take into account any additional support needs, and their ability to manage a tenancy. If either of these elements of the assessment shows that the applicant is likely to be unable to maintain the tenancy we may refuse the tenancy change request, unless we are satisfied that a suitable support plan is in place to mitigate the risk.

6.10 We work with partners to minimise fraud at all stages of tenancy lettings including where there is a request for a tenancy change.

6.11 The staff member who authorises a tenancy change must be at a manager level or higher.

## **7. Right of appeal**

7.1 There will be a right of appeal if any request for a tenancy change is refused.

7.2 When writing to you with a decision on a tenancy change we will advise you of the reason for our decision and of your right to appeal.

7.3 You can appeal our decision for the following reasons

- The applicant believes we have made a mistake when deciding they are ineligible or non-qualifying
- There is information that the applicant thinks we have not taken into account, either about their status as a non-qualifying person or in relation to any disability, medical condition or vulnerability
- There is additional evidence that backs up the claim to be an eligible or qualifying person to succeed and it is to be submitted for consideration

7.4 We cannot accept an appeal for any other reason – we know applicants may not be happy with a decision but unless the appeal is for one of the reasons here we will be unable to consider it.

7.5 To appeal our decision, you should contact us and tell us which reason you are using to appeal and provide us with any supporting information. There is a deadline for this - you will need to contact us within 15 working days of our decision

7.6 We accept an appeal in all of the following ways:

- **Emailing** [relationship.co-ordinator@redkitehousing.org.uk](mailto:relationship.co-ordinator@redkitehousing.org.uk) with the title – Request to Appeal Decision; or
- **Telephoning** us on 01494 476100 advising us you are appealing a decision. We will ask for you to provide the information above and may need you to send further information in by email or post.
- **In person** – you can advise any member of staff that you wish to appeal a decision. We will ask for you to provide the information above and may need you to send further information in by email or post.
- **By post** to Red Kite Community Housing, Kingsmead Business Park, Frederick Place, London Road, High Wycombe HP11 1JU – please title your letter Request to Appeal Decision.

7.7 The appeal will be heard by another senior member of staff not involved in the original decision and our response to your appeal will be sent within 15 working days. In exceptional cases it may take us a little longer to consider the appeal. If this is the case, we will let you know and agree a date when you will have a decision.

7.8 As part of dealing with the appeal, we may contact you to ask questions and ensure we have all of the right information.

7.9 Once the appeal decision has been made there will be no further appeal.

7.10 If you are unhappy with how we have managed your case, you can make a complaint via our Feedback Policy which is available on our website or on request. However, this will not form an appeal of the decision made.

## **8. Related Policies & Procedures**

8.1 This policy should be read in conjunction with the following policies and procedures:

- Allocations Policy
- Succession Procedure
- Mutual Exchange Procedure
- Anti-social Behaviour Policy and Procedure
- Joint to Sole Tenancy Procedure
- Sole to Joint Tenancy Procedure
- Tenancy Policy

## **9. Administrative Charges**

9.1 We may make an administrative charge for any request made except where it is as a result of the issuing of an AT(P).

9.2 Charges will be made in accordance with our charging schedule which is reviewed annually.



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