

Policy Title	Tenancy Policy
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1. Policy Statement

Nehemiah Housing's mission is to build successful, sustainable, and diverse communities by providing housing and well-being services in a culturally sensitive way to our current and our future customers.

This policy sets out our approach to the type of tenancies we will grant and in which circumstances. It also considers tenancy fraud and requests for tenancy changes.

The regulatory framework for social housing in England (from April 2015), specifically the Tenancy Standard, requires Registered Providers to publish clear and accessible policies which outline their approach to tenancy management, the type of tenancy they will grant and set out the circumstances under which they will grant tenancies of a particular type. Nehemiah will issue tenancies which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community and the efficient use of its stock. Nehemiah will meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements.

2. Our Policy

2.1. Types of Tenancy

The types of tenancy Nehemiah will offer are:

2.1a. (Periodic) Assured non shorthold tenancies: these tenancies are used where there is a clear intention to offer a home for life. These tenancies are also known as an assured non-shorthold tenancies or assured tenancies. These tenancies are weekly tenancies. These tenancies are sometimes referred to as 'lifetime' tenancies, as providing the tenant does not breach the tenancy conditions, they will usually be able to stay in their home for the rest of their life.

2.1b. (Periodic) Assured shorthold tenancies: They are issued where there is not a clear intention to offer a home for life, for example, a starter tenancy (see below). They are issued as weekly tenancies. They have less statutory rights than assured tenancies and can be ended more easily.

2.1c. Starter Tenancies: are an assured shorthold tenancy that usually lasts for 12 months but can be extended to 18 months if needed. Unless action is taken to end the starter tenancy, the tenancy will convert into a periodic assured tenancy.

2.1 d. Secure tenancies: These are regulated by the Housing Act 1985. These tenancies are also known as Fair Rent tenancies as the rent levels operate under the Rent Act 1977. This type of tenancy can no longer be granted by Nehemiah, the only circumstance being where an existing Nehemiah secure tenant transfers to another Nehemiah owned property.

2.1 e. Licences: All units currently owned and let by Nehemiah are occupied by residents on an exclusive possession basis. Therefore, Nehemiah currently does not issue licences.

In appropriate circumstances and where Nehemiah acquires properties where residents do not have exclusive possession, Nehemiah will issue an appropriate form of licence: this will generally be a protected licence, but an excluded licence will be used in properties that meet the legal definition of a hostel.

2.1f. Equitable Tenancy Agreements: A person under 18 years old cannot hold a legal interest in land and therefore cannot hold a tenancy. So, they must be granted an equitable form of the tenancy agreement they would have otherwise had if they were an adult. (Also see sections 2.2.cii and 2.2e).

The type of tenancies Nehemiah will not offer are:

2.1 h. Fixed Term Tenancies

Nehemiah will not offer Fixed Term tenancies. An evaluation of fixed term tenancies has been carried by Nehemiah. The evaluation included looking at the tenancy strategies of the local authorities where we have properties. Nehemiah's view is that fixed term tenancies would not benefit households or communities, nor would they support our mission statement, *'to build successful, sustainable, and diverse communities by providing housing and well-being services in a culturally sensitive way to our current and our future customers'*.

However, this decision should be kept under review every three years or sooner if legislation or best practice dictates.

2.2. Circumstances for granting tenancy types

This section identifies what tenancy type we will use circumstances.

2.2 a. General Needs Housing

i. Assured non shorthold tenancies

A periodic assured non shorthold tenancy is granted to tenants in general needs housing when the following circumstances apply:

- An existing Nehemiah periodic assured tenant transfers to another Nehemiah property.
- An applicant who had a secure tenancy with a Local Authority or an assured tenancy with a Private Registered Provider granted before 1 April 2012 and has remained a social housing tenant since, and they move to a Nehemiah property.

ii. Licence Agreements

Nehemiah does not currently issue licence agreements because all residents have exclusive possession of units. The one exception may be where tenants have to be decanted to temporary accommodation whilst repair works are completed at the tenanted property which cannot be done with them residing there.

iii. Secure Tenancies

A secure tenancy is only granted to tenants in general needs housing if they are already a secure tenant with us immediately before they enter into the new tenancy. This is in accordance with section 35(4) (d) of the Housing Act 1988.

iv Starter tenancy

A starter tenancy is granted to all new tenants in general needs housing, unless the conditions for granting one of the other forms of tenancy set out in this section 2.2a apply.

2.1 b. Older Persons' Housing

i. Assured non shorthold tenancies

A periodic assured non-shorthold tenancy granted to tenants in older persons' housing when the following circumstances apply:

An existing Nehemiah periodic assured non shorthold tenant transfers to another Nehemiah property or an applicant who had a secure tenancy with a Local Authority or an assured tenancy with a Private Registered Provider granted before 1st April 2012 and has remained a social housing tenant since, and they move to a Nehemiah property.

ii. Licence Agreements

Nehemiah does not currently issue licence agreements because all residents have exclusive possession of units (other than if a tenant has to be decanted as set out in 2.2a(ii) above).

iii. Secure Tenancies

A secure tenancy is only granted to tenants in older persons' housing if they are already a secure tenant with us immediately before they enter into the new tenancy.

This is in accordance with section 35(4) (d) of the Housing Act 1988.

iv. Starter tenancy

A starter tenancy is issued to all new tenants in older persons' housing, unless the conditions for granting one of the other forms of tenancy set out in this section 2.2b apply.

2.2 c. Supported Housing

All tenancy agreements in Supported Housing are issued to reflect any support provision that forms part of the accommodation.

I. Assured shorthold

In supported housing we will issue assured shorthold tenancies, but the accommodation offer is generally for a relatively short length of time (commonly up to 2 years, although it could be longer). The tenancy agreement does however run periodically, week to week.

II. Equitable Assured Shorthold Periodic Tenancy Agreement

In our Supported Housing Young Family units, we sometimes house tenants who are not yet 18. As a "minor" they cannot hold a standard tenancy, but we need a type of tenancy agreement that can be enforced, and which gives binding rights and responsibilities to them. In this tenancy the Trustee holds the legal Tenancy for the benefit of the Tenant. The Trustee must be an individual who is a third party.

III. Licences

Nehemiah does not currently issue licence agreements because all residents have exclusive possession of units (other than if a tenant has to be decanted as set out in 2.2a(ii) above.

2.2d Properties We Manage For Others

Nehemiah manages a very small amount of stock for other housing associations. The management agreements Nehemiah has with other Registered Providers will detail the agreement that will be used for these properties.

2.2 e. Housing Minors – equitable tenancies

We will house minors where they have succeeded to a tenancy and the tenancy will be held on trust for them or a Supporting People contract is in place and there is specific reference to housing 16- and 17-year-olds. We will also house 16- and 17-

year-olds in a tenancy held on trust for them where the local authority has a legal duty to rehouse them, an appropriate support package is in place and the local authority agrees in writing to act as guarantor for the rent payments.

The trustee will hold the legal tenancy for the minor and will also execute a Deed of Trust. If appropriate, for example where the minor succeeded to the tenancy, once the minor attains the age of majority (i.e., 18) Nehemiah will arrange for a Vesting Deed to be executed and for the tenancy to be vested in the tenant who was formerly the minor.

2.3 Ending a tenancy

We recognise that a tenancy can only be brought to an end in specific ways and have clear procedures for terminating tenancies.

We see eviction as the last resort and only seek possession where it is proportionate to the case and when we have exhausted non-enforcement measures as set out in the relevant policies and procedures or in exceptional circumstances where there is a significant health and safety risk.

2.4 Tenancy Fraud

2.4a. Definition of Tenancy Fraud

It is important for Nehemiah to ensure that their properties are being occupied by those it was allocated to and/or that other misuse through abandonment, sub-letting or parting with possession does not occur.

Nehemiah therefore defines Tenancy Fraud as follows:

1. Not using the property as a tenant's 'only or principal home.' This includes:
 - a. Non occupation including abandoning the property
 - b. Moving another person into the property without the landlord's permission, after the tenant has moved out or died.
 - c. Subletting the entire property or part of it contrary to the tenancy agreement and/or without Nehemiah's consent.
 - d. Key selling i.e. the tenant leaves the property and passes on the keys for a lump sum payment or a favour.
2. Obtaining a property by using false documents or false information (for example using a forged passport or claiming to be someone else in order to access social housing) or by making false statements.
3. When seeking to purchase a property, providing false information as to identity or personal circumstances under the Right to Buy or Right to Acquire.

Tenancy fraud can be dealt with as a civil matter, including instigating possession proceedings against a tenant who has committed fraud where there is a breach of tenancy conditions. Tenancy fraud can also be treated as a criminal matter.

2.4b. Impact of Tenancy Fraud

The following are the possible implications of failing to deal with tenancy fraud:

- Nehemiah's housing stock will not be put to best use. This could result in longer waiting times for applicants, including those with high housing needs, particularly households who are living in unsatisfactory, overcrowded, or temporary housing.
- There is a greater risk of properties being used for illegal purposes and an increased likelihood of anti-social behaviour.
- It would be likely to be more difficult to gain access to carry out repairs, particularly gas servicing, thus compromising the health and safety of not only those residing in the property but also those residing in neighboring properties.

2.4c. Preventing Tenancy Fraud

We will ask all new tenants to provide us with photo ID. This information will be collated, stored, and used in line with GDPR regulations and the Data Protection Act 2018. Where applicable, any ID requested will be done in accordance with what is required pursuant to the right to rent provisions under the Immigration Act 2014.

We will visit all new tenants within the first six weeks of their tenancy to check they have moved into their new home.

We will publish articles about tenancy conditions, what tenancy fraud is, the implications for tenants and how to report concerns of tenancy fraud. We will publicise successful prosecutions for tenancy fraud or successful possession action taken out by Nehemiah or in conjunction with other landlords.

At sign up we will ensure all tenants are clear about all their rights and responsibilities, including sub-letting, abandoning their home, or moving out and giving the keys to someone else. These right and responsibilities are clearly defined in the Nehemiah tenancy agreement.

2.4d. Detecting Tenancy Fraud

We will investigate all reports of tenancy fraud and make reports to external agencies where applicable, including the police.

All staff will be briefed about the possibility of tenancy fraud.

Procedures to deal with suspected abandonments and illegal occupation are in place. The lettings procedure ensures checks are in place to minimise the risk of fraud by staff when properties are let.

We will work co-operatively with local authorities and the National Fraud Initiative (NFI) to carry out data matching exercises to identify tenancy fraud.

3. Data Protection and Information Exchange

We will ensure that we do not breach the General Data Protection Regulations and the Data Protection Act 2018 when carrying out data matching exercises to identify possible tenancy fraud.

4. Equality and Diversity

The Tenancy Policy will be operated in accordance with Nehemiah Housing's Equality and Diversity Policy and in particular, irrespective of age, disability, sex, gender reassignment, race, sexual orientation, religion, or belief or because someone is married or in a civil partnership.

5. Training and Support for Staff

Nehemiah will ensure that employees dealing with tenancies have received the appropriate training and support to enable them to deal effectively and confidently with all areas of tenancy management.

6. Monitoring and Review

All cases of tenancy fraud will be brought to the attention of the Chief Executive and reported to the Operations Committee. Annual losses, as a result of fraudulent activity, will be reported as part of the annual reporting process to Homes England and the Regulator of Social Housing.

The tenancy policy will be reviewed every 3 years or sooner if legislation or good practice dictates.

7. New tenancy: Guidance Notes: Joint Tenancies

Joint tenancies will be granted at the start of a tenancy where requested, (and should be encouraged where the responsibilities of the tenancy are being shared). A joint tenancy will normally be granted to no more than 2 tenants.

Joint tenancy request during the tenancy

Where there is a secure tenancy, there can be no assignment from a sole tenant to that tenant plus one other as there is a general prohibition on the assignment of secure tenancies and the only exceptions are set out in sections 91 and 92 of the Housing Act 1985 : an assignment from a sole tenant to that tenant plus one other does not fall within any of those exceptions.

Requests for joint tenancy status on assured tenancies will be refused where:

- The current tenant has a housing debt.
- The current tenant is subject to an NSP or County Court Order.
- The applicant has not resided with the tenant for a period exceeding 12 months.
- The applicant has previously held a public sector tenancy and has a housing debt to Nehemiah or another registered provider.
- The existing sole tenant is a successor.
- There are already joint tenants.
- The tenant is in breach of tenancy, which may include anti-social behaviour.

Any departure from this usual approach for tenants with an assured non-shorthold tenancy will be dealt with by the Senior Housing Officer, with the authorisation of the Housing Service Manager (where available).

A request must be made in writing from the tenant. Where there is a clear rent account, an application form will be completed by the prospective joint tenant and proof of 12 months residency provided (i.e., bank statements, utility bills etc.).

Clear Rent Account

Housing history checks will be made to identify any former tenant debt. Where 12 months residency is confirmed and no former tenancy debts are identified, there will be an interview to explain the terms and conditions of the tenancy. This includes explaining the current tenant, that any joint tenant could serve notice to end the tenancy without the other tenant knowing or agreeing. This interview will be carried out by the Housing Officer.

The tenants will be asked to execute a Deed of Assignment, assigning the tenancy from the sole tenant to that tenant plus one other. The new joint tenant should be given a copy of the tenancy terms and conditions for their information.

A record of the joint tenancy application will be kept, the new tenant's name added to the tenancy on Sassha. The rent account will be continuous from the date the original tenancy started.

Rent Arrears

Where there are arrears on the rent account, it should be explained that the account will need to be cleared, and where possible a month in credit before the sole tenancy can become a joint tenancy. Where an NSP is in place the NSP must have expired, and the rent account be clear before the sole tenancy can become a joint tenancy. Where a court order is in place, the account must be cleared, and the costs paid before the sole tenancy can become a joint tenancy.

Possible scenarios

Requests for a joint tenancy are in the main likely to come when the existing tenant has a new partner. However, on occasion, requests may be received to create a joint tenancy with an adult child. The adult child would succeed to the tenancy on the death of the parent and therefore has future security to occupy the property.

It however may be more practical to create a joint tenancy, if the tenant is old and frail for example and may need to move to residential care before a succession could take place.

There may also be circumstances where it may be advantageous for the family to claim welfare benefits separately to increase the household income and sustain the tenancy. These cases need to be considered carefully and a report prepared for the authorisation of the Housing Services Manager who will decide if a joint tenancy should be created, to give security but avoids an adult child defaulting waiting lists to access social housing.

The provisions of the tenancy agreement should also be checked to determine if there is any right for the tenancy to be assigned to the person as a potential qualifying successor. This would be a sole tenancy assignment to a new sole tenant.

Joint to sole tenancy request

Nehemiah cannot simply remove a tenant's name or change the tenancy from a joint to sole tenancy just because one of the joint tenants has left the property and/or the remaining joint tenant requests it.

Creating a sole tenancy from a joint tenancy can be achieved by:

Assigning the tenancy as part of divorce or children proceedings – in this instance, there would be an order from the court for the tenancy to be transferred into a particular tenant's sole name. The Court Order should be checked to identify the basis on which the order operates:

- Orders under Matrimonial Causes Act 1973: this order takes effect through assignment; it does not take effect automatically. If this type of order is granted, the Housing Officer should complete a Licence to Assign. Both existing tenants should then be asked to execute a Deed of Assignment. If either party is not willing to sign the Deed, the individuals should pursue this through the courts.
- Orders under Family Law Act 1996: Assignment takes effect automatically on the date set out in the Court Order. The Housing Officer must scan a copy of the Court Order onto Sassa.

Repayment of any arrears should be negotiated. However, the debt will remain on the account in the sole's tenant's name.

Assigning the tenancy by Deed of Assignment

This is only relevant for assured tenancies, not secure tenancies (see above reference to ss 91 and 92 Housing Act 1985).

We will only allow assignment in these circumstances if:

- the rent account is clear;
- there is no history of other breaches of tenancy, including harassment, nuisance or anti-social behavior;
- there is no valid notice in place regarding the tenancy;
- there are no on-going Court proceedings;
- the remaining joint tenant is not the perpetrator of domestic abuse;
- the property is appropriate for the size and needs of the remaining tenant and their household and it will not result in under-occupation;
- the property does not have significant adaptations or is not a wheelchair accessible property. If it is and the remaining tenant or occupiers are not in need of such a tenancy, the request should be refused; or
- the property is in a scheme for persons with particular needs and the remaining tenant or occupier has that need.

Any decision will be taken by the Senior Housing Officer, with the authorisation of the Housing Services Manager (where available).

Nehemiah will complete a Licence to Assign. The tenants will be asked to execute a Deed of Assignment, assigning the tenancy from the joint tenants to the sole remaining tenant:

The remaining tenant giving at least 28 days' notice ending at the end of a period of the tenancy to bring the joint tenancy to an end – this option can be proposed to the tenant who wishes to end the tenancy for example, where the other tenant refuses to execute an assignment or cannot be located in order to do so after they have moved out and significant efforts have been made to get them to enter an assignment, or where the tenancy is a secure tenancy.

It is important to ensure that the tenant who wishes to end the tenancy is told to seek their own independent legal advice as to the implications of doing so and likewise (assuming the whereabouts of the other joint tenant are known) the other joint tenant must be told as soon as notice has been served and should be advised they may wish to seek their own independent legal advice as to how this affects them.

All contact with the tenant who has moved out must refer to any outstanding arrears. A new tenancy can then be granted, and a new rent account created. Any arrears will have to be cleared by the new/remaining tenant as former tenant arrears if the other tenant refuses to co-operate to clear the debt. It is also important to note that a new tenancy agreement can only be granted in accordance with Nehemiah's Lettings Policy.

A joint tenant dies - Where a joint tenant dies, a copy of the death certificate should be requested, and a copy placed on file. The deceased tenant's name should be removed from records, including the Sassha system to ensure no distress is caused by sending correspondence in joint names. A letter should be sent to the remaining sole tenant advising them that the tenancy is now in their sole name. (See Letting Policy for further details)

8. Regulatory and Legislative Requirements

This policy should be implemented in line with the following relevant sections of legislation:

- General Regulations (GDPR) and the Data Protection Act 2018 (The Data Protection Act 2018 is a United Kingdom Act of Parliament which updates data protection laws in the UK. It is a national law which complements the European Union's General Data Protection Regulation and updates the Data Protection Act 1998.)
- Criminal Finance Act 2017 (gives law enforcement agencies and partners, further capabilities and powers to recover the proceeds of crime, tackle money laundering, source: <https://www.gov.uk/government/collections/criminal-finance-act-2017>)
- Prevention of Social Housing Fraud Act 2013 (An Act to create offences and make other provision relating to sub-letting and parting with possession of social housing; to make provision about the investigation of social housing fraud; and for connected purposes.)
- Tenancy Standard 2015 (registered providers) landlord framework to let their homes in a fair and transparent manner)
- Fraud Act 2006 (willingly or deliberately misleading someone in order to gain from misrepresentation)
- Localism Act 2011 gives the Council more freedom to work together with others in a new way to drive down cost.
- Housing Acts 1985 and 1988
- Social Security and Housing Benefits Act 1982 (rent allowances; to amend the law relating to social security and war pensions; to amend section 44 of the National Assistance Act 1948; and for connected purposes.)
- Equality Act 2010

9. Links to Other Policies and Procedures and useful links

This policy should be read and implemented in conjunction with the following Nehemiah housing management policies and procedures.

- Abandonment procedure
- Anti-social behaviour policy and procedure
- Comments, compliments and complaints policy and procedure
- Disciplinary procedure

- Domestic abuse policy
- Ending of assured shorthold tenancy procedure
- Harassment and hate crime policy
- Rent Management Procedure
- Lettings Policy
- Succession Policy
- Tenancy Sustainment Policy
- Whistleblowing Policy

This policy will be reviewed every 3 years or sooner if legislation or good practice dictates.