

Policy

Tenancy Management Policy

Date Authorised	11 March 2020
Review date	2023

1. Introduction

1.1 The Tenancy Management Policy is a policy that encompasses previously separate policies including Sub-letting, Succession and Mutual Exchange as well as including policy statements on a number of tenancy management matters not previously documented.

2. Scope

2.1 This policy applies to all rented properties managed by Rosebery. The policy sets out the principles that Rosebery will follow in the management of its tenancies including:

- Tenancy agreement
- Mutual exchange
- Succession
- Tenancy changes (Assignment)
- Lodgers and sub-letting
- Absence and abandonment
- Tenancy audit
- Pets
- Running a business
- Property condition
- Improvements and alterations
- Starter tenancy monitoring

2.2 This policy will be supported by a range of more detailed procedures that are specific to certain aspects of tenancy management.

3. Aims

3.1 The purpose of this policy is to outline our principles and approach to tenancy management and provide a flexible and responsible tenancy management service that meets statutory, regulatory and contractual requirements.

3.2 We will do this by ensuring tenants are aware of their rights and responsibilities in accordance with their tenancy conditions and legislation. We will make the best use of the available stock, including reducing

overcrowding and under-occupation, preventing tenancy fraud and sub-letting and repossession of abandoned properties.

4. Tenancy Agreement

- 4.1 Forms of tenancies are granted in accordance with the Tenure Policy.
- 4.2 Rosebery will communicate the terms and conditions of tenancy to all tenants during the sign-up process to make sure they are understood. All new tenants will be required to sign a declaration that they have received and understood their tenancy agreement.
- 4.3 We will monitor that our tenants are complying with the terms of their tenancy and will take appropriate action to resolve any breaches of tenancy conditions.

5. Mutual Exchanges

- 5.1 Existing tenants may wish to conduct a mutual exchange with other tenants of Rosebery or with tenants of another housing association or local authority. We recognise that mutual exchange is a useful way of satisfying housing needs and aspirations which cannot be met in other ways.
- 5.2 Assured tenants, secure tenants and fixed term tenants can exchange. Starter tenants cannot exchange but can exchange when they have completed their starter period.
- 5.3 Assured tenants do not have a statutory right to exchange, but have a contractual right to exchange through the terms of their tenancy agreement.
- 5.4 Section 158 of the Localism Act 2011 creates a right to mutual exchange in certain cases where a 'lifetime' tenant wishes to exchange with a fixed term tenant.
- 5.5 When an assured tenant 'lifetime tenant' swaps homes with another assured tenant, this will be on the basis of a reciprocal Assignment of tenancies. The tenancy of the property continues on the same basis and the new tenant takes on the rights and responsibilities of the original tenancy.
- 5.6 Where the circumstances of a proposed exchange are covered by section 158 of the Localism Act 2011, the exchange will be by surrender of the tenancy and the grant of a fresh assured tenancy to the incoming tenant. This applies where a Rosebery tenant with an assured tenancy (which began prior to 1 April 2012) swaps homes with a tenant on a flexible or assured shorthold tenancy. A tenant with a fixed term tenancy must have at least two years remaining at a social rent.
- 5.7 Assured shorthold tenants or other non-secure tenants cannot exchange.
- 5.8 Tenants must have the consent of their landlord and the Assignee's landlord before the exchange can take place. In all cases Rosebery's written permission is required before a mutual exchange can take place; we will not unreasonably withhold our permission.

- 5.9 Rosebery will confirm if the exchange can take place within 42 days.
- 5.10 When considering an application for a mutual exchange we will have regards to the grounds for refusal of an exchange for secure tenancies as set out in Schedule 3 of the Housing Act 1985 (as amended by the Housing Act 2004). In summary these are;
- The tenancy is subject to a court order.
 - The tenancy is subject to a current notice of seeking possession.
 - Legal action has been taken against the tenant or a member of their household because of anti-social behaviour or the matter is waiting to be heard before the Courts.
 - The property the tenant wants to move to is too large for their needs (determined by the Social Housing Room Size Criteria) as outlined in the Allocation Policy.
 - The property the tenant wants to move to is too small for their needs (determined by the Social Housing Room Size Criteria) as outlined in the Allocation Policy.
 - The property has features which make it particularly suitable for people with disabilities, or the property is one of a group let to people with special needs with specific facilities and the exchange would result in no one with the relevant needs occupying the property.
 - The property is a sheltered property and the exchange would result in no one with the relevant needs occupying the property.
- 5.11 In addition to statutory reasons for refusal Rosebery may apply reasonable conditions to a mutual exchange which have to be met before the exchange can take place. We will not allow the exchange to take place if, the tenant or incoming tenant is in rent arrears or in breach of their tenancy, including anti-social behaviour or disrepair of the home regardless of whether or not a Notice of Seeking Possession has been served.
- 5.12 Therefore conditional permission may be given for an exchange but the tenant cannot move until the condition has been met.
- 5.13 Rosebery will not approve a mutual exchange where an exchange has taken place in the last twelve months.
- 5.14 A Rosebery tenant who wishes to appeal against the refusal of a request to allow a mutual exchange can do so through the Associations complaints procedure, stating the reason for the appeal.

6. Succession

- 6.1 In the event of the death of a tenant, an occupant residing in the same property may have a legal right to succeed to the tenancy, depending on their relationship to the resident, their length of occupation and the type of tenancy and property.
- 6.2 Assured tenancies commencing before 1 April 2012 have a statutory right of succession for a tenants spouse or partner, this includes a civil partner (or person living with you as a spouse or civil partner). Protected assured tenants (ie those transferred from EEBC at the time of the stock transfer)

have additional contractual rights as set out in the Tenancy Agreement. Assured tenants, including fixed term tenancies (provided they are for a period of no less than two years) commencing after 1 April 2012 have a statutory right of succession to the tenants spouse or partner. Additional rights of succession may be conveyed through express clauses within the Tenancy Agreement.

- 6.3 In the event of the death of a tenant and where there is no eligible successor, we will serve a notice to quit on the executors of the will/estate and the public trustee to bring the tenancy to an end.
- 6.4 A family member is described in the Housing Act 1985 as the tenant's spouse, parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece; including step-relations, half-relations, adopted or illegitimate children and persons living together as husband and wife or civil partners.
- 6.5 If a claim is received from a potential successor they will be required to provide evidence that they are entitled to succeed. They must prove that they have lived at the property continually as their only or main home for 12 months prior to the tenant's death. The evidence required shall be at least two documents including Council Tax, Housing Benefit, Electoral role or Department of Works and Pension (DWP) form. If the claimant has not declared to Housing Benefit or Council Tax that there has been occupancy from another adult, Rosebery has discretion to refuse the succession and provide evidence to the DWP or Local Authority of suspected fraud.
- 6.6 Where successions will result in under-occupation or where a specially adapted property is no longer needed,
- We will seek to offer suitable alternative housing provision up to 6 months after the death of the tenant, or where the first property becomes available.
 - We will endeavour to give the successor choice where possible, but two appropriate offers (appropriate offer is defined by the Neighbourhood Team Leader and will be the maximum bedroom requirement) can be made.
- 6.7 If the offers are refused then possession action will be commenced. Notice can only be served between 6-12 months following the death of the tenant or at the point the Association first became aware of the death. If the notification of the death is found to have been deliberately withheld in order to gain succession rights outside of the notice period, Rosebery will serve notice and seek to recover possession.
- 6.8 Where a succession claim has been refused an appeal can be made in writing which will be reviewed by the Head of Housing and Customer Experience.

7. Tenancy Changes - Assignment

7.1 Where a resident has the right to assign their tenancy as a condition of their tenancy agreement, they can only assign it in the following circumstances:

- By way of a court order made under Matrimonial Causes Act or Family Law Act, or
- With written permission of Rosebery when exercising the right to exchange as set out above, or
- To a person who would be qualified to succeed them under the provisions of the Rights of Succession clause if the tenant had died immediately before the assignment. This may be classified as a "Succession".

7.1.1 Sole to Joint Tenancy

Sole tenants may request to have a joint tenancy agreement meaning that they would share their tenancy with another person.

There is no legal obligation for Rosebery to grant joint tenancies but it is our policy to consider requests made by partners whether married or unmarried. We will not permit joint tenancies between siblings or parents and children.

If the sole tenant is in breach of any of the conditions of their current tenancy, the application will be refused. Joint tenancies will not be granted to tenants with Assured Shorthold Tenancies (Starter or Key Worker), with the exception of fixed term tenancies.

Applications for joint tenancies must be in writing, and accompanied by supporting evidence that the person requesting to be added has lived at the property continually as their only or main home for the last year. The evidence required shall be at least one document including Council Tax, Housing Benefit, Electoral role and one document from a utility bill, bank statement or DWP form. If the claimant has not declared to Housing Benefit or Council Tax that there has been occupancy from another adult, Rosebery has discretion to refuse the application and provide evidence to the DWP or Local Authority of suspected fraud.

7.1.2 Joint to Sole Tenancy

Rosebery will normally grant consent for a tenancy to be assigned from a joint tenancy to a sole tenancy where there has been an irretrievable breakdown in the relationship between joint tenants as long as:

- There is consent from both parties, and
 - There are no rent arrears in place, and
 - There are no other outstanding breaches of tenancy
- Or
- The tenancy has been reassigned under the Matrimonial Clauses act or other court order

Either tenant can end a joint tenancy by service of a notice to quit, however Rosebery has discretion to grant a new tenancy to one of the existing tenants if it is proportional to do so.

8. Lodgers and subletting

- 8.1 Rosebery recognises that tenants may wish to share their home with another person or change their circumstances to ensure they are able to maintain their tenancy.
- 8.2 Protected Assured and Assured tenants have a right to take in a lodger and sublet part of their property with permission from the association. We will not unreasonably withhold permission.
- 8.3 Permission may be withheld where the additional occupant or occupants would result in overcrowding the property as defined in the number of occupants allowed in the tenancy agreement. Consideration will be given to the impact on a tenant's benefits and Housing Services, and the local community with regard to criminal or behavioural issues.
- 8.4 The Association shall encourage and assist a tenant to take a lodger or sublet where the additional occupier will help sustain a tenancy and prevent the impact of welfare reform or the spare room subsidy. Where permission for a tenant to take in a lodger or sublet part of their tenancy, the tenant must not make a profit by charging more than their weekly rent.

8.4.1 Lodgers

Some tenants have the right to take in a lodger as detailed in their Tenancy Agreement.

Lodgers are licensees without any exclusive right to the use of the property. They are often treated as members of the tenant's family. The association shall take no responsibility for the lodger and they have no preserved right to the tenancy of the property unless they qualify under succession rights.

The tenant remains responsible for the behaviour of the occupants at all time.

8.4.2 Unlawful sub-letting

Rosebery is committed to eradicate the practice of unlawful sub-letting and the prosecution of those engaged in unauthorised subletting.

This means that tenants (except shared owners with permission or leaseholders) will not be allowed to sublet the whole of the property whilst they live elsewhere. If a tenant unlawfully sublets the whole of the property to someone else, they will no longer be classed as a protected or assured tenant and action will be taken to repossess the property.

We will support the Local Authority in seeking prosecution for the unlawful subletting of a property by the tenant in breach of the tenancy agreement. Conviction may carry a fine, and if the subletting is shown to have been dishonest, a fine and/or imprisonment may apply.

9. Absence and abandonment

- 9.1 Rosebery understands that tenants may be away from their homes for an extended period of time for a variety of reasons. These can include work, study reasons or health matters for them or their family.
- 9.2 Tenants are required to inform Rosebery if they are away from their property for more than 28 days and may need to provide evidence to support any extended absence.
- 9.3 If a tenant is away for 56 days or more in a calendar year, or consecutively, it may be considered that they are not living there as their only or main home and could be subject to possession proceedings.
- 9.4 If we believe that a property has been abandoned, we will take prompt and appropriate action to ensure that all checks have been made to establish, as far as reasonable, that a property has been permanently abandoned. If it is deemed abandoned Rosebery will serve notice to quit and apply to court with the evidence gathered with the intention of seeking possession of the property.

9.4.1 Imprisonment

Where a sole tenant receives a prison period of custody longer than the period for which welfare benefit would normally continue to be paid in support of the rent due, we will advise the tenant of their options.

If a tenant in this situation is unwilling to relinquish their tenancy and/or adequate provision is not made to pay the due rent and/or charges we may take legal action to repossess the property.

Where other persons remain in a property following the imprisonment of the tenant, we will consider such cases according to individual circumstances.

10. Tenancy audits

- 10.1 We will carry out tenancy audits to verify that the correct tenant(s) is living in the property.
- 10.2 An audit visit will be used to achieve a number of other objectives including:-
 - See if the tenant has any support requirements;
 - Check that the data we hold about the tenant is correct, for example Date of Birth, contact details, household make up, or changes of circumstances
 - Make sure that the tenant is looking after the property and abiding by the conditions of tenancy;
 - Provide advice around financial assistance, working options, welfare reform, and any benefit entitlement.
 - Check the legal occupancy of the property and identify incidents of unauthorised occupation, overcrowding or under-occupation.

10.3 We consider the process of tenancy audit an important one for both landlord and tenant. We will give reasonable notice of audit visits. Should the tenant fail to allow reasonable access we will take legal action to enforce this under the Tenancy Agreement.

11. Pets

11.1 Permission is required for our tenants to have a pet(s) and permission will not be unreasonably withheld but may include any reasonable conditions. Permission may be withdrawn if the pet(s) causes or leads to anti-social behaviour.

11.2 We will not allow a cat or dog in a property where there is a communal entrance, regardless of whether the ground floor property has a separate access to any part of their property. We do not allow any animal in to a communal area, and it must be walked or exercised away from the property. Medical exemptions for pets can be considered and discretion will be used if there is a health requirement for an animal. The Neighbourhood Officer and Neighbourhood Team Leader will make a decision based on evidence provided, and may seek independent advice from a medical practitioner.

11.3 Should a tenant replace a pet at any time during the tenancy, permission will be required for the new pet(s). Permission granted for one type of pet does not constitute as permission for all pets.

12. Running a business from the property

12.1 Permission is required for our tenants to run a business from their home and permission will not be unreasonably withheld.

12.2 Factors that will be taken into consideration when making our decision include:

- The type of business that will be run and possible impact on neighbours
- The legality of the business
- Any impact this business will have on the buildings insurance of the property
- Any planning agreement restrictions
- Where there is a head-lease with any covenants binding the tenancy
- Any restrictions imposed by our financing agreements

12.3 Permission may be withdrawn if the business causes or leads to anti-social behaviour or has an adverse impact on the neighbourhood.

13. Property condition

13.1 Gardens

Rosebery expects its tenants to keep their property and any garden, hedges, trees and fences in a well-maintained, tidy and safe condition. Further details on tree and hedge maintenance in individual gardens are detailed in the Neighbourhood Management Policy. We will monitor that tenants properties and gardens are being adequately maintained and take

appropriate action where the condition becomes unacceptable. Tenants are responsible for all divisional fences and the maintenance of trees in their garden, although Rosebery may assist with some tree work in exceptional circumstances.

Written permission from Rosebery is required for the following:

- The removal of any tree hedge or edifice currently standing
- The removal of any fence or wall
- The erection of any structure such as a shed, greenhouse or awning

13.2 Hoarding

When a potential hoarding situation is reported or discovered, Rosebery will conduct an inspection of the property or location. In reviewing and recording the conditions present in the property by completing a Risk Assessment we will consider if there are any immediate health and safety dangers present.

Potential examples are:

- Access within the property is greatly restricted
- Emergency access is hindered
- Fire hazards are evident
- Rotting food, animal or human bodily waste, or other unhealthy conditions are present

Rosebery will work in partnership with other agencies to support individuals with a hoarding tendency who are willing to engage in support, while balancing the needs of other impacted people living in the locality.

Should the issue be identified as a breach of tenancy it will be dealt with by regular tenancy visits where progress will be monitored and tenancy support offered, such as rechargeable deep clean and/or skips.

Where a tenant is not willing to engage, or the situation is so extreme as to cause significant harm or risk to themselves or others, enforcement action shall be considered. This will be decided by the Neighbourhood Officer and Neighbourhood Team Leader with consideration given to the views of the partner agencies involved, such as referral to social services in line with The Care Act 2014. See the Safeguarding Policy for details.

14. Improvements and alterations

- 14.1 Tenants may make improvements or alterations to their homes but must get the Association's permission prior to commencing any work. Permission will not unreasonably be withheld but may include reasonable conditions. Tenants will be responsible for repairing and maintaining all improvements and alterations they have installed. Any improvements or alterations carried out without our permission may be considered a breach of tenancy. Following inspection by Rosebery a decision will be made if they are allowed to remain with retrospective permission, require altering or removal or lead to legal action including repossession.

- 14.2 The tenant will be given a reasonable timeframe to either remove or make good the issue, and if that is not adhered to consideration will be given to tenancy enforcement. The level of enforcement will be proportionate to the work that has been carried out. Any costs incurred in the enforcement, or the reinstatement of the property will be recharged to the tenant.
- 14.3 Rosebery may also request that the property is restored to its original condition by the tenant upon termination of the tenancy and will charge the tenant reasonable costs if this is not carried out prior to vacation. See the Recharge Policy for details.

15. Starter tenancy monitoring

- 15.1 When a new tenant is granted a fixed term tenancy, they will receive three home visits within the starter period of their tenancy. This is to ensure that the tenant is adhering to the terms defined within their tenancy agreement.
- 15.2 If the tenancy is conducted to a satisfactory level, Rosebery will grant a five year fixed term tenancy after the 12 month starter period has been completed. The tenant will not be required to sign a new tenancy agreement, and will receive a letter confirming the start of the five year fixed term and completion of the starter period.
- 15.3 Where a tenancy has not been conducted to a satisfactory level, Rosebery may decide to extend the starter period up to 12 months or will serve notice to terminate the tenancy via a Section 21 Notice.
- 15.4 The tenant will have the right to submit an appeal in writing which will be reviewed by the Head of Housing and Customer Experience.