



## MORAY COUNCIL

### Housing and Property Services

### Assignment Policy

#### 1. Scope of the Policy

- 1.1 This policy details the activities and responsibilities involved in facilitating the assignment of a tenancy. Assignment is where a tenant assigns (passes on) their tenancy to another person, known as an assignee. There is no new tenancy, but the rights and responsibilities associated with the tenancy are passed on to the assignee.

#### 2. Strategic context

- 2.1 The Assignment Policy will assist the Council to meet the aims and priorities of its Local Housing Strategy 2019 – 2024, Moray 2027 and Corporate Plan. In particular it will assist the Council to achieve its strategic objective to improve access to housing and alleviate housing need in Moray. The Assignment Policy will also assist the Council to make the best use of its housing stock.

#### 3. Objectives and Principles of the Policy

- 3.1 The overall aim of the Moray Council's Assignment Policy is to assist the Council to meet housing need in Moray.
- 3.2 The specific objectives of the Policy are:
- that assignments are completed in a transparent accountable and consistent manner, which comply with relevant legislation and good practice;
  - to make best use of the housing stock available and consider housing need and demand; and
  - that the Council will refuse assignments that do not comply with the above objective.

3.3 The principles underpinning the Policy are:

- the Council will implement detailed procedures and agreed practices uniformly across the service;
- staff training is provided to ensure that staff are equipped to carry out the roles expected of them; and
- communication with tenants and service users is in “plain language” and will make clear who the appropriate officer is to contact in the case of queries.

#### **4. Legal framework**

4.1 The primary legislation governing assignments is contained within Section 32 and Schedule 5, Part 2 of the Housing (Scotland) Act 2001 as amended by Section 12 of the Housing (Scotland) Act 2014. This provides every Scottish secure tenant and short Scottish secure tenant with the right to assign their tenancy as long as:

The tenant:

- has lived in the house as their only or principal home for 12 months immediately before applying to assign the tenancy; and
- has the written consent of the landlord.

The assignee:

- is over 16 years of age; and
- has lived in the house as their only or principal home for 12 months or more prior to the application to assign the tenancy.

The 12 month residency period will only start when the Council has been notified that the person is living in the property as their only or main home.

4.2 In line with the above legislation:

- tenants cannot assign their tenancy without first obtaining the Council’s written consent;
- the Council can only refuse such request if there are reasonable grounds for refusal;

- if the Council fails to respond to a request to assign a tenancy within one month of the receipt of the application, consent is automatically deemed given.

In the case of short Scottish secure tenants, the right to assign the tenancy is limited to the period of the short Scottish secure tenancy.

- 4.3 The Council will ensure that any information given to it as part of the application process will be used in accordance with the General Data Protection Regulations (GDPR) and the Data Protection Act 2018.
- 4.4 The Assignations Policy will adhere to housing and other relevant legislation. In addition to housing legislation detailed in 4.1, this includes, but is not restricted to the following:
- The Housing (Scotland) Act 1987
  - The Human Rights Act 1998
  - The Data Protection Act 2018
  - The Housing (Scotland) Act 2001
  - The Housing Scotland Act 2014
  - The Equality Act 2010
  - The Matrimonial Homes (Family Protection) (Scotland) Act 1981
  - Marriage and Civil Partnership (Scotland) Act 2014

## **5. Equality and diversity**

- 5.1 The Council is committed to preventing discrimination and promoting equality of opportunity for every person who applies for housing. The Council seeks to ensure that the Policy does not discriminate between individuals on the grounds of age, sex, disability, gender reassignment, marital status/civil partnership, pregnancy and maternity, race, religion or belief and sexual orientation.
- 5.2 The Council will develop information and advice in a variety of formats such as large print, tape and Braille, upon request. The Council will provide

interpreting services free of charge, where these are required to assist applicants.

## **6. Principal home**

6.1 The requirement that the property be the assignee's only or principal home does not mean that they must reside there all of the time. It is possible that there will be periods of time spent away from the home which does not prevent the property being someone's only or principal home. An assignee will still be regarded as occupying their home even if they are temporarily absent if:

- there are physical signs of their presence in the home; and
- they effectively demonstrate an intention to return to the property.

## **7. Application and assessment process**

7.1 The Council will assess each application to assign a tenancy on its own merits.

7.2 Tenants who wish to assign their tenancy must have informed the Council that the person they wish to assign the tenancy to is living in the house. The person must have been living there for 12 months prior to the application. The 12 month period does not start unless the Council has been notified that the person is living in the property as their only or principal home (Housing (Scotland) Act 2014 Section 12 (2b)).

7.3 Tenants who wish to assign their tenancy must apply to the Council in writing. Any tenant who wishes to assign their tenancy must provide the Council with the following information:

- that the tenant wishes to assign their tenancy;
- the address of their property;
- specific details relating to the assignee:
  - name;
  - how long they have lived with the tenant;

- any absences during previous 12 month period (including lengths and reason for absence);
- the date of the proposed assignation; and
- details of any payment that the tenant may receive if the assignation is granted.

7.4 The proposed assignee will be requested to complete a housing application form (if they have not already done so). This will be assessed in accordance with the Allocations Policy to determine the extent of their housing need. Before consent will be granted, the assessment must demonstrate that the proposed assignee has a significant housing need in contrast with others on the Housing List. Where the person is deemed not to be in housing need, the application may be refused.

7.5 Where appropriate, tenancy references may be sought in the same way as for any other housing applicant and in accordance with the Allocations Policy.

7.6 Each application to assign a tenancy will be assessed to take into account the following:

- the level of housing need that the proposed assignee has;
- the demand for housing in the letting area of the tenancy;
- the suitability of the property; and
- whether the assignation will lead to the property being under occupied or overcrowded.

7.7 If the tenant applying to assign the tenancy is a joint tenant, they are required to obtain the consent of the other joint tenant(s). If the consent is not obtained, the tenancy may not be assigned.

7.8 If the property to be assigned is the matrimonial or family home, the rights of occupation of the spouse or civil partner may be affected by the assignation. Where the consent of the spouse is required the tenant who wishes to assign

the tenancy should endeavour to obtain it from their partner. If the consent is not available, the tenancy may not be assigned.

## **8. Notification of decision**

8.1 The Council will notify the tenant of its decision in writing within one month of receipt of the application to assign the tenancy. In accordance with Schedule 5, Part 2 (13) of the Housing (Scotland) Act 2001, if a decision is not given within this timescale, consent is automatically deemed granted.

8.2 Where consent has been refused the Council will advise the tenant of the reasons for refusal, what action should be taken to address the reasons for refusal and the tenant's rights to appeal the decision (refer to Section 11).

## **9. Consent**

9.1 The application to assign a tenancy may be granted when:

- the proposed assignee's housing application, once assessed in line with the Allocations Policy, demonstrates that the proposed assignee is in housing need; and
- that by assigning the tenancy, the Council will be alleviating housing need and demand in the area.

9.2 When permission to assign the tenancy is granted, the tenancy does not end and a new tenancy does not begin. The tenancy continues. No new tenancy agreement is required. It is the tenant who changes.

9.3 The assignee will be asked to attend a meeting to discuss the content of the tenancy agreement and make them aware of their rights and responsibilities in relation to the tenancy.

9.4 The new tenant will take on all the rights and responsibilities associated with the tenancy, including any outstanding housing debt. The former tenant will no longer be liable for any outstanding housing debt and will not be pursued for debt recovery.

9.5 It is the responsibility of the tenants to advise other relevant authorities and services providers of the assignation arrangements.

## **10. Refusal of consent**

10.1 In line with the Housing (Scotland) Act 2001, the Council cannot unreasonably withhold consent when a tenant applies to assign their tenancy.

10.2 The Council can only refuse a request to assign a tenancy where there are reasonable grounds for refusal. Reasonable grounds, as specified by Section 32 of the Housing (Scotland) Act 2001 (as amended by the Housing (Scotland) Act 2014) include the following examples:

- where the proposed assignee would not receive reasonable preference under the terms of the Allocations Policy;
- where the Council believe that the change in the household will result in the property being under occupied (in line with the Allocations Policy);
- a notice of proceedings for possession has been served on the tenant in line with Section 14 (2) of the Housing (Scotland) Act 2001 which specifies any of the 'conduct' grounds for eviction set out in Schedule 2;
- an order for recovery of possession has been made against the tenant under Section 16 (2) of the Housing (Scotland) Act 2001;
- it appears that the tenant is to receive a payment for the assignation which is other than reasonable;
- where the assignation would lead to overcrowding as defined by the section 139 of Housing (Scotland) Act 1987; or
- the landlord proposes to carry out work on the house or building which would affect the accommodation in question.

10.3 The grounds for refusal taken from legislation are not exhaustive. There is no definitive list of grounds for refusal and each case will be assessed on its own merits. Other factors which may be considered include:

- whether or not the transaction is for unreasonable financial gain;

- where the tenant has housing related debt and there is a risk that this will not be repaid to the Council;
- where the house was designed or adapted for persons with special needs and if the assignation were allowed, there would be no person living in the house who required those designs or adaptation;
- where the proposed assignee has pursued a course of antisocial conduct, or has been convicted of using a previous tenancy for illegal or immoral purposes. Or has had an interim or full ASBO granted against them or a member of their household within the last three years;
- where the proposed assignee does not require accommodation of the type, size or standard that is proposed to be assigned;
- whether the assignation is deliberately intended to circumvent the Allocations Policy. The Council will complete an assessment of the assignee's housing need. Where the applicant is deemed not to be in housing need, the application may be refused.

## **11. Appeals**

- 11.1 If an application to assign a tenancy is refused, the tenant may appeal in writing, in the first instance, to the Housing Services Manager who will review the original decision.
- 11.2 The Housing Services Manager will notify the tenant of the outcome of the review within 4 weeks of receiving the appeal request.
- 11.3 If the tenant is not satisfied with the outcome, the tenant has the right to raise legal proceedings by way of summary application to the Sheriff Court within 21 days. The Council will advise the tenant of this right and advise the tenant to seek independent legal advice.

## **12. Review of Policy**

- 12.1 This policy will be reviewed in 2022, unless an earlier review is required due to legislative changes.