



TENANCY CHANGES POLICY

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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
02	May 2023	Review & amendments	25/07/23	NB/BH	SLT
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OVERALL AIM/INTRODUCTION

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. This policy sets out the framework and how we will deal with all tenancy changes in line with relevant legislation.

SCOPE OF POLICY

This policy covers GCH tenants who have an assured shorthold tenancy, a starter tenancy or an assured tenancy. It does not cover customers occupying their homes on licence or shared ownership customers.

The policy applies to:

- Terminating the tenancy
- 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

LEGAL AND 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
- Marriage (same Same Sex Couples Act) 2013
- Civil Partnership Act 2004
- Equality Act 2010
- Family Law Act 1996

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- Children Act 1989
- Prevention of Social Housing Fraud Act 2013
- Domestic Abuse Act 2021
- Tenancy Agreement

SERVICE STANDARDS

TERMINATION OF TENANCY BY THE TENANT

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

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.

If a tenant changes their mind after serving an NTQ and they are still within the agreed notice period, the NTQ may be withdrawn with the agreement of GCH. Any such agreement will normally be subject to there being a clear rent account and no previous tenancy issues, such as anti-social behaviour. However, if the notice period has expired, the tenancy will have ended and notice cannot be withdrawn.

TERMINATION OF A JOINT TENANCY

A joint tenancy is where two persons are given an identical interest in the property and are jointly and severally liable for the obligations of the tenancy, for example, they are both liable for paying the whole rent. One tenant can give a Notice to Quit and this will end the whole joint tenancy, regardless of the wishes of the other joint tenant.

Therefore if one joint tenant leaves, the other remaining tenant can be pursued for the whole of any arrears owing. Temporary absence by one joint tenant does not end their right of occupation, even if they have been absent for some considerable period of time. The presence of the other partner in the property ensures that the absent tenant can return at any time and claim their tenancy rights.

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Informal requests from a joint tenant asking for a name to be taken off a property has no legal effect and will not terminate the individuals interest in the property. This would need to be done by agreement with GCH and both joint tenants and would be done by way of assignment.

MUTUAL AGREEMENT (SURRENDER)

This is where the tenant(s) return the keys and give vacant possession without giving notice.

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), GCH 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 GCH are prepared to agree to this.

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.

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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.

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 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 or not the tenancy was is joint 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.

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. GCH has no legal responsibility to grant a new tenancy. Tenancy conduct, the effective use of housing stock and whether there is any substantiated domestic abuse may impact on whether we grant a new tenancy (and to which party).

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.

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.

ASSIGNMENT

Assignment is the legal transfer of interest in a property from one person to another. Assignment does not create a new tenancy, it merely passes on the existing tenancy to the assignee, who occupies under the same terms (except where it is a mutual exchange governed by the Localism Act 2011 – see Mutual Exchange Policy).

Assignments can only take place with the consent of GCH and in accordance with the terms of the tenancy agreement if it contains a right to assign. Unless the tenancy agreement says otherwise we will only allow assignments (transfers) to another person if:

- Assignment by Court Order - 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
- (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. This includes assignments from joint to sole tenancies.

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

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.

Joint Tenancies

Where there is a new letting or transfer, joint tenancies will only be offered to:

- Married couples
- Civil partners
- Co-habiting couples

Joint to Sole

A request for a joint tenancy to become a sole tenancy can be done by:

- Assignment with the agreement of both parties and GCH.

There is no obligation on GCH to grant a sole tenancy from a joint tenancy and agreement to do so is entirely at the discretion of GCH. We would not consider a request for a joint tenancy to become a sole tenancy where:

- There has already been a previous assignment or succession unless there is a Court Order directing us to do so
- There are outstanding rent arrears or other debts owed to us by the joint tenants
- Legal proceedings of any kind have been initiated or there are other tenancy breaches
- The person who would become the sole tenant does not have the right to rent, has no recourse to public funds or no right to remain in the country
- Where there is reason to believe that one of the parties is being pressured into the decision

This is not an exhaustive list and would also be subject to an affordability assessment being carried out to ensure that that tenancy is sustainable.

Both tenants must agree to and sign the assignment paperwork.

Sole to Joint

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GCH will not permit requests for a sole tenancy to become a joint tenancy.

PAYMENT OF RENT AND USE AND OCCUPATION CHARGES

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.

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.

GCH would make Use and Occupation charges in the following circumstances:

- Notice has been given by the customer and expired, bringing the tenancy to an end but we still have not received the keys and believe that the property is still being occupied (see unauthorised occupiers policy)

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 or 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.

Alternatively, a Notice to Quit will be served by us on the Personal Representatives of the deceased tenant. Such an 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. Any occupier who remains in occupation after the expiry of a NTQ will be charged a Use & Occupation charge under our Unauthorised Occupiers Policy.

SUCCESSION FOLLOWING DEATH OF TENANT

Please see our Succession Policy.

CONSULTATION

Front-line teams responsible for the implementation and management of this policy have been consulted.

APPEALS

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 received within five working days (weekdays not including public holidays) from the date of refusal. A 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 triennially to ensure that it remains fit for purpose, unless an earlier review is required due to regulatory, statutory or other requirements.