



ASSIGNATION OF TENANCY

November 2019

1. Purpose

The purpose of this procedure is to provide clear guidance to Association staff on how we will manage the rights of our tenants to assign their tenancy to another person. These rights are set out by in the Housing (Scotland) Act 2001 part two, section 22 as amended by the Housing (Scotland) Act 2014 and in the Association's Scottish Secure Tenancy Agreement. Whilst these rights are laid out in legislation, having a written procedure ensures that a uniform approach is adopted, and the service delivered is compliant with legislation. The procedure applies all landlords within the Link Group. Assignations are not common are and staff should always seek advice from their manager on any case that arises.

2. What is assignation?

There are two types of assignation

Assignation by Voluntary transfer

Assignation describes the process when a tenant transfers (or passes) their tenancy on to another person (the assignee) by means of a deed of assignation. In an assignation the legal interest and the rights and responsibilities) are passed over to the assignee. The existing tenant ceases to have any rights to the tenancy. A new tenancy agreement is not given as the assignee takes on the terms of the original tenancy agreement as signed by the original tenant. An assignation can only take place with the Association's written permission

Court ordered assignation

Under the Matrimonial Homes (Family Protection) Act (Scotland) Act 2001 the courts may transfer the tenancy of the property between spouses, former spouses, civil partners or cohabitants . In this case the Association's permission is not required (and the Association cannot refuse permission) however the tenant needs to inform us of this.

3. Assessment of an application to assign

3.1 Eligibility

Assignations are only permitted if

- The property must have been the tenant's only or principal home during the 12 months immediately before they apply for written permission to assign.
- the person taking on the tenancy (the proposed assignee)
 - is 16 years old or over
 - must have lived in the property as their only or principal home for 12 months prior to the application for assignation being made

AND

- the Association must have been notified of them living in the property (the 12 month residency period starts when the landlord has been notified)

3.2 Request to assign a tenancy

Any request for assignation needs to be made in writing. Tenants may make their request by phone, email or via the app but must be asked to confirm the request in writing by completing the appropriate form (appendix1) giving details of the proposed assignation and assignee's details. The Housing Officer should provide support to complete the form where necessary

The Association has one month to respond in writing to a request for assignation. If we fail to respond within this timescale then consent is deemed to have been given. It is therefore essential that timescales are adhered to.

3.3 Meeting the tenant and proposed assignee

The Housing Officer should arrange home visit to meet with the tenant and the proposed assignee within 5 working days of the request being made. The purpose of this meeting is to explain the rights and obligations to both parties and to assess eligibility. It should be emphasised to both parties that the existing tenancy is not ending but being passed on with its rights and obligations

The property services officer should also attend this meeting to carry out a pre termination inspection in line with void procedures. In addition, the assignation ends the tenancy from the perspective of the statutory right to compensation for improvements scheme, therefore the property services officer should ascertain whether the tenant has carried out any improvements for which he/ she might qualify for compensation

Where the tenant fails to keep an arrangement to meet, the decision on whether to grant or refuse permission on the assignation should be made based on the information which has already been provided by the tenant

4.1 Refusal of application to assign

The Association will not unreasonably withhold consent for the assignation. However, the law lists various grounds where it is reasonable to refuse a request

- The tenant and the proposed assignee have not lived in the property as their only or principal home for 12 months before the request
- We had not been notified that the proposed assignee was living in the property 12 months prior to the application
- A Notice of Proceedings has been served on the tenant
- A court order for recovery of possession has been granted against the tenant
- The Association would not give the assignee reasonable preference under its lettings policy
- The property is specially designed, or has been adapted, and its amenities are not required by the assignee

- The assignation would lead to overcrowding or under occupation under the lettings policy
- There are rent arrears or other charges outstanding (**unless the assignee agrees to clear these prior to the assignation**)
- The Tenant or proposed assignee has been involved in the perpetration of serious ASB
- Either party has given false information in relation to the proposed assignation

4.2 Prior to reaching a final decision, the housing officer also needs to check the following

- Has the proposed assignee have a legal right to be granted a tenancy (i.e. are they over 16 years of age and have the right to remain in the UK?)
- Does any other person have occupancy rights? This important since their consent is needed prior to assignation. Occupancy rights give the any spouse or civil partner (who is not joint tenant) spouse the right to occupy and gain access to the matrimonial home.

4.3 This list is not exhaustive, and housing officers should assess each request fully and make a recommendation on whether to grant or refuse consent to the housing services manager

4.4 The Association will notify the tenant of its decision within one month of the. Where permission is not given, the tenant should be informed in writing (appendix 2) . If the assignation is to be approved a letter should be issued (appendix 3b) should be issued and a schedule of variation (appendix 3a) should be signed by the outgoing tenant and the assignee .

4.5 The assignee should be given a copy of the original tenancy agreement and the schedule of variation and a copy of the tenants handbook. A visit should be made by the Housing Officer to discuss rent payments, order an Allpay card and arrange a Direct debit , assist with claims for housing costs/HB and to arrange tenancy sustainment / welfare benefits advice as required.

4.6 The existing tenancy should be ended (with vacation reason as 'assignation) and a new tenancy created for the assignee (making them primary client) using the old rent account number. The tenancy type should be recorded as assignation

4.7 If the application is to be refused, the reason should be given clearly in writing. If there is insufficient information available to allow a decision to be made the request will be refused and the tenant advised to re-apply when further information is available.

5 Complaints & appeals

People who are dissatisfied with how the Association has handled the request to assign the tenancy can make a complaint in line with the Association's Complaint handling procedure and if remain dissatisfied have recourse to the SPSO. This does not prejudice the tenant's right to appeal to the Sheriff Court under part 2 schedule 5 of the Housing (Scotland) Act 2001