

# Islington & Shoreditch Housing Association (ISHA)

## Relationship Breakdown Policy

### 1. Policy Statement

This policy outlines Islington & Shoreditch Housing Association's (ISHA) approach to dealing with relationship breakdown and sets out the legal position of tenants following relationship breakdown and ISHA's policy & procedures in these circumstances

### 2. Related Procedures and other Documents

- Domestic Violence
- Joint tenancy
- Vacation notices from tenants
- Unauthorised occupation
- Mutual Exchange and Assignment of Tenancy

### 3. Definition

Relationship breakdown refers to a **permanent** end to a relationship.

### 4. Responsibility

Tenancy Services Managers, the Senior Tenancy Services Manager and the Supported Housing Manager are responsible for providing tenant advice and implementing tenancy changes.

The Operations Director will have a monitoring role and the Revenue Allocations and Performance Director must agree to new lettings and assignments.

### 5. Procedure

#### 5.1 Joint tenancies

If joint tenants no longer want to live together, ISHA has no right in law to decide which tenant should have the tenancy. Only the courts can make this decision as part of divorce or separation proceedings.

Unless they have a court order, the joint tenancy continues and both tenants are liable for the rent and other tenancy conditions, even if there is only one of them still living in the property. The Association cannot 'take a tenants name off' the tenancy, even if one tenant has been absent for many years, or consents to the change except as outlined below.

### 5.1.1 Assignment by Court Order

Either tenant can apply to the family court for the tenancy to be transferred to them (under Matrimonial law if married, under the Children Act 1989 if they have children, or under the Family Law Act 1996). This right doesn't exist once the tenancy has ended e.g. by tenants notice to quit. Tenants should be advised to take separate legal advice on their rights in this area.

If either tenant receives a court order the tenancy must be assigned or transferred to them according to the terms of the order. The Tenancy Service Managers, Senior Tenancy Services Manager and Supported Housing Manager should attach a copy of the court order to the original tenancy agreement and send the lettings form to the Allocations and Voids Officer to ensure the tenancy records are shown in one name only and marked assignment if appropriate.

Family Law Act orders do not require assignment. Assignments granted by court orders do not constitute a succession.

### 5.1.2 Assignment to someone qualified to succeed

Secure tenants have the right to assign the tenancy to someone who would have been qualified to succeed in the event of their death. Therefore providing both tenants consent to the separation, and agree who should remain with the tenancy, joint or sole tenants can assign the tenancy to the remaining partner. Any outstanding rent arrears will become the responsibility of the tenant to whom the tenancy has been assigned and they will be required to sign a document acknowledging this (Appendix 1) This counts as a succession. ISHA will consent to assured tenants doing this in similar circumstances providing there is written and signed evidence that both parties consent. All assignments must be in writing (See appendices 2 and 3 for licence to assign and deed of assignment forms) and both parties will be required to attend ISHA's offices to complete the relevant documents although they may do so at different times.

### 5.1.3 Tenant's Notice to Quit

Either party can end a joint periodic tenancy by serving a tenant's notice to quit on the Association (NB Not fixed term). This notice must give 28 days notice, ending on a Sunday (see "Vacation notice from tenants" procedure). This ends the tenancy for all tenants and removes the right of all joint tenants to live in the property.

If tenants use this method, they should be advised that ISHA will only grant a new sole tenancy to one tenant in the circumstances detailed in 7.2. ISHA must ensure that both parties received the same advice (wherever possible) regarding the legal position of a Notice to Quit.

## 5.2 **Granting new sole tenancies after Notice to Quit**

ISHA may grant a new sole tenancy to the remaining tenant on the following conditions:

- There is evidence that both parties consent to the change (also see 5.1.2 above)
- The property is not too large for the remaining tenant's needs. We may require the remaining tenant to move to more suitable accommodation, according to our lettings policy, before granting a new sole tenancy. Consideration will be given to personal circumstances, including age and length of occupation and extent of under-occupation (normally 2 or more bedrooms).
- There are no rent arrears or other breaches of tenancy.

If joint tenants cannot agree to the change, ISHA will only grant a new assured tenancy in very exceptional circumstances e.g.:

- To protect a victim of domestic violence
- To meet the needs of dependent children
- If the remaining joint tenant can show evidence that the other has been absent for at least a year and is unlikely to return.

### **5.3 Re-housing both parties after relationship breakdown**

We will not normally provide separate re-housing for both partners following a relationship breakdown, with the following exceptions:

- In incidences of domestic violence, where the victim will be assisted, either directly or indirectly. (See Domestic Violence Policy for guidance.)
- Where both tenants agree to give up a large family sized property (3 bed or more) to move to separate one-bedroom properties or bed sits. Consideration will be given to the personal circumstances of both tenants, including age and length of occupation, as well as current demand for the property to be given up.
- Other exceptional circumstances at the discretion of the Operations Director (following consultation with the Revenue Allocations and Performance Director responsible for lettings), e.g. If the departing party may be considered vulnerable under homelessness legislation. To encourage a sole tenant to assign to a partner with children, allowing the children to remain in the family home. Prevent under-occupation or protracted court proceedings, where the case for allowing this outweighs the argument against rewarding aggressors with a new tenancy.

### **5.4 Sole tenants**

#### **5.4.1 Married**

If the sole tenant leaves, the remaining partner is entitled by law, to remain in occupation for as long as they remain married. ISHA must accept rent from them as if they were the tenant. Occupation by the spouse who is not a

tenant is treated as if the tenant occupied the property. This means they have security of tenure and they have the basis of a right to claim Housing Benefit. The remaining non-tenant can apply to the family court to have the tenancy awarded to them (Matrimonial Causes Act 1973). If the written consent of the departing tenant is given the tenancy can be assigned to them as in para 5.1.2 above.

#### 5.4.2 Cohabiting

The law does not give non-tenant partners the same right to remain as if they were married. Co-habitees who are not the tenants' are effectively the licensee of the tenant. If the tenant leaves, the tenancy ceases to be secure or assured and could be ended by the landlord serving Notice to Quit on the tenant. The former licensee would then be treated as an unauthorised occupier. They can apply to the courts for a temporary occupation order and to have the tenancy assigned to them permanently, for example for the benefit of dependent children (Children Act 1989). If they do not apply to court, the sole tenant can assign the tenancy to them as in para 5.1.2 above.

Alternatively where there is evidence that both partners consent to the change the sole tenant can end their tenancy by tenant's Notice to Quit and a new sole tenancy will be granted to the remaining partner as in para 5.2 above.

Where the sole tenant does not consent, the non-tenant partner will usually need to apply to the local authority for re-housing. In cases of domestic violence, where the non-tenant partner is the victim ISHA may offer assistance in line with its domestic violence policy.

### 5.5 **Children**

ISHA will encourage a solution to family needs to ensure that children have a suitable and stable home. In all cases of relationship breakdown we will attempt to find a solution in law that enables the partner with children to remain unless suitable alternative accommodation is available.

### 5.6 **Domestic Violence**

Domestic violence is a crime. It is also a breach of tenancy. ISHA will do everything possible to support victims of violence. This includes getting a court order to evict perpetrators and granting sole tenancies to victims, in separate accommodation where necessary. See Domestic Violence procedure for full details. Particular care needs to be taken in cases involving domestic violence, to protect the victim from further violence as a result of any tenancy changes or ISHA'S action.

### 5.7 **Agreeing new sole tenancies**

The manager responsible for lettings must agree all new sole tenancies granted as a result of relationship breakdown.

## **5.8 Supported Housing**

New sole tenancies will not be granted to remaining partners unless that partner meets the lettings criteria for that project and require the additional support provided. Alternative accommodation will only be offered in the circumstances of para 5.2 above.

## **5.9 Rent Arrears**

If a sole tenant remains in the property after relationship breakdown, they continue to be liable for all rent arrears. If a sole tenant leaves, and ISHA agrees to grant a new tenancy to the remaining non-tenant spouse, the new tenant is not liable for arrears on the old tenancy. If the sole tenancy is assigned to the remaining partner, that person takes on all the responsibilities for the tenancy, including the arrears unless the courts indicate otherwise.

Joint tenants are all liable for all arrears. Court orders may specify the apportionment of the debt to one party or another. Otherwise, if the tenancy is assigned to one joint tenant, that remaining tenant takes on all the obligations of the tenancy, including the arrears. The Family Law Act requires courts to consider the landlord's representation regarding arrears.

If a joint tenancy is ended by Notice to Quit, the whole tenancy ends and arrears cannot be transferred to any new tenancy granted.

Where arrears cannot be transferred following relationship breakdown, efforts should be made to collect the debt as a Former Tenant Arrears unless the Revenue Allocations and Performance Director agree to them being written off.

## **5.10 Secure or Assured**

If a joint tenancy was secure, the tenancy remains secure after assignment, transfer or if a new tenancy granted to one of them as a sole tenant. If a sole tenancy was secure, it remains secure after assignment or transfer (by Family Law Act), but any new tenancy granted to previous non-tenants must be assured.

## **5.11 Sub tenants**

If it is likely that there may be sub-tenants or other unauthorised occupiers in the property legal advice should be sought to ensure tenancy rights are not conferred to them. See procedure for Vacation Notice from tenants and unauthorised occupation procedure.

## **5.12 Tenancy Records**

The Tenancy Services Managers, Senior Tenancy Services Manager and Supported Housing Manager must advise the Allocations and Voids Officer of any tenancy changes following relationship breakdown by completing the relevant lettings form.

## **6. Fraud**

Concrete evidence about the circumstances of a relationship breakdown is rarely available, except where formal divorce proceedings have started. There is the possibility for fraud, for example that tenants may collude to be re-housed under the relationship breakdown policy in order to be given better quality housing than their original home. This is a difficult area to investigate. Some couples do reunite, even where there has been violence. This is not in itself proof of fraud. Some relationships fail more than once and give rise to a need for re-housing on more than one occasion.

Officers will need to apply a balanced approach between applying sensitivity with the need to investigate any suspicions, which they may have. All tenants and housing applicants should be informed at all stages of the re-housing process that giving false information will lead to action being taken against them.

## **7. Legal Advice**

Relationship breakdown is an extremely complex area of law. Staff should not attempt to give advice in areas where they have insufficient knowledge, or where the situation is too complex. However we do have a duty to provide practical support and advice to assist tenants. This includes providing lists of useful contacts and advice on tenancy details. As a landlord, we must ensure that we do not restrict the occupation rights of legitimate tenants. Solicitors' advice should be sought in complex situations to ensure correct action is taken by ISHA.

## **8. Confidentiality**

The confidentiality policy sets out the circumstances in which information about individual residents should be passed to others. This is particularly important in relationship breakdown, above all where violence is involved.

**June 2009**

**VARIATION OF TENANCY AGREEMENT**

I, [NAME OF TENANT] (“the Tenant”) hereby agree that the following clause be added to the existing Tenant’s Obligations in the assured tenancy agreement in respect of XXXXXXXXXXXXXXXXXXXX (“the Premises”), and that the addition of the clause shall take effect as an agreed variation of the tenancy agreement:

The Tenant agrees to repay rent arrears owed in respect of the Tenancy of £[AMOUNT OF ARREARS] (which sum is hereby acknowledged by the Tenant as owing to the Association) at the rate of £ [AGREED REPAYMENT RATE] per week in addition to the rent and other payments due under this Agreement. If the Tenant fails to keep to this repayment agreement, the Tenant will be in breach of this term of the Tenancy and the Trust will be entitled to seek possession of the Premises.

Signed ..... Date .....

(Tenant)

Signed ..... Date.....

(For and on Behalf of Islington and Shoreditch Housing Association)

### The 'Sign up' Document

*(to be used in cases of assignment by Court Order or assignment to a potential successor)*

THIS AGREEMENT IS MADE THIS.....DAY OF.....  
BETWEEN:

(1) ISLINGTON AND SHOREDITCH HOUSING ASSOCIATION of 102 Blackstock Road, London, N4 2DR ("the association") and

(2) .....of.....

1. Definition:

1.1 The assignment means the agreement by the tenant to assign the tenancy to the successor by way of an agreement or letter dated.....

1.2 The tenant means.....

1.3 The premises means.....

1.4 The tenancy agreement means a tenancy agreement dated ..... made between the association and the tenant

1.5 The tenancy means the weekly periodic tenancy granted from.....under the tenancy agreement.

1.6 The rent means the current rate of £.....& .....pence per week) payable under the tenancy agreement

2.1 By the tenancy agreement, the premises were let to the tenant under the tenancy agreement.

2.2 The tenancy is subject to the terms and conditions under the tenancy agreement

2.3 On the..... the tenant assigned the tenancy to the assignee:

2.4 Immediately before the assignment:

(a) The assignee was the tenant of the property known as.....

(b) was deemed to be a successor of the property referred to in sub-paragraph (a) above pursuant to sections 87 to 89 of the Housing Act ,1985 and

\*(c) hereby acknowledge that on and after the date of the assignment s/he is a successor with respect to the tenancy pursuant to section 88 of the Housing Act 1985.

## The Deed Document

<p>This agreement is made this ( <i>Date</i> ) between  <b>ISLINGTON AND SHOREDITCH HOUSING ASSOCIATION</b>  <b>of 102 Blackstock Road, London, N4 2DR</b></p> <p>(The "Landlord") of the first part</p> <p>and.....(<i>Out going tenant</i>)..... ("The first tenant") of the second part  and... (<i>Incoming tenant</i>) .....("The second tenant") of the third part</p> <p><b>WHEREAS:</b></p> <ol style="list-style-type: none"> <li>1. On the <i>day (tenancy start date)</i> the landlord let the property known as (<i>outgoing tenant's address</i>) on an assured/secure tenancy* (please delete as appropriate to the first tenant.</li> <li>2. On the <i>day (tenancy start date)</i> the landlord let the property known as (<i>incoming tenant's address</i>) on an assured/secure tenancy to the second tenant.</li> <li>3. It was a condition of the said tenancies that the first tenant and the second tenant would not assign their respective tenancies without first obtaining the consent of the landlord.</li> <li>4. The first tenant wishes to assign his/her tenancy to the second tenant in consideration of the second tenant assigning his/her tenancy to the first tenant and the landlord consents to the said assignments.</li> </ol> <p><b>NOW THIS DEED WITNESSES as follows:</b></p> <p>Pursuant to clause 5.6 of the said tenancy agreements and pursuant to <i>sections 91 and 92 of the Housing Act 1985</i>, the landlord hereby consents to the first tenant assigning his/her tenancy to the second tenant and to the second tenant assigning his/her tenancy to the first tenant.</p> <ol style="list-style-type: none"> <li>5. All parties accept that this Deed of Assignment operates so that the first tenant irrevocably assigns the tenancy of premises known as (<i>your outgoing tenant's address</i>) to the second tenant and that the second tenant irrevocably assigns the assured/secure tenancy of the premises known as (<i>your incoming tenant's address</i>) to the first tenant.</li> </ol>	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">ASS</div>
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## Obverse of Deed Document

**IN WITNESS THEREOF** all parties have executed this agreement as a Deed the day and year first before written.

**EXECUTED AS A DEED by the LANDLORD** }

by an authorised Officer signing } *Revenue and Performance Manager's signature*

it in the presence of: } *(name), Revenue and Performance Manager*

Witness: *Performance and Allocations Officer's signature*

Name: *Performance and Allocations Officer's name,*

Address: *102 Blackstock Road, London N4 2DR*

Occupation: *Performance and Allocations Officer*

**EXECUTED AS A DEED by the said** } *Signature of the outgoing tenant*

First Tenant in the presence of: } *(outgoing tenant's name).*

Witness: *Performance and Allocations Officer's signature*

Name: *Performance and Allocations Officer's name*

Address: *(Office address)*

Occupation: *Performance and Allocations Officer*

**EXECUTED AS A DEED by the said** } *Signature of the outgoing tenant.*

Second Tenant in the presence of: } *(outgoing tenant's name).*

Witness: *Performance and Allocations Officer's signature*

Name: *Performance and Allocations Officer's name*

Address: *(Office address)*

Occupation: *Performance and Allocations Officer*