

TENANCY AGREEMENT OF THE MULTI SHARED FLATS

<i>STATUS - for comments/draft decision prior to consultation</i>

1. INTRODUCTION

- 1.1 The multi tenancy for the 22 people in our 5 multi (shared-housing) flats is different from the normal Scottish Secure Tenancy (SST). Each tenant has their own tenancy agreement and each one is 'joint and several' with other tenants in the same property. I understand it is not a SST as each tenancy does not give exclusive use of the property to the tenant.
- 1.2 There are several characteristics of this approach, as follows:
 - a. When one person moves out the other peoples' tenancy agreements do not need to be adjusted - they just run on the same. Ditto when someone new moves in.
 - b. The tenants as a whole are responsible for all the rent, which gives a shared onus. It also means that when there is a vacancy, if it is not filled within the 28 day notice period then the remaining tenants have to cover the void rent.
 - c. Tenants are not 'linked' to a particular room, so if one person moves out, say, from the largest/best room, then the other tenants sometimes shuffle around within the flat.
- 1.3 Technically the multi tenants are responsible for paying the Council tax and Water rates, however as part of a voluntary agreement, dating back to poll tax/start of Council tax days, Lister agrees to pay the Council tax and Water rates and adds the sum onto the rent. There were a considerable number of problems dating back to the Poll tax and several cases of individual multi tenants having legal action taken against them by the Council for the debts of other tenants. Thus caused considerable mental and financial stress.
- 1.4 Lister stepped in and the arrangement where Lister pays the Council tax/Water rates was brokered with CEC to try and avoid any such issues occurring again. This brought great relief to multi tenants. The arrangement is long-standing and Lister's name is on the bill.

2. THE PROBLEM

- 2.1 This last aspect is one which now is causing difficulties to tenants now that the benefit system has changed. One tenant who has made a claim for Universal Credit (UC) has discovered that UC will not pay the housing element of the rent and they cannot claim for Council Tax Reduction - the benefit to reduce Council tax, as they don't have a Council tax account in their name.

- 2.2 Our Housing Officer, Mark has spoken at some length with a CEC officer and they cannot suggest any simple way round the matter that keeps the current arrangement.
- 2.3 This problem is causing issues now for the individual concerned, as they do not have the income to cover their share of the rent which relates to Council Tax/Water rates. Clearly the other tenants in the flat where that one person lives, do not wish or are unable to cover the shortfall. Lister actually has paid the Council tax and Water rates so it is a rent shortfall from the individual to Lister that is at issue. This will continue to build up. Lister wishes to try and find a way round this problem, for all multi tenants for the future.

3. POSSIBLE SOLUTIONS

- 3.1. We are exploring various options to see what is possible. Options could include:
 - A. The Council tax bill being changed to individual names as a separate record. This seems not possible according to the information we have. The senior Officer who agreed the original plan has long since retired and staff now seem not to think this option is possible.
 - B. Lister changes the tenancy to an 'Occupancy agreement' where each tenant has their own (named) room and shared use of the communal parts of the flat. This could cause issues if tenants moved room within the flat. There would be a key question to establish with the Council Tax Reduction team at CEC which is how they would deal with a CTR request from an individual.
 - C. Lister changes the tenancy to one joint tenancy for the whole flat in the names of all the tenants. They should be then all named on the Council Tax/Water rates bill. There would be a key question to establish with the Council Tax Reduction team at CEC which is how they would deal with a CTR request from an individual. If the CTR team decided that the income of all tenants should be assessed if one of them makes a claim for CTR, then that would not be workable.
- 3.2 We are speaking with the Council tax team to ascertain as clearly as possible what the implications of these different scenarios would be for someone claiming CTR; for someone claiming UC.
- 3.3 Once we have this information we plan to take advice from our solicitors, T C Young, to check that our reasoning is sound and assess any other knock-on implications.

4. IMPLICATIONS OF THE TENANCY BEING CHANGED TO A ONE-DOCUMENT AGREEMENT

- 4.1 If the agreement is one document with all names on it, then it would, we understand, be classed as a Scottish Secure Tenancy (SST). This brings with it certain rights such as the right to take in a lodger, sub-let, assign, do a mutual exchange, create a joint tenancy, etc. Some of these do not sit easily with the multi concept of 4 or 6 separate individuals with a bedroom each, sharing one large flat.

4.2 The current multi tenancy agreement shares most of the features and clauses of the SST except for those relating to lodgers, assignation, mutual exchanges and joint tenancies. We also do not make direct reference to the SST in it.

4.3 There is some good news in that we are aware from our solicitors that legal action can be taken against one person named on a joint SST and that person 'evicted' with the other tenants remaining in the tenancy thereafter.

5. IMPLEMENTING A SOLUTION

5.1 In both the SST and the current Multi tenancy agreements, these are a 'contract' between Lister and the tenant(s) and can only be changed, either by agreement or by applying to the Sheriff for an order to change the agreement and the Sheriff grants such an order.

5.2 Whilst it may be possible to reach agreement with multi tenants, Lister would need to have a fall-back plan if one or more multi tenants refused to agree to any proposed change. It may be that all the tenants in one or more flats may agree to the change, whilst another flat may not have 100% agreement.

5.3 One key issue might be any rent arrears - would these continue with any new tenancy (possibly unable to so do, legally) or would they be written off or become a non-rent debt, or what? We would need to get legal advice on this.

5.4 Certainly, whichever option is chosen (unless we decide to do nothing) then there will be more bureaucracy and paperwork for every change in tenancy - both someone leaving and someone joining a multi. This should be manageable if the process is clear to all concerned.

5.5 It may be neater for any change to happen on 1 April, when the rents are reviewed, but this may not be possible for the reasons outlined above.

5.6 Whatever options are possible, there needs to be consultation with tenants before any final decision and any implementation.

6. MAKING A DECISION

6.1 We shall bring more information we hope to the Management Committee meeting. The Committee is asked to give its comments and depending if all information is available, make a draft decision on the way forward prior to going out to consultation with multi tenants.

Alistair Cant
DIRECTOR
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