

# APPENDIX 1

## Tenancy Policy



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### Document History

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0.1	September 2019	Rachael Swales	First draft
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## 1. Introduction

The Tenancy Policy (the Policy) outlines the principles and approach that Livin takes in respect of the tenancies we offer, including arrangements in place support tenants so that their tenancies are sustainable.

## 2. Policy Statement

The Policy sets out a clear framework for our Tenants to ensure that they are provided with a tenancy offer that meets their housing need and their personal circumstances.

Livin is committed to providing an accessible affordable housing service to ensure our tenants can access a tenancy that provides them with the right home to meet their needs and their aspirations.

Livin is committed to providing clear information to help tenants understand the types of tenancies we use and the circumstances in which we will use those tenancies.

The Policy sets out Livin's commitment to meeting the Regulator of Social Housing's Tenancy Standard. Specifically, it sets out our approach to how Livin meet the required outcomes in relation to Tenure:

### Required Outcomes:

*Registered Providers shall offer tenancies or terms of occupation which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock.*

*They shall meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements or terms of occupation.*

### Specific Outcomes:

*Registered providers shall publish clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary evictions, and tackling tenancy fraud.*

The Policy sets out:

- The tenancy types Livin will grant.
- Where tenancies are granted for a fixed term, the length of those terms.
- The circumstances in which we will grant tenancies of a particular type.
- Any exceptional circumstances in which we will grant fixed term tenancies for a period of less than five years following a probationary period.
- Our policy on granting discretionary succession rights, taking account of the needs of vulnerable household members.

The Policy should be read as part of a complementary suite of Policies, setting out our approach to managing and sustaining tenancies. Examples of complementary policies include our Lettings Policy and our Anti-social Behaviour Policy.

Our approach to tenancy management is set out in the procedures which underpin this Policy.

### 3. Tenancy Types

Livin provide the most secure form of tenancy available to our tenants and we provide both general needs and specialist housing and support services to our tenants. Livin personalises our services to the needs of our tenants and offer the most appropriate type of tenancy or occupancy agreement to prospective households.

We currently offer the following tenancy types:

- Transferring tenants (non-shorthold)
- New tenants with full rights (non-shorthold)
- Starter Tenancy (shorthold)
- Fixed Term Probationary Tenancy (shorthold)
- Fixed Term Tenancy (assured shorthold)
- Mortgage Rescue (shorthold)
- Equitable Tenancy – minors aged 16 and 17 years
- Demoted Tenancies
- Family Intervention Tenancies
- Licences
- Shared Ownership
- Garage Licences

These are explained in more detail below.

#### Transferring tenants (non-shorthold)

A tenancy only offered to tenants who transferred to Livin from Sedgefield Borough Council (31 March 2009). These tenants will continue to have the protected rights that existed at the time of the transfer.

#### New tenants with full rights (non-shorthold)

We will only give assured (non-shorthold) tenancy agreements to:

- new tenants that have held a Starter Tenancy (assured shorthold) agreement with us for a minimum 12 – 18 months, unless they have broken the tenancy conditions
- Tenants that have held an assured or secure tenancy with another Registered Provider or local authority at the point of allocation.

#### Starter Tenancy (shorthold)

This tenancy will only be offered to new tenants that do not hold an assured or secure tenancy with another Registered Provider at the point of allocation. It is a probationary tenancy and lasts for a period of 12 months from tenancy sign up date. After this period the starter tenancy will convert to an assured tenancy providing that the probationary period has not been extended or legal action has not been taken to end the tenancy.

#### Fixed Term Tenancy (shorthold)

We have historically offered this tenancy type in some locations, however we have taken a decision to no longer offer this tenancy type going forward. Any tenant who is currently on a fixed term tenancy will be offered a permanent tenancy on expiration of the fixed term.

### Mortgage Rescue (shorthold)

Mortgage Rescue Tenancies will be offered in cases where a property has been bought by Livin via the Mortgage Rescue Scheme (MRS). This tenancy will last for three years and will enable the homeowner to remain in their home as a shorthold tenant.

After this period the tenancy may be converted, to an assured tenancy providing that the probationary period has not been extended or legal action has not been taken to end the tenancy.

### Equitable Tenancy – minors aged 16 – 17 years (shorthold)

This type of agreement is only available to minors aged 16 or 17 years old as they are legally not entitled to hold a tenancy. We will offer minors aged 16 – 17 years an equitable tenancy; however a third party (over 18 years) is required as trustee. A third party should also be appointed as guarantor. This will ensure that the terms of the agreement are upheld until the minor reaches their 18th birthday.

Providing the equitable tenancy has not been breached a starter assured (shorthold tenancy) will be offered following the 18<sup>th</sup> Birthday of the Tenant.

### Family Intervention Tenancy

In exceptional circumstances, family intervention tenancies are granted to families who have chaotic lifestyles and who require significant support in order to help them maintain tenancies. This tenancy type is NOT normally offered as a standard tenancy type but may be offered in a few occasions depending on a needs overview for the individual circumstances of the applicant. Existing tenancies cannot be converted into a family intervention tenancy.

### Demoted Tenancy

Following an application to the courts for a demotion order, we may demote an assured (non-shorthold) tenancy to an assured (shorthold) tenancy for a period of 12 months, as determined by the provisions of the Housing Act 1988, s6a and 20b.

### Licences

A licence is used as a temporary measure, within a limited time period (for example) where a tenant needs to be decanted during a temporary period.

### Shared Ownership

Livin offer shared ownership properties for sale as part of our commitment to affordability in housing within our communities.

### Garage Licences

This licence is granted to those renting a garage, separated from the dwelling curtilage.

## **4. Rights and Responsibilities**

### Right to occupation

Tenants have a right to occupation and we will only end a tenancy based upon grounds set out in each agreement or if the tenants have breached the tenancy conditions.

### Information

We ensure that tenants are provided with clear information about their rights and obligations regarding their tenancy agreement with Livin.

### Support to sustain tenancies

We provide support to our tenants to enable the sustainable occupation of their home and interventions are based on the responsibilities and needs of both the individual tenant(s) and Livin.

### Ending Tenancies – surrender (termination)

Tenants are required to provide 4 weeks' notice to terminate their tenancy, except in exceptional circumstances, such as acceptance of shorter notice periods where a tenant has deceased.

Tenancy termination can be done by a tenant in writing to Livin. A prescribed form can be provided by Livin to assist tenants with this. If a joint tenancy is surrendered, the surrender should be signed by all the joint tenants where possible. The surrender of a joint tenancy brings to an end the joint tenancy however Livin may in certain circumstances award a single tenancy to any remaining occupant when a previous tenancy ends.

### Ending Tenancies – tenancies with no security

Livin may bring a tenancy to an end if a tenant has lost their security of tenure, such as where the tenant no longer occupy the property as their only or principal home or where they have died and there are no further succession rights. Livin will serve Notice to Quit and/or seek court proceedings where appropriate to end tenancies in circumstances such as this.

### Right of Succession

Succession to tenancy can prevent the event of a property becoming void and allow the remaining occupant to securely remain in the property rather than being required to leave their "home". A succession may occur after a tenant has died and where another individual may have the right to take over the tenancy. Rights of succession are detailed in the tenancy agreement and are only normally granted once. Succession will normally be by the means of continuation of the existing tenancy agreements or when granting a new tenancy agreement if appropriate.

We reserve the discretion to allow all transferring tenants with protected rights one new succession from the date of transfer. We also reserve the discretion to grant a right of succession to meet the needs of vulnerable household members or to mitigate the impact of welfare reform.

## Assignment of Tenancy

Assignment is the legal term used when a tenant passes on their secure tenancy to another eligible person or "assignee". The tenancy continues and the tenancy terms and conditions do not change, a new tenancy does not commence but the tenant changes.

Assignment of tenancy can occur when:

- A tenant mutually exchanges their home with another secure or assured tenant
- There is a relationship breakdown and a court issues a matrimonial order as part of divorce or separation proceedings
- A family member who would have qualified to succeed if the tenant had died

Assignment can only take place if the original tenant has the right to assign the tenancy.

The Localism Act 2011 amended the rights of Assignment where a tenancy was created after 1 April 2012. In these cases, a statutory right to assignment is limited to a spouse/partner/civil partner. For secure or assured tenancies created before 1 April 2012, the right to assign can be transferred to a family member.

Once an assignment has taken place, all the rights and responsibilities of the tenancy are transferred from the original tenant to the new tenant.

## **5. Tenancy Fraud**

There are a number of situations where a tenant's fraudulent actions may result in the organisation taking legal action to end that tenancy. Examples (not exhaustive) include:

- Subletting all of a tenancy or part of it without the prior consent of the organisation.
- Obtaining a tenancy by deception or deliberately misrepresenting circumstances resulting in a property being allocated.
- The deliberate misrepresentation of circumstances in order to obtain approval for a mutual exchange.
- The deliberate misrepresentation of circumstances in order to be assigned a tenancy.

### The Fraud Act 2006:

Wilfully misrepresenting circumstances or deliberately misleading someone in order to gain from that misrepresentation may also be a criminal offence within the meaning of the Fraud Act 2006. This may involve the Police or Local Authority Council in bringing criminal proceedings against an individual(s) where it is satisfied that there appears to have been criminal intent.

### The Prevention of Social Housing Fraud Act 2013:

The Prevention of Social Housing Fraud Act 2013 creates new specific criminal offences of unlawfully subletting by secure and assured tenants in social housing. This occurs where:

- The whole or part of the property has been sublet.
- The sublet is contrary to the tenancy conditions.
- The tenant has moved out and the tenant knows the sublet is a breach of their tenancy.

The Act gives local authorities powers to prosecute in cases of unlawful subletting, and enables the Court to order the recovery of any profit made through subletting, by awarding Unlawful Profit Orders (UPOs). Any assured tenant convicted of unlawfully subletting their tenancy will lose their security of tenure.

## **6. Monitoring and review**

This policy will be reviewed every 3 years but will be subject to earlier review if there is significant change to either the legislative/regulatory environment or in the light of significant learning from good practice or customer complaints.

The policy has been developed in consultation with our customers to ensure that we are reflecting their needs and aspirations.

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