

# *Assignment Policy*

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## **Assignment Policy**

### **1. Purpose**

The purpose of this policy is to set our approach to considering applications to assign a tenancy as set out in the Housing (Scotland) Act 2001, as amended by the Housing (Scotland) Act 2014 and in our Scottish Secure Tenancy Agreement.

### **2. Legislation, regulation and guidance**

This policy adheres to all legal, regulatory and statutory guidance, in particular:

- Housing (Scotland) Act 2001
- Housing (Scotland) Act 2014

### **3. Organisational Values**

#### ***Our Vision:***

"We will provide excellent quality affordable and efficient homes in neighbourhoods that are well managed and maintained; we will contribute to sustaining communities where people feel safe and want to live by providing housing and other services and working with our voluntary and statutory partners."

#### ***Our Values:***

Our Core Values are:

We Will

- Invest and Support

We will be

- Engaged and Responsive
- Accountable and Compliant
- Fair and Approachable
- Efficient and Responsible
- Excellent and Committed

**4. Making an application to assign a tenancy**

Before a tenant can assign the tenancy of their home to someone else they must apply in writing for permission to do so and get our written consent. We will permit assignation only when:

- the house has been the tenant's only or principal home during the 12 months immediately before the tenant applies for written permission to assign their tenancy and
- 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
- the tenant, joint tenant or person they wish to assign their tenancy to must have notified us that the person they wish to assign the tenancy to is living in the house. The 12-month period does not start unless we have been notified that the person is living in the property as their only or principal home and consented to their residency.

**5 Notification and Consent to Reside**

***Notification***

The tenant or joint tenant(s) or the person moving into the property must notify us that the property is to be the person's only or principle home. This notification must be in writing. The 12 month qualifying period doesn't commence until notification has been received and consent (in writing) given. Any period before notification or after notification but before consent will not count as part of the 12 month qualifying period.

In the case of children in the household reaching 16 who were part of the household when the tenancy was awarded or were added subsequently to the household and it is their long term and principle home, no further notification is needed.

On notification, we will consider whether it is appropriate for the person to reside in the property. We will refuse consent if the residency is inappropriate. For example consent will not be given where the person moving in will cause over-crowding of the property. There may be other reasons for refusing consent, these will be notified in writing to the applicant.

## **6. Assessing an application to assign a tenancy**

The assessment of applications for permission to assign a tenancy will take account of both the tenant's and the proposed tenant's circumstances. In all cases the criteria set down in Section 32 and part 2 of schedule of the Housing (Scotland) Act 2001 as amended by section 12(2) of the Housing (Scotland) Act 2014 must have been satisfied. These criteria are set out at appendix 1.

Rosehill may refuse consent to an assignation for the following reasons:

- A Notice of Proceedings has been served on the tenant on any of the 'conduct grounds' set out in paragraphs 1-7 of schedule 2 of the Housing (Scotland) Act 2001
- A decree for possession has been made against the tenant
- Substantial work is required to the property
- There is damage or disrepair caused by the tenant, a member of the household or a visitor to the property
- The tenant and/or the proposed assignee has outstanding debt owed to Rosehill. This can be arrears of rent (both current and former), rechargeable repairs or any other debt.
- Rosehill has been given false or incomplete information about the application.

- The house is unsuitable for the proposed assignee's needs.
- The proposed assignee has previously had action taken for Anti-social behaviour or has been convicted of using a previous home for illegal or immoral purposes.
- The property was designed or substantially adapted for a person with special needs for example a wheelchair adapted property or a property specifically designed for persons over pensionable age and the proposed assignee does not require this type of housing.
- Where the proposed assignee would not qualify for the property under the allocations policy
- Where based on the occupancy standard set out in the Allocations Policy the assignation would result in the house being under occupied.

This list is not exhaustive and all applications will be treated individually and on their merit.

## **7. Notification of Decision**

We will notify the tenant and proposed assignee of the decision, in writing, within 28 days of receiving a written application. If a decision has not been made within the 28 days we will be deemed to have granted consent to the application under the terms of Schedule 5, part 2, paragraph 12 of the Housing (Scotland) Act 2001.

## **8. Membership**

Before assigning the tenancy the qualifying person(s) must apply for membership of Rosehill and be accepted as a member.

## **9. Appeals Process**

Rosehill operates an internal appeals process for dealing with any disputes which may arise regarding a decision made by Rosehill.

Throughout this process tenants may wish to take advice from an independent source such as the Citizens Advice Bureau, Law Centre or Solicitor.

## **10. Equality and Diversity**

We are committed to providing fair and equal treatment for all our staff and customers including tenants and will not discriminate against anyone on the grounds of race, colour, ethnic or national origin, language, religion, belief, age, gender, sexual orientation, marital status, family circumstances, employment status, physical ability and mental health. In implementing this policy we will positively endeavour to achieve fair outcomes for all.

We are committed to removing any barriers to communication. Therefore, if required, this Policy can be produced in another format e.g. Braille, large print, etc or another language

## **11. Data Protection**

On the 25<sup>th</sup> May 2018 the legislation governing data protection changed with the introduction of the General Data Protection Regulation (GDPR).

We hold a variety of Personal Data relating to individuals including tenants, waiting list applicants, factored owners, other service users, employees and Committee Members. Our Privacy Policy sets out the basis on which we can process and share such data with third parties, it also sets out how we will securely store individuals' data, whether electronically or in paper format. It also provides information on individuals' rights under GDPR including: to view personal data held about them by us; to request a restriction of processing of their data; the right to be forgotten and a right to object to us processing their data. In terms of the rights to be forgotten and to restrict or object to processing of Personal Data, any such requests will require to be considered on their own merits and legal advice will need to be obtained in some

circumstances. We have the responsibility for accepting or refusing such requests and will do so in writing.

Under GDPR we are required to provide all customers whose Personal Data we hold with a Fair Processing Notice (also known as a Privacy Notice). The Notice sets out the Personal Data we process and the basis for doing so.

We will only keep and process Personal Data for the original purpose we gathered it for and we will not keep it for any longer than necessary. Attached to our Privacy Policy is a table of Retention Periods for Personal Data held and processed by us. We recognise that not all Personal Data can be processed and kept for the same period of time, and this will vary depending on the individual circumstances of each person whose Personal Data we hold.

The Privacy Policy sets out what should happen in the event of a Data breach e.g. does the breach require reporting to the Information Commissioner's Office and whether the individual affected should be notified. Timescales are set out for dealing with data breaches.

Full copies of our Privacy Policy are available upon request at our office or from our website [www.rosehillhousing.co.uk](http://www.rosehillhousing.co.uk)

## **12. Complaints**

Our aim is to get services right first time. Where customers are dissatisfied with any part of this process, we have a Complaints Policy and procedure. The procedure can be used where there is dissatisfaction with this Policy or its operation. Our Complaints Policy is available in our office or online at [www.rosehillhousing.co.uk](http://www.rosehillhousing.co.uk)

## **13. Tenant Participation**

One of our strategic objectives is to engage effectively with tenants and service users so that our service delivery meets their requirements. In order to ensure we do this effectively we have a tenant participation strategy. Tenants are encouraged to engage with the operational design of services.

Further details of this can be found in our Tenant Participation Strategy. Copies of this are available in our office or online at [www.rosehillhousing.co.uk](http://www.rosehillhousing.co.uk)

#### **14. Risk Management**

In all the key areas of our business we need to consider any risks which may arise. To this end we have in place a robust Risk Management Policy and from this flows our Risk Register. We have identified our material risks which are regularly monitored by our Management Team and Audit Sub-Committee.

Key to the mitigation of the risks associated with tenancy management issues and the subsequent impact on the reputation of Rosehill and possible litigation risk is having a comprehensive policy in place to govern the management of tenancy issues.

#### **15. Policy Review**

This Policy will be reviewed at least every five years or sooner to ensure it continues to reflect current thinking and practice and to comply with legislative requirements and regulatory guidance.

Any tenant wanting to get involved with the review of any Rosehill policy can do so. Further details of this can be found in our Tenant Participation Strategy. Copies of this are available in our office or online at [www.rosehillhousing.co.uk](http://www.rosehillhousing.co.uk)

## Appendix 1

### **SECTION 32 OF THE HOUSING (SCOTLAND) ACT 2001 AS AMENDED BY SECTION 12(2) OF THE HOUSING (SCOTLAND) ACT 2014**

(1) It is a term of every Scottish secure tenancy that the tenant may assign, sub-let or otherwise give up to another person possession of the house or any part of it or take in a lodger—

(a) only with the consent in writing of the landlord, and

(b) in the case of an assignation, only where the house has been the assignee's only or principal home throughout the period of 12 months ending with the date of the application for the landlord's consent to the assignation under paragraph 9 of schedule 5.

(2) A landlord whose consent is required under subsection (1) may refuse such consent only if it has reasonable grounds for doing so.

(3) There are, in particular, reasonable grounds for refusing such consent if—

(a) a notice under section 14(2) has been served on the tenant specifying a ground set out in any of paragraphs 1 to 7 of schedule 2,

(b) an order for recovery of possession of the house has been made against the tenant under section 16(2),

(c) it appears to the landlord that a payment other than—

(i) a rent which is in its opinion a reasonable rent, or

(ii) a deposit which in its opinion is reasonable, returnable at the termination of the assignation, sub-letting or other transaction and given as security for the sub-tenant's obligations for accounts for supplies of gas, electricity, telephone or other domestic supplies and for damage to the house or contents, has been or is to be received by the tenant in consideration of the assignation, sub-letting or other transaction

(d) the transaction for which consent is sought would lead to overcrowding of the house in such circumstances as to render the occupier guilty of an offence under section 139 of the 1987 Act, or

(e) the landlord proposes to carry out work on the house or on the building of which it forms part so that the proposed work will affect the

accommodation likely to be used by the sub-tenant or other person who would reside in the house as a result of the transaction.

- (4) Where the landlord is a registered social landlord which is a co-operative housing association, any consent under subsection (1) is subject to the condition that the assignee, sub-tenant or other person is a member of the association when the assignation or sub-lease takes effect or, as the case may be, when possession is given to the other person.
- (5) The Scottish Ministers may by order modify subsection (3).
- (6) It is a term of every Scottish secure tenancy that, where the landlord has given consent to an assignation, sub-letting or other transaction under subsection (1), the tenant —
  - (a) must notify the landlord of any proposed increase in the rent which was payable by the sub-tenant at the commencement of the assignation, subletting or other transaction, and
  - (b) must not increase the rent if the landlord objects to the increase.
- (7) An assignation, sub-letting or other transaction to which this section applies is not—
  - (a) a protected tenancy or a statutory tenancy within the meaning of the Rent (Scotland) Act 1984 (c. 58), or
  - (b) an assured tenancy, and Part VII (rent assessment) of that Act does not apply to such an assignation, sub-letting or other transaction.
- (8) In this section and schedule 5, “sub-tenant” means a person entitled to possession of a house or any part of a house under an assignation, sub-letting or other transaction to which this section applies, and includes a lodger.
- (9) The provisions of Part 2 of schedule 5, so far as relating to this section, have effect as terms of every Scottish secure tenancy.

In accordance with Section 12(2) of the Housing (Scotland) Act 2014 we may also refuse permission for an Assignation:

- where the landlord (being a local authority or a registered social landlord) would not give the person the tenant wishes to pass the tenancy to reasonable preference under their Allocations policy;

- where, in the landlord's opinion, the assignation would result in the home being underoccupied.