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Tenancy Changes Policy

Telephone: 01452 424344
Email: customer.services@gch.co.uk
Website: www.gch.co.uk



Documentation Master Sheet

Amendments to this Document are Detailed Below

Version Number	Date Amended	Comments	Date Approved	Author	Approved By
01	April 2020	New Policy	11/06/2020	BR/JH	Tenant Panel
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OVERALL AIM

GCH's mission is to work with our tenants to provide excellent services and decent homes in successful communities.

This policy is designed to give guidance on tenancy changes that may occur in our housing. There are many reasons why tenancy changes are needed, and this policy explains both legislation and the Gloucester City Homes (GCH) policy around some of those changes.

INTRODUCTION

GCH is committed to working alongside existing and new tenants. This policy sets out the framework and how we will deal with all tenancy changes in line with relevant legislation. The policy will: -

- Set out clear expectations for tenants;
- Be easily understood;
- Ensure GCH makes best use of its housing stock.

SCOPE OF THE POLICY

Will cover all areas of GCH but be managed through the Tenancy Services Team.

DEFINITIONS

Transfer of Property Order – An order that is granted by the Courts stipulating that a Tenancy should be altered by virtue of a name change.

NTQ (Notice to Quit) – Formal notice that the tenancy will be ended, usually by a specific date.

Succession - When a tenancy is passed to another household member resident in the house/dwelling on the tenant's death, this is called a succession.

Assignment of Tenancy - When a tenant requests that the tenancy is given to somebody else, this is called an assignment.

Abandonment - Is when a tenant leaves the property before the tenancy has ended, usually without letting the landlord know.

LEGAL & REGULATORY EXPECTATIONS

The policy is informed by the following legislation and regulation

- Housing Act 1985
- Housing Act 1988
- Localism Act 2011
- Matrimonial Causes Act 1973
- Family Law Act 1996
- Children Act 1989

TERMINATION OF TENANCY BY THE TENANT

A tenant who wishes to end their tenancy must serve a signed Notice to Quit (NTQ) giving 4 weeks' notice ending on a Sunday, which is effective once the Notice is received by us. We have a standard Termination/NTQ form to help tenants and will inform residents where a valid NTQ has not been given.

Where notice is given by a sole tenant or both joint tenants, we may in our sole discretion accept a shorter notice or a notice ending on a day other than a Sunday, but are not obliged to do so.

If the tenancy is a joint tenancy, we encourage all tenants 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 is aware of it. For any parties remaining in the property they will be assessed in relation to our Left in Occupation policy.

If a tenant has given a valid NTQ and wishes to extend the original date on which the tenancy is to end, we may agree in some circumstances taking all factors into account. If the tenant does not provide vacant possession on the date agreed, use and occupation will be charged after that date at the same rate as their most recent rent charge until vacant possession is given, and the keys are returned. All future correspondence will refer to the former tenancy and to use and occupation charges.

ABANDONMENT

Where a property has been abandoned by the lawful tenant and is not occupied, we will seek to recover possession as soon as possible. Where there is an unconfirmed suspicion of abandonment, we will serve a Notice to Quit at the property. Investigations will be carried out in accordance with our Abandoned Homes policy and Tenancy Fraud Policy.

On expiry of the NTQ if there is indisputable evidence that the property is unoccupied and a surrender by conduct has occurred, we will arrange to change the locks and take possession of the property. If there is any uncertainty, we will seek a Possession Order from the County Court.

UNAUTHORISED OCCUPATION

If a property is no longer the tenant's only or principal home the tenancy loses its security of tenure (assured or enhanced assured status) and may be terminated by a Notice to Quit served by us. We will then require any remaining occupier or former tenant (who has taken back up occupation after expiry of the notice) to leave and will

seek possession by court action. Where possible the unauthorised occupier will be named as a defendant in the possession proceedings so that we can seek an order for damages for use and occupation after the Notice to Quit expires.

If the tenant has unlawfully sublet the whole of the property or parted with possession of the whole, the tenancy loses its security of tenure (assured or enhanced assured status) and it can never be regained even if the tenant moves back in. The tenant may also be committing an offence under the Prevention of Social Housing Fraud Act 2013. Please refer to our Tenancy Fraud policy. We can then the non-secure tenancy by serving a notice to quit and will seek a Possession Order from the County Court.

RELATIONSHIP BREAKDOWN

We advise couples who are permanently separating to seek independent legal advice in relation to tenancy issues.

Tenants who are going through a relationship breakdown need to tell us the following:

- The details of who is still living in the property;
- What each tenant wants to happen to their home;
- Whether they both agree;
- Whether the tenants are married, in a civil partnership or co-habiting;
- Whether there are any children living permanently at the property;
- Whether the household is in receipt of any benefits;
- Whether any domestic abuse or violence has occurred.

What we can do depends on:

- The name(s) on the tenancy;
- The type of tenancy;
- Whether there has been any previous assignment or succession.

If tenants are having difficulty coming to an agreement, they may be able to apply to Court for a decision. The Citizens' Advice / Gloucestershire Law Centre should be able to provide more information about this.

In the case of married couples any matrimonial occupation rights, now called 'home rights', would apply whether the tenancy was in both spouses' names.

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-habitant 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.

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 married couple separate and the tenancy is held in only one of their names, the spouse/civil partner will be allowed to remain in the home for as long as the tenancy continues i.e. until ended legally by the tenant or by us or unless ordered to leave by a court. We will not be able to terminate the tenancy simply because the tenant is no longer in occupation.

These home rights will end on divorce unless the spouse/civil partner applies to the Court during the marriage for those rights to continue, or to resume the rights after a divorce.

Cohabiting couples who are not married and/or have not entered into a civil partnership do not benefit from home rights.

For customers experiencing Domestic Abuse, the below measures may apply:

- Injunctions (a 'stay away' order) applied for by the person experiencing abuse themselves or their solicitor.
- Occupation Orders establish who has the right to remain in the home and can deal with issues around rent, bills and access to a property or certain parts of a property. They can last for 6-12 months and can have a power of arrest attached if they are breached.

Please refer to our Domestic Abuse policy for further details.

CHANGING THE NAMES ON A TENANCY

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

Unless the tenancy agreement says otherwise we will only allow assignments (transfers) to another person if:

- Tthere 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
- (i) We have given our written consent for a mutual exchange, or
- (ii) The person to whom the tenancy is to be assigned could succeed to the tenancy if the tenant died.

In relation to requests to mutually exchange please refer to our Mutual Exchange Policy.

Our tenancy agreement permits assignments to another person who would be qualified under the tenancy agreement to succeed to the tenancy. All such transfers must be done by a Deed of Assignment. This right is limited, and the tenant should contact us to check whether the person they propose transferring the tenancy to meets the qualification criteria. Only one succession or assignment is permitted.

In exceptional cases we will consider requests for the tenancy to be assigned from joint names to a sole name and from a sole name to joint names even where there is no right under the tenancy agreement to transfer the tenancy. We are not obliged to consent to the request and decisions are in our sole discretion.

Reasons for refusing a request include, but are not limited to:

- Where there has already been a previous assignment or a succession (including succession by a surviving joint tenant) we will not allow another change unless there is a Court Order directing us to do so;
- Where there are outstanding rent arrears or other debts owed to us;
- Where legal proceedings of any kind have been initiated against the current tenant or there are other tenancy breaches;
- Where the person who is applying to join the tenancy does not have the right to rent, has no recourse to public funds or no right to remain in the country;
- Where the person applying to become a joint tenant or the person applying to have the tenancy in their own name 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 person applying to be joined as a tenant is not the current tenant's spouse or partner;
- Where there is a valid Court Order for possession of the existing tenant's home;
- Where there is reason to believe that one of the parties is being pressured into changing the names on the tenancy;
- Where the property is not suitable.

If we agree to change the named tenants on a tenancy agreement, this will be done by assignment.

Where someone changes their own name, we can record this without the need for an assignment as the person who holds the tenancy remains the same.

Examples of where changes will be approved include (but is not limited) to the following:

- Marriage (on presentation of marriage certificate)
- Deed Poll (on presentation of order)
- Gender re-assignment
- Witness protection (on evidence from National Witness Protection Service / Police)

PAYMENT OF RENT AND MANAGEMENT OF ARREARS

If a tenancy is in the name of one person, they will be responsible for any arrears. If a tenancy is in joint names, all tenants are equally responsible for any arrears or debts owed to GCH.

If the change in names on the tenancy agreement is as a result of a Court Order, then any arrears will apply to both joint tenants.

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 Judgement.

Any deed of assignment may also set out who is responsible for paying any existing rent arrears at the time of assignment.

DEATH OF TENANT

A tenancy does not automatically end with the death of a tenant. If there is no statutory successor the tenancy will become part of the deceased tenant's estate.

The Personal Representatives (executors of administrators) of the deceased estate can serve upon us a NTQ the tenancy, which would normally be in writing of 4 weeks' ending on a Sunday, although we may accept a shorter notice or notice ending on a different day.

Alternative, 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 on the Public Trustee's office, unless there has been a formal Grant of Probate obtained by Executors/Administrators in which case the NTQ will be served on them.

If the next of kin are not able or willing to sign the notice, then we serve the Public Trustee notice with immediate effect to avoid delay. When the NTQ has been served on Public Trustee, the tenancy will end at the end of the 28-day notice period. This will avoid unnecessary delay, the build-up of debt and income lost to the business because until a tenancy is formally ended and the keys returned, the deceased's estate is responsible for paying the weekly rent/use and occupation charges.

We may then take back possession of the property or seek a Possession Order from the County Court.

If someone who is not entitled to succeed occupies the property, proceedings for possession will be taken after serving a Notice to Quit on the Personal Representatives of the deceased. If the property remains occupied on expiry of the Notice to Quit, we will issue legal proceedings and obtain an order for possession that would be enforced by a warrant for possession if necessary.

Any debts owed to us will be recovered from the deceased tenant's estate and/or any occupier who remains in occupation after the expiry of a NTQ.

TENANCY SUSTAINMENT, SUPPORT & PARTNERSHIP

GCH is committed to promoting tenancy sustainment and to supporting sustainable communities.

Tenancy sustainment refers to a customer's ability to successfully manage a tenancy independently or with tailored support. In terms of tenancy compliance an applicant would need to demonstrate a clear understanding of their responsibilities under the tenancy agreement.

Where we identify that a customer is in need of support, we will incorporate an action plan and support package identifying the specific support needs and make referrals to

the relevant organisation/provider and ensure that we have review mechanisms in place for the support plan in partnership with this organisation/provider.

RESPONSIBILITY

The Head of Housing is responsible for the effective implementation of this policy.

CONSULTATION

GCH will consult and review the Tenancy Changes Policy with Tenant Panel and link in with other relevant agencies in order to continually develop good practice in this policy area. We will attend any forums existing now or in the future to encourage joined up working with Local Authorities or any other agency either voluntary or statutory.

COMPLAINTS / REVIEW

Customers may request a review of any decisions made regarding tenancy changes which have been refused. Additional information should be provided in support of their appeal. The appeal should be in writing or dictated over the phone to a member of staff within five working days (weekdays not including public holidays) from the date of refusal. A Housing Services Team Leader or Manager will investigate the reasonableness of the refusal and will advise the applicant in writing of the decision. This process will be concluded in ten working days unless a mutually agreed alternative timescale is agreed.

Any customer who continues to be dis-satisfied with our approach in assessing and managing the case can lodge a complaint under GCHs own Customer Complaints Policy.

REVIEW

This policy will normally be reviewed every three years to ensure that it remains fit for purpose.