

## Tenancy Changes Policy

### 1.0 Policy statement

- 1.1 This policy sets out Stonewater's approach to managing changes to our tenancy agreements in accordance with legislative and regulatory requirements. We recognise the importance of ensuring that our customers understand what the various changes of tenancy mean to them and understand the responsibilities they are taking on.

### 2.0 Policy scope and objectives

- 2.1 This policy applies to any customer renting their home from Stonewater who wants to make changes to their tenancy. The policy therefore excludes leaseholders and shared owners.
- 2.2 This policy applies to:
- requests to change the name on the tenancy
  - requests to create joint tenancies from sole tenancies
  - requests to create sole tenancies from joint tenancies
  - requests to succeed a tenancy following the death of a tenant
  - requests to assign the tenancy to someone else
  - terminating the tenancy.
- 2.3 This policy excludes mutual exchanges which are dealt with within our specific Mutual Exchange Policy.
- 2.4 This policy does not apply to managed services customers where the Owners Policy is applied.

### 3.0 Regulatory and legal considerations

- 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
- Matrimonial Causes Act 1973
- Children Act 1989
- Family Law Act 1996
- Coronavirus Act 2020
- Domestic Abuse Act 2021

## 4.0 Policy details

### 4.1 Definitions

- 4.1.1 **Sole tenancy:** where one person has legal responsibility for a tenancy.
- 4.1.2 **Joint tenancy:** defined as one tenancy held by two or more persons, with each tenant being jointly and individually responsible for keeping to the obligations set out in the tenancy agreement. If one person in a joint tenancy serves a valid notice to terminate the tenancy, then the tenancy as a whole is ended.
- 4.1.3 **Assignments:** these occur when a tenant gives their interest in a tenancy to another person. 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.
- 4.1.4 **Mutual exchanges:** direct swapping or exchange of properties which are arranged by tenants themselves; see the Mutual Exchange Policy for more information.
- 4.1.5 **Succession:** this is when a tenant dies and their tenancy passes to another qualifying person. 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. There can be only one statutory succession. Some tenancy agreements allow for 'succession' outside of the statutory regime. Our tenancy agreements clearly set out the contractual and statutory succession rights which apply.
- 4.2 For **starter tenancies**, we will not generally permit any tenancy changes within the 12-month starter tenancy period other than:

- succession by survivorship and statutory succession
- assignment by way of a court order
- surrender of tenancy

- 4.3 **Change of name:** Where a customer who is a current tenant has legally changed their name, we will recognise the change and update our records accordingly upon receipt of recognised legal documentation. This does not count as a succession.

### 4.4 Termination of tenancy by the tenant

#### 4.4.1 Periodic tenancies

A customer who wishes to end their tenancy must serve a written notice to quit (NTQ) giving a minimum of 28 days (4 weeks) notice, which normally is effective from the first Monday after the notice is received by us. The NTQ must expire on the last day of a period of the tenancy which will normally be a Sunday. Written notice can be served upon us by post to our registered office address or via email subject to the email address used to send the Notice being registered to the tenant's account.

We have a standard NTQ form our customers can use for this purpose, although they are not required to use it, and we will let customers know where a valid NTQ has not been given.

If the tenancy is a joint tenancy, we encourage all customers who are included on the tenancy to sign the NTQ. However, if only one party to the tenancy signs a valid NTQ, it shall remain valid and will terminate the tenancy whether or not the other party(ies) is/are aware. We will not accept verbal notice from the Tenant.

#### **4.4.2 Fixed term tenancies**

If the tenancy is for a fixed term and a customer wishes to end their tenancy before the end of the fixed term, they may do by a notice to quit (NTQ) giving the required notice specified within the tenancy agreement's break clause, which is effective once the NTQ is received by us. In the case of joint tenants both tenants must sign the NTQ to end the tenancy.

Where there is no break clause option within the fixed term tenancy, Stonewater will actively work with the customer to understand why they need to terminate the agreement and agree terms under which this may be accepted and agreed. Normally this will be no shorter than 28 days (4 weeks) notice in line with periodic tenancies. See also surrender below.

#### **4.4.3 Surrender of tenancy**

All parties can end a tenancy at any time with or without notice if there is clear agreement between the tenants and Stonewater. It is not lawful for Stonewater to accept an offer of surrender if that offer is given by only one party to a joint tenancy.

Surrender can only take place where the customer offers to give up the tenancy of their property or acts in a way that they clearly want out of the tenancy (e.g. by emptying the property and returning the keys) and Stonewater agree. It is preferable to have this in writing in the form of a deed of surrender. Where keys are handed back for a property without notice we will generally not accept this as an act of surrender and will end the tenancy by notice to quit (NTQ) giving 28 days' notice during which rent will be charged.

Where we agree to accept a surrender we will prepare a Deed of Surrender for all parties to sign. Where the tenant simply empties the property, leaves and returns the keys without warning or with no forwarding address (and so it is not possible to prepare a deed of surrender), Stonewater if it wishes could accept this as a surrender by implication of law. This is where the tenant by their actions clearly want to relinquish the tenancy and Stonewater are prepared to agree to this.

#### **4.5 Notice periods**

- 4.5.1 Upon a tenant's request, Stonewater have a discretion to accept a shorter notice period than that set out in the tenancy agreement but we are not obliged to do so.

4.5.2 If the property is left in good condition, with all keys returned and the tenant consents to Stonewater carrying out repair works during a notice period to make the property re-lettable for the next tenant we may consider a rent credit. This is entirely at Stonewater's discretion.

#### **4.6 Abandonment**

4.6.1 Where a property has been abandoned by the lawful tenant(s) and is not occupied, we will seek to recover possession as soon as possible. We will serve a notice to quit (NTQ) at the property. If there is indisputable evidence that the property is unoccupied, we may arrange to change the locks and take possession of the property on expiry of the notice.

#### **4.7 Unauthorised occupation**

4.7.1 If a property is no longer the customer's only or principal home the tenancy loses security of tenure and can formally be terminated by a notice to quit (NTQ) served by us. We will then require any remaining occupier(s) to leave and will seek possession through court action as necessary. Where appropriate, the unauthorised occupier(s) will be named as a defendant in the possession proceedings so that we can seek damages from them for their use and occupation after the NTQ expires.

4.7.2 If the tenant parts with possession of the property or has unlawfully sublet the whole of the property, their tenancy loses its assured status and this can never be regained even if the tenant moves back into the property. The tenant may also be committing an offence under the Prevention of Social Housing Fraud Act 2013.

4.7.3 In cases of social housing fraud, as well as seeking to recover possession of the property we may work with our partners in order to seek criminal prosecution of those responsible. We will also seek unlawful profit orders.

#### **4.8 Joint tenancy breakdown**

4.8.1 Stonewater will be mindful of any indications of domestic abuse in all matters relating to relationship breakdown and subsequent requests from tenants.

4.8.2 We advise any joint tenants who are permanently separating to seek independent legal advice in relation to tenancy issues.

4.8.3 Joint tenants who are going through a separation and no longer looking to hold a tenancy in joint names will need to tell us about the following:

- details of who is still living in the property
- what each customer who is party to the tenancy wants to happen to their home
- whether they both agree
- whether they are married, in a civil partnership or co-habiting
- whether there are any children living permanently at the property
- whether any member of the household is in receipt of any benefits
- whether any domestic abuse or violence has occurred.

4.8.4 What we can do depends on the following:

- the name(s) on the tenancy; and
- the type of tenancy

4.8.5 If customers are having difficulty coming to an agreement about their tenancy they may be able to apply to court for a decision. The Citizens' Advice Bureau should be able to provide more information about this.

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

4.8.7 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 cohabitee 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.

4.8.8 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 sole tenant leaves the property, leaving their married/civil partner in occupation the tenancy will remain whilst the marriage/civil partnership continues or the tenancy is legally ended by the tenant or by us.

4.8.10 We will not be able to terminate the tenancy simply because the spouse/civil partner apply to the court during the marriage or civil partnership for those rights to continue, or to resume the rights after a divorce.

4.8.11 In cases of periodic Assured tenancies, if one joint tenant serves a valid notice to quit it will bring the whole tenancy to an end. Stonewater has no legal responsibility to grant a new tenancy. Tenancy conduct, the effective utilisation of housing stock and whether there is any substantiated domestic abuse may impact on whether we grant a new tenancy (and to which party). If there is a dispute over the tenancy and Stonewater are not in a position to decide who should be granted a new sole tenancy we may offer back another joint tenancy in accordance with our Tenure Policy.

#### 4.9 **Assignment**

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

4.9.2 Mutual exchanges carried out via assignment are dealt with by our separate Mutual Exchange Policy.

4.9.3 We will allow assignments (transfers) to another person in accordance with this policy or 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.

4.9.4 Our assured tenancy agreements will permit assignment to another person who would be qualified to succeed to the tenancy. This must be undertaken by

a Deed of Assignment. This right is limited and the customer should contact us to check whether the person they propose assigning their tenancy to meets the qualification criteria.

4.9.5 Reasons why we may refuse a request include\*, but are not limited to:

- where there has already been a previous assignment unless there is a court order directing us to do so
- where there are outstanding rent arrears or other debts owed to us or other breaches of tenancy
- where the assignment would not be the best utilisation of Stonewater housing stock or the property is unsuitable
- where legal proceedings of any kind have been initiated against the customer or the proposed assignor or we are aware of anti-social behaviour or prior breaches of tenancy by the customer or assignor
- where there is a court order for possession of the existing customer's home or where a notice has been served
- where the applicant has no recourse to public funds or no right to remain in the country
- where the applicant 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 assignment would result in a breach of s106 criteria
- where there is reason to believe that one of the parties is being pressurised into changing the tenancy
- where we have reason to believe the applicant is not resident.

\*This list is not exhaustive

#### 4.10 **Requests for joint tenancies**

4.10.1 Customers will be advised to seek legal advice around the implications of sole and joint tenancies. If a customer is already a sole tenant and is seeking a joint tenancy we will limit those that are permitted to become a joint tenant to only those who are the Tenant's spouse or partner.

4.10.2 We will not grant a joint tenancy to any more than 2 adults, unless in exceptional circumstances. We will not grant a tenancy to more than 4 adults. Occasionally, we may grant a joint tenancy to an adult and a minor, provided the adult joint tenant acts as trustee for the minor.

4.10.3 We will be mindful of any known domestic violence issues, in particular to any indication of coercion or control when discussing occupancy agreements with customers and reserve the right to suspend a decision until further investigation has taken place.

4.10.4 There is no legal right to compel Stonewater to grant joint tenancies.

4.10.5 For customers who hold assured tenancies, requests for joint tenancies will be dealt with by Deed of Assignment which will enable the applicant to join the existing sole tenancy.

4.10.6 Unless a spouse or civil partner (evidence by certificate), the applicant(s) requesting to be added to the tenancy will need to prove that they have been resident for a minimum of 12 months. They will need to meet Stonewater's Access to Housing Policy and Appendix and show that they have Leave to Remain in the UK for a period exceeding the tenancy in place.

4.10.7 We may refuse an application for a joint tenancy if any of the points in 4.9.5 apply, which are not exhaustive.

#### 4.11 **Payment of rent (and applicable service charges) and use and occupation damages**

4.11.1 If a tenancy is held in the name of one person they will be responsible for any rent and/or service charge arrears. If a tenancy is held in joint names, all customers who are tenants are jointly responsible for any arrears or debts owed to us.

4.11.2 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 judgment.

4.11.3 We will demand damages for use and occupation in the following circumstances:

- Notice has been given by the customer and expired bringing the tenancy to an end but we have not received the keys and believe that the tenant may still be in occupation. Use and occupation will be charged until we have legally obtained possession.
- The tenant has not provided us with vacant possession at the end of the tenancy. Use and occupation will be charged until we have legally obtained possession.
- We consent to continued occupation after the tenancy has terminated.
- Failure to pay these charges will result in possession action
- This will only ever be a temporary arrangement.

#### 4.12 **Death of tenant**

4.12.1 A tenancy does not automatically end with the death of a tenant, although normally the security of tenure (e.g. assured status) is lost on death and the tenancy continues as a contractual periodic tenancy. If there is no statutory succession the tenancy will become part of the deceased customer's estate.

4.12.2 A notice to quit (NTQ) will be served by us on the personal representatives of the deceased tenant. Such NTQ will be served at the property and a copy on the public trustee's office, unless there has been a formal grant of probate/letters of administration obtained by executors/administrators in which case the NTQ will be served on them.

4.12.3 If someone who is not entitled to succeed occupies the property, proceedings for possession will be taken after serving a Notice to Quit. We will seek damages for use and occupation from any unauthorised persons in the property after the notice has expired.

4.12.4 We will seek to recover any debts owed to us from the deceased customer's estate (subject to the funds being available to pay the debt).

#### **4.13 Succession following death of tenant**

##### **4.13.1 Survivorship by a joint tenant**

Where a joint tenant passes away and is survived by the remaining joint tenant, we will recognise that the surviving joint tenant has succeeded to the tenancy, with automatic and immediate effect from the date of death. We will provide the customer who is to be the new sole tenant with a letter confirming the succession. This will count as a succession.

If the joint tenant no longer resides in the property, they will still succeed to the tenancy, but their security of tenure is lost and we can take steps to end the tenancy by service of a notice to quit. The tenancy will end if the joint tenant does not take back up occupation of the property as their only or main home prior to the expiry of the notice. The joint tenant will be liable for any arrears arising from the tenancy irrespective of whether they are residing in the property.

##### **4.13.2 Statutory succession by a spouse/partner**

Where a sole tenant passes away, and was not themselves a successor the tenancy will vest with automatic and immediate effect (by virtue of Section 17, Housing Act 1988) in any spouse or civil partner (or any person living in the property as such) of the tenant who was occupying the property as his or her only or principal home at the time of death. In this instance, the tenancy will not devolve under the tenant's will or intestacy. We will provide the customer who is to be the new sole tenant with a letter confirming the succession.

##### **4.13.3 Contractual succession by a relative**

Where a sole tenant passes away, that customer was not themselves a successor and there is no statutory succession by a spouse/partner, some of our legacy organisation tenancy agreements state that a relative may succeed to the tenancy as long as they were living in the property with the sole tenant as their only or main home throughout the 12 months before the date of death.

Only one person may succeed to the tenancy; if more than one relative wishes to succeed, they should agree between themselves but if this is not possible then we will make the decision.

If the tenancy commenced prior to 1 April 2012 this succession will be carried out by way of ending the existing tenancy and granting a new one to the successor.



If the tenancy commenced after 1 April 2012 and gives right of succession of the tenancy to a relative, Stonewater will allow a relative to succeed the tenancy by way of an endorsement to the tenancy.

Succession may not be to the property of the deceased if Stonewater deem it unsuitable.

If the tenancy commenced after 1 April 2012 and is silent on any rights for the tenancy to be succeeded by a relative, Stonewater will not allow a relative to succeed the tenancy.

#### **4.14 Devolvement to another person under the tenant's will or intestacy**

4.14.1 Where a sole tenant passes away, and their tenancy has devolved to another person under the tenant's will or intestacy, we will recognise that this person has succeeded to the tenancy provided that the formalities for transferring the tenancy from the deceased tenant to them have been completed.

4.14.2 We will provide the customer who will be the new tenant with an endorsement to the tenancy confirming that they have succeeded to the tenancy following the date of death. In these circumstances, if the new tenant did not have a contractual right to succeed to the tenancy, we will consider applying for possession of the property under Ground 7, Schedule 2, Housing Act 1988.

### **5.0 Service standards**

5.1 To ensure compliance with regulatory and legislative requirements.

5.2 To ensure that Stonewater maximises the utilisation of its housing stock.

5.3 To empower staff by providing a high level framework from which comprehensive processes and procedures will flow from.

5.4 To set clear expectations for our customers and ensure that our customers understand the implications of the various types of tenancy changes.

5.5 To ensure a positive customer experience to customers needing to make a tenancy change.

5.6 In the event of a pandemic or other emergencies our procedures will be reviewed to reflect government guidance.

### **6.0 Equality, diversity and inclusion**

6.1 The Equality Act of 2010 makes it unlawful to discriminate against anyone on grounds of age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, and pregnancy and maternity. Stonewater supports its principles and is committed to the values of equality of opportunity and non-discrimination.

### **7.0 Related policies**

7.1 This policy should be read in conjunction with the following policies:

- Tenure Policy
- Access to Housing Policy
- Mutual Exchange Policy

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