



## Lodger and sub-letting policy

**Date:** 1<sup>st</sup> July 2015

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# **TWO RIVERS HOUSING**

## **Lodger and Sub-letting Policy**

### **1.0 Introduction**

- 1.1 Two Rivers Housing (TRH) understands that there may be occasions when a tenant wishes to take in a lodger or sub-tenant whether because of personal, financial or health reasons of either person.
- 1.2 With changes to the benefits system as part of the government's Welfare Reform programme, TRH also believes that the additional income from a lodger or sub-tenant may mean a tenant can remain in a home and community they may otherwise have to leave as a result of under occupation criteria. In addition, housing a lodger or sub-tenant can help make better use of housing stock as well as meet housing need.
- 1.3 By allowing all tenancy types the option of taking in a lodger/sub-tenant, TRH is encouraging tenants to make informed choices about managing their own tenancies in a way that can meet their own needs and aspirations.
- 1.4 However, TRH recognises having a sub-tenant or a lodger may not always be in the best interests of a tenant and TRH will provide information on an individual basis on how lodgers and sub-tenants may impact on tenancy agreements and affect Benefit entitlements, if appropriate. In addition TRH will encourage tenants to explore a range of options before making an informed decision about the type of arrangement that best suits their lifestyle and needs.

### **2.0 Purpose**

- 2.1 The purpose of this policy is to:
  - Ensure all enquiries and requests by tenants to take in a lodger or sublet part of their property are dealt with consistently and fairly;
  - Prevent overcrowding;
  - Ensure tenants remain responsible for all obligations under their tenancy agreement;
  - Prevent properties being unlawfully sublet, illegal assignment and the creation of unintended tenancies and rights of occupation;
  - Minimise the risk of unauthorised mutual exchanges;
  - Ensure TRH properties are not used as commercial ventures where rooms are rented out by tenants as a business.
  - Ensure TRH has a proactive approach to identifying unauthorised occupation;
  - Ensure swift and effective action is taken to regain possession of properties occupied by unauthorised occupants;
  - Set out the circumstances where permission to sublet will be refused;

- Alert staff and tenants/residents to the possibility of the exploitation of vulnerable tenants by lodgers or the issues for tenants of taking in vulnerable lodgers; and
- Maintain up to date records of household composition.

### 3.0 Definitions

- 3.1 A **tenant** is someone who has a Tenancy agreement with TRH as the landlord in relation to a specific property. They are responsible for the whole property and all the obligations, responsibilities and rights outlined in the agreement. They have a legal relationship with TRH.
- 3.2 A **lodger** is a person who shares the facilities of a dwelling and does not have exclusive possession of any part of the property. A lodger may also receive services such as a laundry cleaning or meals. They can be asked to go within a reasonable period of notice. Family members are not normally treated as lodgers.
- 3.3 A **sub-tenant** pays a charge to the tenant for exclusive rights to part of the property and will have a tenancy granted by the tenant. A tenant cannot enter a sub-tenant's designated space without permission from the sub-tenant. It is a breach of TRH's tenancy agreement for a tenant to sublet the whole property.
- 3.4 An **unauthorised occupant** is someone who has no contractual right to occupy the property or whose continued occupation is unlawful because it is in breach of the express terms of the tenancy or lease.
- 3.5 A tenant and their family may be **decanted** (i.e. re-housed) by TRH on a temporary basis due to maintenance, refurbishment or redevelopment work but later return to their original home.

### 4.0 Permission and reasons for refusal

#### 4.1 Lodgers

4.1.1 Secure tenants have a statutory right to take in a lodger without seeking permission under the 1985 & 1996 Housing Acts. TRH grants the same right to assured and assured shorthold fixed term tenants under the terms of the tenancy agreement. Those tenants on an assured shorthold starter tenancy or assured shorthold fixed term starter tenancy do not have this right.

4.1.2 Although permission is not required, TRH requests that tenants inform us if they take in a lodger and provide the following information:

- Name, age & gender of the lodger(s);
- The intended length of time they will be staying;
- How much they will be charging (weekly, fortnightly or monthly);
- Which part of the property they will be occupying.

- Confirmation that the Housing Benefit department has been advised (where appropriate).

## 4.2 Sub-tenants

4.2.1 Secure tenants are granted statutory rights under the 1985 & 1996 Housing Acts to take in a sub-tenant with the written permission of their housing association. TRH grants the same rights to assured and assured shorthold tenants under the terms of the tenancy agreement. Those tenants on an assured shorthold starter tenancy or assured shorthold fixed term starter tenancy do not have this right.

4.2.2 When a tenant wishes to sublet part of their property they must apply in writing before allowing the sub-tenant to move in and provide the following information:

- Name, age & gender of the sub-tenant(s);
- The intended length of time they will be staying;
- How much they will be charging (weekly, fortnightly or monthly);
- Which part of the property they will be occupying;
- Type of agreement that will be in place between the tenant and sub-tenant, i.e. a contractual tenancy or licence.
- Confirmation that the Housing Benefit department has been advised (where appropriate).

4.2.3 TRH will not refuse permission for a tenant to have a sub-tenant without good reason. Reasonable grounds for refusal include where:

- Taking in a sub-tenant would lead to the tenant's home becoming statutorily overcrowded.
- The level of payment to be made by the sub-tenant is regarded as excessive.
- Planned repair or improvement works will affect the accommodation likely to be used by the proposed sub-tenant.
- The proposed sub-tenant is subject to action for antisocial behaviour.
- The tenant is subject to a possession order.
- It would not be appropriate for the proposed sub-tenant to live with the tenant if they live in a specific housing scheme (e.g. Home Plus) which the sub-tenant would not qualify for.
- There was substantiated evidence that a vulnerable adult or a child might be at risk if the sub tenancy was granted.

A breach of tenancy on an unrelated matter such as rent arrears would not be considered reasonable grounds for refusal and each case will be considered on an individual basis.

4.3 Where permission is refused, the tenant will be given the reasons in writing within 10 days of the written request. If a tenant wishes to appeal against this decision they can (see section 10.0 of this policy for further information).

- 4.4 Where permission is given, an assured subtenancy must not be used. TRH refutes any claims of a sub-tenant to security of tenure if a tenant leaves the property.

## **5.0 Tenant Responsibilities**

- 5.1 Tenants can take in any persons as lodgers and sub-tenants as long as they do not sublet the whole property or exceed the permitted number of people allowed to live in the home. If the tenant lives in a scheme designed for a specific purpose (e.g. Home Plus) TRH will not permit the tenant to take in a lodger who themselves does not qualify for the scheme.
- 5.2 Tenants are responsible for the behaviour of their lodgers and sub-tenants. If they cause nuisance, damage property or harass neighbours, TRH will investigate and may take action against the tenant for breach of tenancy.
- 5.3 The tenant is responsible for ensuring the lodger/sub-tenant vacates on termination of their tenancy. They are also responsible for ensuring that lodgers and sub-tenants are given a reasonable period of notice or in the case of a sub-tenant, pursuing legal action to force vacation of the property. Lodgers or sub-tenants left in occupation once the tenancy is terminated will be deemed to be unauthorised occupiers in line with this policy and as such TRH reserves the right to take action to regain vacant possession of the property. The terminating tenant will be subject to any incurred costs as a result of action taken.
- 5.4 Where TRH discovers that a tenant has taken in lodger or a sub-tenant without first getting permission, it will liaise with the tenant and decide whether to give retrospective permission. If retrospective permission is denied, the sub-tenant will be expected to leave the property. If it is suspected that the tenant has sublet the whole of the property or are in breach of their tenancy agreement, TRH will investigate further and where necessary take legal action.
- 5.5 If a tenant is in receipt of benefits it is their responsibility to declare the rent payments received from any lodgers/sub-tenants as income to any relevant organisation, such as Her Majesty's Revenue and Customs (HMRC), Department for Work & Pensions (DWP) or local authority.
- 5.6 As part of the conditions of their tenancy with TRH, the tenant is still responsible for the obligations as defined in the Tenancy Agreement, such as monthly rent due or rechargeable repairs and any breaches will be enforced against the tenant, whether they are as a result of actions by the lodger/sub-tenant.

## **6.0 TRH Responsibilities**

- 6.1 If a tenant is considering taking in a lodger or sub-tenant they should approach TRH first for advice and/or permission on their rights and responsibilities including declaring any income to HMRC and DWP/benefit service where appropriate.
- 6.2 TRH will also advise that tenants are responsible for the behaviour of the lodger or sub-tenant and that TRH will not become involved in any dispute between the tenant and the lodger or sub-tenant. However, TRH will signpost the tenant to other organisations such as the Citizens Advice Bureau or local Law Centre which may be able to assist.
- 6.3 TRH will make the tenants aware that if they apply for a transfer, the lodger or sub-tenant will not be counted as part of the household. The same criterion applies if the household needs to be decanted.
- 6.4 TRH will not be able to get involved in any disputes between a tenant and lodger/sub-tenant unless it causes antisocial behaviour and/or has implications on the welfare of neighbours. Any action taken as a consequence of antisocial behaviour could result in the tenant losing their home.
- 6.5 TRH strongly advises tenants to seek legal advice before taking in a lodger or sub-tenant.

## **7.0 Rights of Lodgers or Sub-tenants**

- 7.1 A lodger or sub-tenant will have no rights to succeed to the TRH tenancy agreement for the whole property in the event of the tenancy ending, whether voluntarily or via legal action. In addition TRH will have no responsibility to provide alternative accommodation and will only provide details on where the lodger/sub-tenant should seek advice.
- 7.2 A lodger or sub-tenant has no legal relationship with TRH and therefore none of the rights, responsibilities or obligations associated with the tenancy or property.
- 7.3 If a tenant needs to be decanted to an alternative property so that major works can take place in their home, lodgers and sub-tenants will not be classed as part of the household. In these instances TRH will have no responsibility to provide accommodation for lodgers and/or sub-tenants.

## **8.0 Leaseholder Entitlements and Responsibilities**

- 8.1 None of the TRH Right to Buy leases prevents properties from being rented out or sublet.

- 8.2 Leaseholders remain responsible for all covenants in their lease and the behaviour of their tenant, while their property is sublet. TRH recommend that a formal tenancy agreement is in place which matches the terms of the lease.
- 8.3 TRH will advise the leaseholder that if they have a mortgage, they must write to tell their lender they are planning to sublet the property, and that they are responsible for the landlord's duties under the Gas Safety Regulation 1998 and the provision of an Energy Performance Certificate for the property.

## **9.0 Shared Ownership**

- 9.1 A term of this tenure is that the property must be the lessee's only and principal home. There is no restriction on sub-letting the property as long as the owner remains in residence.
- 9.2 If in any doubt the shared owner/lessee should contact TRH for further advice.

## **10.0 Complaints or Appeals**

- 10.1 If a tenant/applicant is not happy with the service received in relation to their application for a lodger or sub tenant, they will be able to make a formal complaint. The complaint will be dealt with in line with TRH's Complaints and Compliments policy.
- 10.2 If a tenant has been refused permission to take in a lodger or sub-tenant they can, if they wish, appeal against the decision. Tenants should notify TRH within 5 working days of receipt of the refusal letter stating their reasons for an appeal. The tenant will be asked to attend an appeal hearing to present their case. The appeal panel will consist of three senior managers and the tenant will be advised of the outcome.

## **11.0 Equality and Diversity**

- 11.1 TRH is committed to the principle of equality of opportunity in the delivery of its services. TRH aims to ensure that all of its customers are dealt with fairly and equitably and, where possible, taking into account the diverse nature of cultures and backgrounds.
- 11.2 TRH will actively work towards promoting good relations, eliminating discrimination and addressing existing disadvantage in relation to different groups on the basis of race, colour, ethnic and national origin, nationality, gender, disability either mental or physical, religion, sexual orientation, marital status, HIV/AIDS, responsibility for dependants, trade union activity, and age.

## **12.0 Monitoring and Review**

- 12.1 TRH will actively promote this policy through its tenant newsletter, website, and housing surgeries.
- 12.2 The Neighbourhood Housing Co-ordinator is responsible for monitoring this policy ensuring it is being correctly applied, and is also responsible for ensuring reviews of this policy are carried out.
- 12.3 TRH will undertake regular reviews of this policy, any procedures related to it and staff training needs, ensuring service improvements are made and implemented.
- 12.4 There will be an automatic review of this policy whenever there is a change of policy from the government, the Homes & Communities Agency or change to legislation. In the absence of any other trigger, the policy will be reviewed after one year and at intervals of no more than two years thereafter.