



Tenancy Policy

Revised September 2018

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Approved by:

Board: 12th November 2018

Responsibility:

Housing Services Manager

1. Introduction

The purpose of this document is to set out the types of tenancy we grant.

The regulatory framework for social housing in England requires Registered Providers to publish clear and accessible policies which outline their approach to tenancy management including interventions to sustain tenancies and prevent unnecessary evictions, and tackle tenancy fraud and set out the types of tenancy they will grant. We will meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements.

2. Tenancy Types

The types of tenancy we offer are:

Assured Tenancies

An assured tenancy gives the tenant a legal right to live in their home as long as they can keep to the terms of the agreement. An assured tenancy can only be brought to an end if the tenant gives notice to terminate it or a court order is obtained.

Assured Shorthold Periodic Tenancies

These tenancies have a specific end date, usually after twelve months. Assured shorthold tenancies are usually given to tenants in temporary accommodation.

Assured shorthold tenancies may be extended for a further period of up to 6 months. (See Starter Tenancy Policy for further details)

Fair Rent Tenancies (Secure Tenancies, prior to the Housing Act 1988).

This type of tenancy is no longer issued to new tenants and the only occasion that we would issue this type of tenancy is to an existing St Peter's fair rent tenant who transfers to another St Peter's owned, social rented property. The Fair Rent tenancy was replaced by the Assured Non Assured Shorthold tenancy.

Licences

A Licence Agreement is a legal contract which is used for temporary accommodation or shared housing, such as renting a bedroom with a shared kitchen, bathroom and in some cases a living room.

3. Affordability

For new tenants an affordability assessment will be carried out. The check is based on the tenant's income and expenditure including rent and estimated bills for the new property. The check will ensure the prospective tenant is clear about the costs of running a home and sustaining their tenancy.

4. Succession

Our tenants have the right to pass their tenancy onto their spouse, civil partner or co-habitee when they die if the property was their 'only or principal home' at the time of the tenant's death and the tenant hadn't previously succeeded to the tenancy. This is known as succession. Other family members can succeed to the tenancy if they have resided at the property for at least 12 months prior to the tenant's death and there is no spouse, civil partner, or co-habitee to succeed. Again the property must have been their 'only or principal home'. The successor will inherit the same type of tenancy.

Where adult child/children have the right to succeed to their parent's tenancy, careful consideration needs to be given to the housing options available and the best use of our housing stock. The successor does not have to remain in their existing property if alternative housing options can meet the succession requirements.

Statutory succession, partners or spouses, does not create a new tenancy. The successor takes over the existing tenancy including arrears and any notices that apply

Contractual succession, family members, must sign a new tenancy where the arrears etc are not passed to the new tenant

5. Mutual Exchanges

Secure tenants have the right to exchange their tenancy with another St Peter's tenant, local authority or other housing association tenant and can legally do so with our consent. Consent will not be withheld without reasonable grounds.

Where a 'lifetime' tenant wishes to exchange with a 'non-lifetime' tenancy, to avoid the loss of the 'lifetime' tenancy the new right to exchange is achieved by issuing new tenancies.

- The 'lifetime' tenant gets a new "lifetime" tenancy of the new dwelling (secure periodic or full assured)
- The other tenant will also have to receive a new tenancy, but there is no particular provision regarding its status.

This is implemented through s158 Localism Act 2011. For s158 to apply, however, all the following conditions must be met.

1. One of the tenancies must be "lifetime" (i.e. full assured periodic or secure) and the other must be a flexible or assured shorthold tenancy with a fixed term of at least two years.
2. The "lifetime" tenant must have held that status since before 1 April 2012.
3. The "non-lifetime" tenancy must be at a social rent (i.e. not affordable, intermediate)
4. The exchange must not fall within the list of grounds on which a landlord may refuse an exchange under section 158. This list is set out in Schedule 14 to the Localism Act 2011, and is closely based on the grounds on which consent may be refused to a mutual exchange between secure tenants.

Any mutual exchange fulfilling the requirements of s158 must be effected by the granting of fresh tenancies.

Any other mutual exchange (and this will be the great majority) will continue to take place by reciprocal assignment of tenancy in the usual way. Each tenant steps into the shoes of the other and applies to all features of the tenancy, including its statutory type (secure or assured), its periodic or fixed term nature, and its rent level (social or affordable).

6. Joint tenancies

6.1 Sole to joint tenancy

Where tenants wish to change from a sole to a joint tenancy, we will generally agree as long as:

- Both adults are agreeable to a joint tenancy being created AND
- There has not already been a succession or assignment of the tenancy

AND

- The relationship is deemed to be of a permanent nature. In the case of a partner, this can be demonstrated by either a copy of the marriage or civil partnership certificate or by a co-habitation period of 12 months or more. In other cases it may be demonstrated by other documents showing 12 months occupancy, such as utility bills AND

- The tenant's rent account is clear and there is no legal action pending

AND

- Proof of identity and residency in the UK.

6.2 Joint to sole tenancy

a) Where tenants wish to change from a joint to a sole tenancy, we will generally agree as long as:

- Both parties are in agreement. If both tenants are in agreement, joint tenants can assign the tenancy to the sole name of either one of the parties of the original joint tenancy.
- The tenant's rent account is clear and there is no legal action pending.
- The home will not be under-occupied as a result of the change. If it would be, we may refuse but offer suitable alternative accommodation.
- A deed of assignment will need to be completed by both tenants. This action uses up the right to succeed or assign the tenancy.

The exception to this is where a court decides who should have the sole tenancy.

b) Where one tenant has vanished or is uncooperative, then it will not be possible to assign to a sole tenant, because both parties must be in agreement.

However, in some cases we may agree to grant a new tenancy to the remaining tenant, if the remaining tenant ends the tenancy by completing a notice of termination, giving us 4 weeks' notice. However, we would not encourage or agree to this unless:

- The absent joint tenant has made it quite clear by their actions that they have no intention of returning to or retaining a legal interest in the property, AND
- Evidence and investigation shows that there is no chance of getting in touch with the absent tenant to confirm their intentions OR such contact would put the remaining tenant in risk.

We will normally only agree to grant a new tenancy where the rent account is clear and no legal action is pending or exclusion order etc exists. We will also look at whether the property would be under-occupied as a result.

Where we agree, the remaining tenant will need to serve a termination notice. Once this has expired, a new tenancy is then granted to the remaining tenant

making them a sole tenant.

We will not allow changes to tenancy where there is a breach of tenancy.

7 The Right to take in Lodgers or Sub-Let

Tenants wishing to take in lodgers or sub-let the property must seek our consent prior to entering into any arrangement. Starter tenants do not have the right to take in lodgers or sub-let the property.

- On receipt of a written request from a tenant to take in a lodger, we will contact the tenant within 10 working days to arrange to visit them in their home.
- When we visit we will seek information about the level of occupation in the property, the name of the intended lodger, the anticipated length of the arrangement and the reason why the lodger / sub-tenant wishes to live with the tenant. Where the tenant is in receipt of Housing Benefit / Housing Costs we will provide advice about how the presence of a lodger in their home will affect their claim for benefit.
- We may withhold consent from a tenant wishing to take in a lodger or sub-let, where we consider that the arrangement will lead to overcrowding or where we believe the tenant intends to sublet the whole of their home and/or fall under the exclusion list within our Allocations Policy.
- We will write to the tenant within 10 days of the visit to their home, advising them whether consent has been given to their request. Where we have refused permission to take in a lodger, we will outline the reasons for refusing consent in our letter to the tenant.
- Secure tenants cannot sublet the whole of their home, and if they do the tenancy ceases to be secure and cannot subsequently be reinstated. The resulting non-secure tenancy can be ended by serving a Notice to Quit. Once the tenancy has ended the landlord can apply to recover possession from any occupiers as trespassers of land.
- If an assured tenant sublets the whole of the property they will be in breach of the terms of the tenancy agreement, they will also have ceased to occupy as their only or principal home, and unless they can prove they were only temporarily absent, they will lose their status of being an assured tenant. The tenancy can be terminated with an application for possession in a county court for breach of tenancy. However, unlike secure tenancies, the tenant can regain assured tenancy status by returning to occupy the property as their only or principal home.

8. Redevelopment / Major Works

If a tenant has to move into alternative accommodation during any redevelopment or other works a tenancy with no less security of tenure on their return to settled accommodation will be granted.

9. Sustainable tenancies

We are committed to helping our tenants have sustainable tenancies and being an active member of the community. Where a tenant is having problems maintaining their tenancy we will help and signpost them to the right help, and liaise with other agencies; including benefits, social services and police where relevant.