

## 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

### 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 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 separate 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. 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 changed their name we will recognise the change and update our records accordingly upon receipt of recognised legal documentation. This will 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 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 our customers can use for this purpose 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 the NTQ, it shall remain valid and will terminate the tenancy whether or not the other party(ies) is/are aware.

##### 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 giving the required Notice specified within the tenancy agreement, which is effective once the Notice is received by us. In the case of joint tenants both tenants must sign the Notice to Quit to end the tenancy. 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 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**

If the property is left in good condition and the tenant consents to us 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**

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 at the property. If there is indisputable evidence that the property is unoccupied, we will 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 served by us. We will then require any remaining occupier(s) to leave and will seek possession through court action as necessary. Where possible the unauthorised occupier(s) will be named as a defendant in the possession proceedings so that we can seek damages for use and occupation after the Notice to Quit 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 Relationship Breakdown

- 4.8.1 We advise any couples who are permanently separating to seek independent legal advice in relation to tenancy issues.
- 4.8.2 Customers who are going through a relationship breakdown 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.
- 4.8.3 What we can do depends on the following:
- the name(s) on the tenancy; and
  - the type of tenancy
- 4.8.4 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.
- 4.8.5 In the case of married couples any matrimonial occupation rights would apply whether or not the tenancy was held in both spouses' names.
- 4.8.6 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-habitee 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.
- 4.8.7 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 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.
- 4.8.8 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.
- 4.8.9 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 and Allocations Policies.

#### **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;
  - 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 We will only consider joint tenancies for spouses, civil partners and partners. There is no legal right for Stonewater to grant joint tenancies.

4.10.2 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.

4.10.3 Unless a spouse or civil partner (evidenced by certificate), the applicant requesting to be added to the tenancy will need to prove that they have been resident for a minimum of 12 months. We may refuse an application for a joint tenancy if any of the points in 3.9.5 apply, which are not exhaustive.

#### **4.11 Payment of Rent and Use and Occupation charges**

4.11.1 If a tenancy is held in the name of one person they will be responsible for any rent 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 charge use and occupation charges in the following circumstances:

- Notice has been given by the customer 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 is 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. If there is no statutory succession the tenancy will become part of the deceased customer's estate.

4.12.2 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 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 use and occupation charges 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. This will count as a succession.

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

Where a sole tenant passes away, and was not themselves a successor the tenancy has vested 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 copy of the existing tenancy agreement.

##### **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 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 the 1<sup>st</sup> April 2012 this succession will be carried out by way of ending the existing tenancy and granting a new one to the successor. This may not be to the property of the deceased if Stonewater deem it unsuitable.

#### **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 a copy of the existing tenancy agreement, and ask them to sign a document 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

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 & Civil Partnership, Pregnancy & Maternity. Stonewater supports its principles and is committed to the values of equality of opportunity and non-discrimination

## 7.0 Author & Version

Author	Ben Swiergon
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Approved by:	Housing Committee
Date approved	27.11.18

### Revision History

Version	Date	Author	Description
1	27.11.18	Ben Swiergon	Created
2	15.6.20	Nicola Mason	Reviewed and updated onto new policy template. Updated with pandemic statement. Reviewed in line with new service model Reviewed to consider L&G Regulatory information added
3	25/6/20	Nicola Mason	Updated following feedback JG