Assignation Policy

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1. Introduction

1.1. This policy outlines the rights of assignation granted to Scottish Secure Tenants under the provision of the Housing (Scotland) Act 2001 and Housing (Scotland) Act 2014.

2. Purpose

2.1. By having a written detailed Assignation Policy, Waverley Housing is able to ensure that a uniform and professional approach is adopted throughout the organisation and the service delivered is compliant with law, best practice and internal policy.

3. Aims of Assignation Policy

3.1. The main aim of this policy is to clarify to tenants and applicants how applications to assign tenancies will be processed and managed.

3.2. An assignation of a tenancy is when the assignor terminates their tenancy and conveys all their rights and responsibilities under a new Tenancy Agreement to another person.

The other person becomes the new tenant but does not assume responsibility for any breach of tenancy conditions from the time before they took up the tenancy.

3.3. Section 5 highlights the eligibility criteria for assignation as not all applicants will be eligible.

3.4. An Assignation Application will be responded to within 28 days of Waverley Housing receiving the completed application form. Failure to do so will lead to the assignation being granted automatically.

4. Policy Statement

4.1. Waverley Housing will not unreasonably withhold consent for assignations when the house has been the assignee's only or principal home for at least 12 months prior to the date of the written application to assign. However, consent may be withheld in certain circumstances.

This would include where:

a) the assignation would lead to overcrowding or under-occupation.

b) a Notice of Proceedings for Possession, under conduct grounds, has been served on the tenant.

c) an Antisocial Behaviour Order is effective against the tenant or any member of the tenant's family.

d) the proposed assignee was previously evicted for antisocial behaviour within the last 5 years (this includes eviction by other social landlords).

e) where Waverley would not give priority within the terms of its Allocations Policy whom the tenant wishes to assign the tenancy.

f) an order for the tenant's eviction has been obtained.

g) if the Pre-End of Tenancy Inspection is unsatisfactory and there would not be enough time for the tenant to carry out the necessary repairs, a refusal letter should be issued to the tenant detailing the outstanding repairs.

h) the tenant has outstanding debts with Waverley Housing of more than one month's rent and has not adhered to a reasonable repayment arrangement for at least 3 consecutive months.

i) the proposed assignee owes Waverley Housing a debt and has not adhered to a reasonable repayment arrangement for at least 3 consecutive months.

j) the proposed assignee abandoned a local authority or housing association tenancy within the last 3 years.

k) if it transpires that the tenant is receiving any payment for the assignation.

4.2. All applications for assignation (with the exception of those ordered by the Court) must be in writing, by completing the appropriate forms, giving details of the proposed assignation and the assignee(s) details.

5. Eligibility

5.1. We will only permit assignations where the tenant applies in writing to Waverley and:

a) The property has been the tenants only or principal home during the 12 months immediately before the tenant applies for written permission to assign the tenancy and

b) The person that the tenant wishes to assign their tenancy to must have lived at the property as their only or principal home for the 12 months before the application to assign is made and

c) The person that they wish to assign their tenancy to must have notified Waverley that they are living in the property. The 12 month period does not start until Waverley has been notified that the person is living in the property as their only or principal home.

6. Types of Assignation

6.1. Assignation by Voluntary Transfer. Subject to written consent from Waverley Housing the assignee will be issued with a new Scottish Secure Tenancy Agreement which will commence from the day after the existing tenancy is terminated.

6.2. Assignation under Matrimonial Homes (Family Protection) (Scotland) Act 1981 – Section 1 Protection of occupancy rights of one spouse against the other.

Under the Matrimonial Homes Act, the courts may transfer the tenancy of a property from one spouse to another. Under the Act, a cohabitee has the same rights as a spouse in terms of the Act.

In these cases the consent of Waverley Housing is not required, however there is an obligation from the tenant to inform Waverley Housing immediately if this happens.

7. Implication of Assignation

7.1. The existing tenant ceases to have any rights in relation to the tenancy.

7.2. The assignee is issued with a new Scottish Secure Tenancy Agreement.

7.3. The assignee will not be responsible for taking on any debt associated with the property i.e. rent arrears or recharges. Only assignees who were joint tenants prior to becoming sole tenants shall have responsibility for rent arrears or recharges that are outstanding at the date of assignation.

8. Timescales

8.1. Waverley Housing is committed to respond within 28 days of receipt of the written assignation request. If consent is withheld the tenant will be provided with details of the reasons for refusal.

8.2. Waverley Housing will ensure this policy is reviewed every three years or earlier if there are any changes to legislation.

9. Equalities Commitment

9.1. Waverley Housing is committed to tackling discrimination on the grounds of sex or marital status, racial grounds or grounds of disability, age, sexual orientation, language, social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.

9.2. Waverley Housing seeks to embrace diversity, promote equal opportunities for all and eliminate any unlawful discrimination.