

TENANCY CHANGES POLICY

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1.0 Introduction

1.1 This policy is designed to give guidance on the various changes to tenancy conditions that may occur in CHS's General Needs housing and, unless otherwise stated, to Sheltered / Extra Care housing and Community Support Services.

2.0 Termination of tenancy

2.1 A customer who wishes to end their tenancy must give CHS a Notice to Quit (NTQ) with a minimum 28 days notice ending on a Sunday for weekly tenancies. The 28 day period begins once the Notice is received by the Society. Once served a tenant cannot withdraw a NTQ. CHS has a standard NTQ form to help customers to give a valid NTQ and will inform customers where a valid NTQ has not been given.

2.2 One tenant to a joint tenancy can terminate the tenancy by giving a valid NTQ. CHS encourages all tenants to sign the NTQ however if only one party to the tenancy signs it CHS would try to contact and inform the other tenants. The NTQ will remain valid whether or not CHS is able to contact other tenants to a joint tenancy.

2.3 If a customer has given a valid NTQ and wishes to extend the original date on which the tenancy is to end CHS may agree (unless a date for a new customer to begin a tenancy has been agreed). So long as the original NTQ was valid, the tenancy will have ended on the original date agreed. CHS will confirm to the customer that no new tenancy will be created and the outgoing customer will be charged for use and occupation after that date at the same rate as their most recent rent charge until they give up possession and return the keys. All future correspondence will refer to the former tenancy and use and occupation charges and not to current rent charges.

3.0 Surrender of tenancy

3.1 All parties can end a tenancy at any time with or without notice if there is clear agreement. It is not lawful for CHS to accept an offer of surrender if that offer is given by only one of two or more joint tenants. A surrender can only take place where the customer offers to give up the property (it is preferable to have this in writing in the form of a Notice of Surrender however it may be an unequivocal act of surrender e.g. handing in the keys to the property) and where CHS agrees to accept surrender. CHS will prepare a Notice of Surrender for all parties to sign. The Housing Manager / Housing Officer will only agree immediate surrender in exceptional circumstances. A surrender may also be agreed in writing for a date in the future by the Housing Officer, in cases where the customer has given four weeks' notice but the Notice to Quit is technically invalid. If CHS agrees with the proposed date for ending the tenancy it will prepare a Notice of Surrender to be signed by all parties including all parties to any joint tenancy. Rent can no longer be charged after a surrender of tenancy.

4.0 Abandonment

(This section applies to tenancies in General Needs, Sheltered and Extra Care housing)

4.1 Where a property has been abandoned by the lawful tenant and is not occupied CHS will seek to recover possession as soon as possible. Where there is an unconfirmed suspicion of abandonment CHS will serve a seven day warning at the property that it will serve a 28 day Notice To Quit if the issue is not resolved. The Housing Manager approves service of any Notice to Quit. The Notice to Quit should be served once CHS is fully satisfied that the property has been abandoned.

4.2 On expiry of the NTQ if there is indisputable evidence that the property is unoccupied CHS will arrange to change the locks, take possession and inspect the property. Only if the evidence of abandonment is incontrovertible will CHS take possession before the NTQ expires. If CHS was to take possession and then discover that the property had not been abandoned, this may give rise to a breach of the Protection from Eviction Act 1977 which is a criminal offence. Therefore CHS must be certain (and be able to demonstrate) that the lawful tenant has no intention to return. If there is any uncertainty CHS will seek a possession order from the County Court.

4.3 CHS will take a full inventory (completed and signed by at least two employees) and take photographs of each room of any General Needs property that is abandoned immediately on taking possession. This is done to record evidence of the abandonment and of any belongings left behind in case of any later claim against CHS.

4.4 The CHS Starter / Assured Tenancy agreement requires that CHS is informed of any absence of more than 28 days. While it is technically a breach of tenancy to fail to inform CHS of such an absence it cannot be automatically concluded that the customer has given up their home, and failing to notify CHS of a longer absence would not be likely in itself to be a sufficient breach to justify a possession order. CHS acknowledges that some customers may need to be away from home for lengthy periods and the needs of Black and Minority Ethnic communities need to be taken into account e.g. in relation to long term visits to relatives abroad. So long as the property is the customer's main home and they have a genuine intention to return to it there is no particular time limit on such a temporary absence. However if breaches of tenancy arise during such absence (e.g. rent arrears) CHS will attempt to contact the tenant/s and will follow its other procedures.

5.0 Unauthorised Occupation

5.1 If a property is no longer the tenant's only or principal home the tenancy loses its security of tenure and may be terminated by a Notice to Quit served by CHS. CHS can then require any remaining occupier to leave and seek possession by court action. The Notice to Quit will be served in conjunction with a Notice of Seeking Possession without prejudice to the Notice To Quit so that CHS has the option of taking possession action based on breach of tenancy if the tenant returns to the home prior to expiry of the Notice to Quit. Where possible the unauthorised occupier will be named by CHS as a defendant in the possession proceedings so that CHS can seek an order for damages for use and occupation after the Notice to Quit expires.

6.0 Evictions

6.1 Where CHS has obtained a Warrant for eviction it will notify the local authority of a potential homelessness claim and advise the tenant that they may apply to the Court for a

suspension. Where the local authority seeks to find ways to avoid eviction, CHS will co-operate constructively but will need to be convinced that there is a solution that addresses the prime reason for the eviction before agreeing to suspend it.

6.2 Disposal of possessions

(This section applies to tenancies in General Needs, Sheltered and Extra Care housing)

Where items are left behind in an abandoned property or following an eviction CHS will make a decision on whether it can argue that any goods left behind in the property have been abandoned taking into account all the facts of the case. Goods are more likely to have been abandoned where the property itself has been abandoned and where the monetary value of the goods is low. Where goods have been abandoned CHS may dispose of them or sell them and apply any proceeds towards debts owed to CHS. If there is any reason to believe that the customer intended to return to collect goods (for example if they asked for time after an eviction) then CHS may not treat them as abandoned and the Torts (Interference with Goods) Act 1977 may apply. In these cases CHS will serve a **Notice To Collect** the goods. CHS will try to trace the customer via GP's, schools, former addresses, known relatives, workplace, Housing Benefit department etc. If there is no contact after serving this Notice CHS will serve a **Notice of Intention to Sell**. If there is no response to this Notice a risk assessment is carried out regarding the likelihood of the former customer returning and claiming damages. Where this risk is significant and the goods are of high value CHS may apply to Court for authority to sell or dispose of the goods. Where the risk assessment indicates a very low risk of any claim for damages and the value of goods is low CHS will dispose of any remaining goods. Goods may be removed and stored while these considerations take place having taken detailed inventories and photographs.

7.0 Death of tenant

7.1 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 Executor of the estate would need to serve a Notice to Quit. If this is not forthcoming or if the identity of any representatives is unknown CHS may serve a Notice to Quit. Alternatively CHS may agree to accept a surrender of the tenancy by the Executor after which no rent is charged. If someone who is not entitled to succeed occupies the property, proceedings for possession will be taken after serving a Notice to Quit at the property and on the personal representatives of the deceased tenant, and on the public trustee. If the property remains occupied on expiry of the Notice to Quit, CHS will issue legal proceedings and obtain an order for possession that would be enforced by a warrant for possession if necessary.

8.0 Succession

8.1 On the death of a joint tenant in General Needs housing the tenancy continues automatically as a sole tenancy in the name of the survivor who will be a successor. Unless the tenancy is a Starter tenancy that has not yet matured to an Assured tenancy, a spouse or partner who is not a joint tenant but lived at the property at the time of the tenant's death will also be allowed to succeed to the tenancy. Other members of the family household (son or daughter, parent or grandparent, sister or brother, niece or nephew) may succeed if they have lived at the property for the 12 months immediately before the tenant's death, provided that the succession will not result in the home being under-occupied by more than two bedrooms. CHS treats couples of the same sex in the same way as other couples. If a succession is completed, CHS will attach an appendix to the tenancy agreement confirming the succession and the successor will be asked to sign it to acknowledge that they are bound by the terms and conditions in the tenancy. For tenancies beginning after 1st

April 2012 no further succession is guaranteed. Where a succession by a person listed above would result in under-occupation of the home, CHS may seek possession having first offered that person advice and assistance if appropriate in relation to finding suitable alternative accommodation.

8.2 In sheltered and extra care housing the statutory right to succession will apply, which permits one succession only. Section 17 of the Housing Act 1988 provides that a spouse or civil partner or those living with the tenant as spouse or civil partner who occupied the house as his or her principal home when the sole tenant died may succeed. If the successor does not comply with planning regulations or CHS's own policy to let sheltered / extra care tenancies to those aged 55 or over, CHS will seek to find alternative accommodation for the successor. Further successions will not be permitted.

8.3 If the property is under-occupied by the successor then CHS would offer suitable alternative accommodation in order to make better use of CHS stock. This may involve working with other social landlords to provide the most suitable accommodation. If the successor refuses to move to such accommodation CHS may serve a Notice of Seeking Possession. For Secure tenancies this must take place between six months and twelve months after the succession. For Assured tenancies there is no such time limit however CHS would seek to follow the same principle as for Secure tenancies. CHS may then seek possession under Ground 9 (Assured tenancies) or Ground 16 (Secure tenancies) of Schedule 2 of the Housing Act 1985. The successor can appeal to the Community Services Director if they feel the offer of alternative accommodation is unreasonable and can defend any possession proceedings on the same basis.

9.0 Relationship breakdown

9.1 CHS advises any couples who are separating to seek independent legal advice in relation to tenancy and other related issues. However CHS will advise on the status of the tenancy and the implications of possible changes to a tenancy. CHS will give particular assistance to victims of domestic abuse e.g. by making contact with relevant support agencies, providing advice on sources of temporary safe accommodation, making contact with the partner to establish their intentions. Where a victim of domestic abuse wishes to remain in the home but to permanently exclude a violent ex-partner who is a joint tenant they are entitled to unilaterally end the joint tenancy however they should always discuss this with CHS first. If CHS is satisfied that there is appropriate evidence it will usually give preference to the victim by agreeing to issue a new sole tenancy in their name. CHS acknowledges that presenting such evidence is very difficult however it wishes to avoid the termination of a tenancy where a false allegation is made. A new tenancy may not be agreed where it would result in any children being made homeless in which case CHS would expect the parties to resolve the matter through legal proceedings. In the case of married couples any matrimonial occupation rights would take priority whether or not the tenancy was in both spouses' names. Therefore CHS prefers all such matters to be resolved by the courts where possible especially where children / dependents would be affected.

9.2 Where a couple hold a joint tenancy and the relationship ends, there is a legal right for one joint tenant to end the joint tenancy by giving CHS Notice To Quit so long as it is valid. CHS would try to contact the other party to inform them of this termination as they would lose the right to occupy the property and may become homeless. A person whose rights may be affected by the termination of the tenancy may be able to prevent a joint tenant from giving notice to end the tenancy by injunction in the case of divorce proceedings, wardship proceedings or Children Act proceedings.

9.3 The County Court has the power to exclude a joint tenant from the home for an unlimited period under powers in 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 CHS should be served with the notice of application to the Court and would have the opportunity to make representations.

9.4 The Family Law Act 1996 provides that occupation of the matrimonial home by a spouse 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 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 CHS. These matrimonial rights will end on divorce unless the spouse applies to the court during the marriage under the Family Law Act 1996 for those rights to continue, or to resume these rights after a divorce.

10.0 Joint to Sole tenancy

10.1 Where a couple who are joint tenants separate and come to an agreement that one of them wishes to remain in the home as a sole tenant, they should discuss this with CHS. If CHS agrees (i.e. the property would be suitable) and the remaining customer is prepared to take sole responsibility for any remaining rent arrears then it would allow an assignment of the joint tenancy by both joint tenants to the remaining customer as a sole tenancy. This would be carried out by a Deed of Assignment.

11.0 Sole to joint tenancy

11.1 Where a sole tenant wishes to create a joint tenancy with a partner or spouse they may do so only with CHS permission (except in Community Support Services in which such conversions are not allowed). CHS will advise the original sole tenant of the implications for their own future security by adding a new joint tenant and strongly advises the original sole tenant to wait for 12 months after beginning to co-habit before considering a joint tenancy. We also explain the implications of marriage in creating occupation rights for the spouse regardless of whether they are a joint tenant. Once CHS permission is granted it is necessary to terminate the sole tenancy and grant a new joint tenancy agreement. CHS would not give such permission for various reasons including where there are outstanding rent arrears (as they would become former tenancy arrears on grant of a new tenancy) or other debts or breaches of tenancy.

12.0 Questions and concerns

12.1 If customers have any questions or concerns about this policy or the way an issue has been dealt with under this policy, they can discuss these with their Housing Officer or Housing Manager in the first instance. If the issue remains unresolved customers are encouraged to ask for a review by a more senior officer or to make a complaint. Customers are also encouraged to take their own legal advice from a solicitor, Citizens Advice Bureau or the equivalent.