

## Tenancy Policy

<b>Version</b> (e.g. first draft, final report):	Final Report
<b>Authorities covered:</b>	Eastbourne Borough Council
<b>Applies to:</b>	<p>This document applies to all staff managing the housing stock of Eastbourne Borough Council.</p> <p>It applies to all tenants living in general needs and retirement accommodation owned by Eastbourne Borough Council, with the exception of any properties used as temporary accommodation.</p>
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## 1.0 Policy Statement

The need for a Tenancy Policy arises out of a range of social housing reforms set out in the Localism Act 2011. These reforms include the introduction of the right to issue tenancies for a fixed length of time, there are changes to the rights of succession and it has given housing providers greater flexibility in making best use of their stock and Affordable Rent Tenure Options (the term affordable means up to 80% of the local market rent) to maximise rental income and in turn increase supply.

## 2.0 Scope

This policy sets out how Eastbourne Borough Council (“the Council”) use the range of options available in the Localism Act to assist in meeting its strategic aims as outlined in their Housing Revenue Account Business Plans and the Council’s Tenancy Strategies.

This policy sets out the Council’s approach to the use of different tenancy types to ensure the best use of this valuable social housing stock, and it outlines the circumstances under which tenancies will be offered and the ways in which they will be managed.

## 3.0 Legal and Regulatory Framework

The requirement to produce a Tenancy Policy is not through statute but through the Regulatory Framework for Social Housing (in England) produced by the Homes and Communities Agency. The Tenancy Standard states: “Registered providers shall offer tenancies or terms of occupation which are compatible with the purpose of the accommodation, the needs of the individual households, the sustainability of the community and the efficient use of their housing stock.” In addition, the standard also states: “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 Council uses Homes First as their delivery model in order to facilitate and perform the day to day housing management functions of the Council.

## 4.0 Aims and Objectives

The Council’s Tenancy Policy aims are:

- To make best use of our homes.
- To enable mobility and encourage tenants to move to more suitable accommodation where their existing home becomes too big or their needs or circumstances change.
- To support tenancy sustainment.
- To recognise our customers’ needs and aspirations through offering a range of housing choices.
- To outline our approach to Tenancy Fraud.

## 5.0 Types of Tenancies

### 5.1 Introductory Tenancies

All new tenants to the Council are granted an Introductory Tenancy if they have not held a social tenancy elsewhere for a minimum of one year. This lasts for one year but may be extended for a maximum of a further six months. During this time, the tenant has less security and fewer rights than under a Secure Tenancy, for example:

- Their home is at much greater risk of repossession if the tenant does not keep to the terms of the Tenancy Agreement, as the level of security of tenure is low.
- They cannot buy their home.
- They cannot exchange homes with other tenants.
- They cannot take in lodgers.

- They cannot transfer to another tenancy.

The Council has used Introductory Tenancies for some time and believe that they help in its aim to provide safe and clean neighbourhoods by encouraging people to adhere to their tenancy conditions. They enable quicker and firmer action to deal with nuisance and anti-social behaviour and non-payment of rent.

If a tenant breaks any terms or conditions of their Tenancy Agreement the Council may decide to apply to the court for a Possession Order. This could ultimately result in the termination of the tenancy and everyone in the home being evicted. Before the Council applies to the court, it will serve the tenant with a Notice to Terminate the tenancy explaining that the Council will ask the court to make a possession order and providing details of the tenant's right to request a review of its decision. The Council can ask the court that the tenant pay the Council's legal costs if it makes an application to the court. As long as the Council has acted lawfully and followed the correct procedure, the Court must order possession of an Introductory Tenancy where it is asked to do so.

The Council may decide to extend the Introductory Tenancy probationary period for a further period of up to six months. The Council will serve a Notice of Extension no less than 8 weeks before the end of the probationary period giving the reasons for its decision to extend and the time allowed for requesting that review. The notice will provide details of the tenant's right to request a review of its decision. If a review is requested, the tenant must be notified of the review decision before the original 1 year expiry date. If the Notice of Extension is not withdrawn, following review, the Introductory Tenancy is extended for a further period of up to six months from the end of the initial 12 month period.

As part of our procedure for monitoring Introductory Tenancies, the tenant will be asked to allow a representative from the Council to visit them in their home. This is to enable the Council to check whether or not a tenant is successfully keeping to the terms of their Tenancy Agreement, and provide advice and assistance to help them if problems are developing or the agreement is being breached.

If a tenant has complied with the terms and conditions of their Introductory Tenancy Agreement the tenancy will become a Secure Tenancy on the expiry of the Introductory Tenancy or Fixed Term Tenancy unless the Council has gained possession of the dwelling or is in the process of doing so.

## 5.2 Secure Tenancies

The Council will use **Secure Tenancies** for:

- All new tenants to the Council who have immediately beforehand held a Secure Tenancy or the housing association equivalent – an Assured Periodic Tenancy.
- All existing tenants of the Council who have immediately beforehand held a Secure Tenancy.
- Tenants who have not been served with a notice stating that they will be granted a fixed term tenancy at the end of the introductory tenancy.
- All tenants whose Introductory Tenancy is not to be terminated.

Secure Tenants have a full set of tenancy rights. These include:

- The right to live in their home without having to periodically ask for their tenancy to be renewed.
- A right to buy their home.
- A right to exchange their home with another tenant, for example if they need to move to be closer to work or to get a smaller or larger home to better accommodate their family.
- A right to make improvements to their home provided they have obtained prior written permission from the Council.
- A right to succession to pass the tenancy to a partner or family member after death, for those secure tenancies granted after 1<sup>st</sup> April 2012 statutory succession is limited to a spouse, civil partner or cohabitee (subject to the Housing Act 1985).
- A Secure Tenant can only be evicted from their home if the Council is able to secure a possession order from the County Court, for which it needs to show clear evidence that the tenant has breached their tenancy conditions.

### **How will Secure Tenancies be ended?**

If the tenant has breached the terms and conditions of their Tenancy Agreement, the Council may end the tenancy provided there is a valid ground for possession (as set out in Schedule 2 of the Housing Act 1985 (as amended by the Housing Act 1996).

This will mean obtaining a Possession Order from the Court. Examples of when the Council would take this course of action include; when tenants do not pay their rent, damage the property, commit criminal acts in their home, sublet, commit social housing fraud (including not using a property as their main and principle home) or behave in a way that is anti-social to those living in and around their neighbourhood.

The Council may also end the tenancy if there is a valid ground for possession (as set out in Schedule 2 of the Housing Act 1985 (as amended by the Housing Act 1996).

Alternatively, the Council may end a secure tenancy by obtaining a demotion order under Section 82A of the Housing Act 1985.

### **5.3 Affordable Rent Tenure Tenancies**

To increase supplies of social housing the Council may purchase or develop homes with the intention of using them as Affordable Rent Tenancies. In these cases, the Council will award either an affordable introductory tenancy or an affordable secure tenancy, as detailed above. The rent will be on an affordable rent basis rather than a social rent basis; allowing the Council to charge up to 80% of the local market rent rate on the property.

Where an affordable rent is being charged, this will be discussed with the incoming tenant and an affordability check carried out to ensure the home is affordable for the tenant.

The terms of tenancy and the method for bring them to an end are the same process as detailed in sections 5.1 and 5.2 respectively.

### **5.4 Non-Secure Tenancies and Licences**

There are a few exceptional situations when the Council can make available accommodation to people outside the normal framework of Introductory, Secure, Fixed Term and Demoted Tenancies. This is when the accommodation is made available for a temporary period for a specific purpose.

An example of this is when the Council may need to secure accommodation for a homeless household that has applied for help to find a new place to live. In these cases, the Council will use either a Licence Agreement or a Non-Secure Tenancy.

The Council will use a Licence Agreement or 'Licence to Occupy' or a Non-Secure Tenancy when accommodating people on a temporary basis in designated temporary accommodation. This will be when such accommodation is needed to support the Council in delivering its statutory services to households who are homeless and to whom the Council has a legal duty to provide such temporary accommodation. The decision to use either the Licence or Non-Secure will depend on the applicant's status, such accommodation will only be made available for temporary use and neither agreement constitute as secure tenancy.

A further example of this is when the Council awards a new tenancy as part of the Housing First scheme to support the Rough Sleepers Initiative. In these cases, a Non-Secure tenancy will be awarded initially and reviewed after a year to establish if the tenant is managing their tenancy in a satisfactory manner, if they are not but it has been decided not to bring the tenancy to an end then this will be reviewed again after a further 6 months. Once a Housing First client is managing their tenancy, they will be awarded a new Introductory Tenancy and will follow the same route to a Secure Tenancy subject to satisfactorily managing during this period.

### **How will Non-secure Accommodation be brought to an end?**

The Council will issue a 'Notice to Quit' which the occupier must abide by. If they do not leave, the Council can apply for a Court Order to have them summarily removed from the property.

## **5.5 Fixed Term Tenancies**

The Council will consider the use of Fixed Term Tenancies in a small number of circumstances. All new tenants will receive an Introductory Tenancy. At the end of the introductory period the tenancy will become a Fixed Term Tenancy rather than a Secure Tenancy in the circumstances outlined below following service of a notice setting out that a fixed term tenancy will be granted.

A Fixed Term Tenancy may be used in the case of exceptional, untried family arrangements where the Council decides to support that arrangement through the provision of appropriate housing. We anticipate that we will seek to use this option in only a very limited number of cases and that the vast majority of these are likely to be where the Council is supporting a new fostering arrangement approved by East Sussex County Council. Using a Fixed Term Tenancy will enable the Council to recover a property that is being under occupied should the arrangement break down.

A Fixed Term Tenancy will also be used for new tenants to the Council who are being let a home that has been adapted for use by a disabled person, and the new tenants (and household) do not require an adapted property. This option will only be used on the rare

occasion where there is no suitable tenant requiring an adapted property at the time it is available to let.

In these exceptional circumstances a Fixed Term Tenancy of 2 years will be offered.

### **How will Fixed Term Tenancies be ended in the case of foster carers and untried family arrangements?**

The Council will liaise with the tenant at least six months prior to the end of the tenancy, where the arrangements are still the same then a further fixed term tenancy will be awarded. Where the tenant has been entitled to a Fixed Term Tenancy as an approved foster parent for East Sussex County Council, but the tenant has stopped fostering for them, the tenancy will not be renewed. Where the tenant has been entitled to a Fixed Term Tenancy in the circumstance of an untried family arrangement, the tenancy will not be renewed if the arrangement is no longer in place.

The Council may also end the tenancy if the tenant breaches their tenancy agreement or if there is a valid ground for possession (as set out in Schedule 2 of the Housing Act 1985 (as amended by the Housing Act 1996)).

### **What happens if a Fixed Term Tenancy is not renewed?**

The Council will send the tenant two written notices; the first 6 months before the fixed term ends stating that the tenancy will not be renewed and the second giving 2 months' notice that possession is required.

The Council will give the tenant priority banding to bid for another home provided by the Council or by a Housing Association in accordance with the Council's Allocation Policy. The tenant will be able to challenge the decision but if that decision is upheld the tenant has no alternative but to move on.

### **Right of review of decisions relating to Fixed Term Tenancies**

There is a statutory right to request a review of the following two types of decisions:

- A person has the right to request a review of the Council's decision to offer a Fixed Term Tenancy (or the decision to serve a notice stating that on coming to an end of an Introductory Tenancy it will become a Fixed Term Tenancy of a certain length), if they believe the length of the tenancy offered is not consistent with this Policy.
- A tenant has a right to request a review of the Council's decision not to grant another tenancy on the expiry of their Fixed Term Tenancy.

A person who wishes to request a review must do so before the end of the period of 21 days, beginning with the day on which the notice of the decision is served.

The administrative arrangements for requesting and conducting a review will be set out in the offer/decision letter. The Fixed Term Tenancies (Review Procedures) Regulations 2012 set out the procedure to be followed and include a right for the tenant(s)/potential tenant/s to request an oral hearing.

## **5.6 Demoted Tenancies**

The Council can use Demoted Tenancies as one of the ways that it tackles anti-social or nuisance behaviour. A Demoted Tenancy is a tenancy created by order of a Court. The tenants Secure Tenancy is replaced with a less secure 'demoted' tenancy, by a Demotion Order from the Court. A Demoted Tenancy remains demoted for 12 months before becoming secure again unless the Council applies for possession during that time.

During the demotion period the tenancy will be monitored and if deemed to have been conducted satisfactorily and the Council has not served a Notice to Seek Possession of the property, the tenancy will automatically revert to a Secure Tenancy after twelve months.

During the demotion period, the Council may decide to end the tenancy if any tenancy conditions are breached, in the same way as they would end an introductory tenancy during its initial term.

### **Reviewing a decision to end a Demoted Tenancy**

The demoted tenant has the right to ask for a review of the Council's decision to end their tenancy; however if the Council serves a notice to end the tenancy the tenant must request a review within 10 working days otherwise they will lose their right to a review.

## **6.0 Tenants Ending a Tenancy**

To end a tenancy a tenant must give the Council at least 28 days' written notice (called 'notice to quit'). This 28 days' written notice must start on a Monday and end on a Sunday.

Only a legal tenant can bring the tenancy to an end, unless a person has a Power of Attorney in place to deal with financial matters then they are also able to give us with a Notice to Quit. If a tenant is unable to end their tenancy for any reason and there is no Power of Attorney in place, then a suitable person needs to be appointed by the Office of the Public Guardian. Any tenant can give notice to end a tenancy and therefore it is important to be aware that it only requires one party in a joint tenancy to serve notice and bring the tenancy to an end.

If a tenant has sadly passed away an Executor of their will can issue us with a Notice to Quit the tenancy. If there is no Executor then the Council will serve a Notice to Quit upon the personal representatives of the late tenant at the property and send a copy of the Notice to Quit to The Office of the Public Trustee.

Rent will continue to be charged in all situations until the tenancy can be legally brought to an end.

Fixed Term Tenancies are ended at the end of the term, or any agreed break clause point as stated within the Tenancy Agreement. In order to surrender a Fixed Term early this request must be made in writing, giving a minimum of 28 days' notice and carried out in negotiation with the Council.

## **7.0 Rents**

- 7.1 The Council will continue to charge Social Rent on all existing Housing Revenue Account Properties.

Affordable Rent will be charged where developments are built as part of a Homes and Communities Agency (HCA) programme. For these new developments' rents will be Affordable Rents up to 80% of market rent.

Other new build developments (those outside of HCA programme) will be charged at Affordable Rent or at Social Rent, depending upon the funding secured for each scheme. The rent to be charged will be clearly advertised in advance of any tenancy start.

- 7.2 The Council's Account Management Team proactively addresses any payment problems as quickly as possible in order to prevent debts accruing. The Council encourages people to make contact if they have any problems in paying their rent. Where appropriate, the Council also refer tenants for specialist benefits advice and/or debt counselling.

## 8.0 Succession to Tenancies

- 8.1 When a tenant passes away there may be a right for the tenancy to be passed on; this is known as a succession. A tenancy can only be passed on once. The rules governing the rights of succession depend on when the tenancy started.

For tenancies that started **before** 1 April 2012 (where there has been no previous succession to the tenancy), a person will succeed to the tenancy if they are living in the property as their only or principal home at the time of the tenant's death **and** they are either:

(a) The tenant's spouse or civil partner, or;

(b) Another member of the tenant's family who has lived with the tenant throughout the period of 12 months ending with the tenant's death. Member(s) of the family' are defined as: cohabitantes, parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews and nieces. Step-relations, half-relations, relations by marriage and adopted children are also included in the definition as long as the relationship subsisted at the time of the succession, but foster children are not.

Where a secure tenant passes away (and there has been no previous succession) leaving only a child (under 18) who resided with her/him for at least the 12-month period before the death, a landlord must recognise the child as having succeeded to the tenancy. An adult, either a relative or professional (e.g. a social worker), will have to hold the legal tenancy on trust until the child is 18.

Where there is more than one qualifying person to succeed, the late tenant's spouse/civil partner takes precedence. Otherwise the qualifying persons must agree amongst themselves who is to take over the tenancy. If they cannot agree the Council is entitled to choose the successor. There can be no joint succession.

For tenancies that started on or after 1 April 2012, (where there has been no previous succession to the tenancy), only a spouse or civil partner is entitled to succeed (this includes a person who was living with the tenant as if they were the tenant's spouse or civil partner). Another member of the tenant's family will not be entitled to succeed regardless of how long they have lived in the property.

## 8.2 Under Occupation after Succession to Tenancy

Irrespective of when the tenancy was originally entered into by the deceased tenant, or of how long the tenancy has been held, a spouse or civil partner is the only successor who has the right to remain in the property regardless of its size.

Any other family member (including co-habitees) with the right of succession can be required to move to a suitably sized property for their housing need. If this is the case and the property is found to be too large for the successor's needs, the Council will provide suitable alternative accommodation. Ground 15A of the Housing Act 1985 Schedule 3 enables the Council authority to obtain a possession order against the successor tenant, to move a successor who is under occupying.

## 8.3 Where there is no Right of Succession

Where there is no right of succession following the death of the tenant the Council will serve a Notice to Quit to bring the existing tenancy to an end. The Council retains the discretion to offer a new tenancy of the same property, or a new tenancy at an alternative property, to a family member left in occupation. When deciding whether to offer a new tenancy we will take account of the individual circumstances, the needs of vulnerable household members and the need to optimise the use of housing stock to meet housing demand. Use and Occupation Charges will apply for any occupier that remains in the property once the tenancy has been brought to an end.

## 9.0 Sole and Joint Tenancy

9.1 If you have a joint tenancy we are unable to amend this to a sole tenancy by simply removing one party even if both parties are in agreement with the request. A Transfer of Tenancy can be obtained via the Courts under Part VII of the Family Law Act 1996, the Council will have an opportunity to make representations as to why the tenancy should not be transferred if appropriate. It is advised that any tenant wishing to remove themselves from the tenancy seeks independent legal advice to establish the implications of giving up a secure Council tenancy.

If you hold a sole secure tenancy and you wish to have your partner added to the tenancy, you can request that the tenancy is changed to a joint tenancy. In order for this to happen, we would need to see proof that you are married or in a civil partnership or your partner has been living with you at the property for the last 12 months. The Council will not award joint tenancies between parents and children, siblings or applicants and their carers. If the sole tenant is in breach of any of the conditions of their sole tenancy, then the application will be refused.

There is no legal right for the Council to grant joint tenancies, but it is our policy to consider requests made by partners where the above conditions have been met. It is entirely at the Council's discretion whether to agree to a change from a sole to a joint tenancy. However, if consent is not given, a letter explaining the reasons for this will be sent to the tenant, with a copy kept on the tenant's file.

If it is agreed, then the sole tenancy will be brought to an end and a new joint tenancy awarded. The creation of a new tenancy agreement will sometimes result in an increase in

rent to ensure that the current target or affordable rent is applied. Tenants will be notified of this prior to the new tenancy being agreed.

- 9.2 Where a tenant applies for housing with another adult who is living with them in the capacity of spouse/partner then the Council will usually offer a joint tenancy. This means that both are equally liable for the rent and conditions of the tenancy agreement. If one tenant breaks the agreement the Council will take action against both tenants. Either joint tenant can end the tenancy without the agreement of the other.
- 9.3 A spouse or civil partner exercising a home right as set out in Family Law Act 1996, section 30, is entitled to pay rent. Any payment or offer of payment is as good as if made by the tenant.

## **10.0 Assignment**

Secure tenants of the Council can request permission to assign their tenancy to another person who at the time of application would be entitled to succeed to the tenancy should the tenant pass away at that time. The details as to who may be eligible to be assigned a tenancy is reflected in the detail on Succession in 8.1 of this policy. Assignment counts as a statutory succession and therefore there will be no further right of succession following an assignment. There is also no right to assign a tenancy where a succession has already taken place, including a joint to sole change following the death of one of the tenants (also referred to as survivorship). Assignments by way of mutual exchange or Family Law Act Transfer of Tenancy do not count as a succession.

## **11.0 Mutual Exchange**

Secure tenants of the Council can consider moving by exchanging their home with another council or housing association tenant. That right to exchange a home is subject to approval from the Council. A request must be made in writing to the Council seeking permission to proceed with the exchange the Council will confirm within 42 days if the exchange can proceed.

When deciding if permission is to be granted for an exchange the Council will make its decision with reference to Schedule 3 of the Housing Act 1985. If one of the grounds in schedule 3 applies to the mutual exchange, the request will be refused.

If you have a secure tenancy (or assured tenancy, sometimes referred to as a lifetime tenancy) which began before 1 April 2012 and you exchange homes with a fixed term council or housing association tenant, you should be granted another lifetime tenancy when you exchange.

If you have a secure tenancy (or assured tenancy, sometimes referred to as a lifetime tenancy) which began on or after 1 April 2012 and you exchange homes with a fixed term council or housing association tenant, you may lose your lifetime tenancy unless specifically granted another one by the new landlord.

## 12.0 Tenancy Incentive Scheme (TIS)

The Council operates a Transfer Incentive Scheme (TIS) which aims to enable the organisation to manage its housing stock effectively, by offering tenants incentives to move to smaller accommodation and thereby make larger homes available for those who most need it. Please refer to the TIS policy for further details.

## 13.0 Tenancy Fraud

The Council will take a proactive approach to tackling unlawful subletting and other instances of tenancy fraud, including obtaining housing by deception, wrongly claimed succession, key selling, unlawful assignment or making a false right to buy application. Immediate action will be taken to evict those that are unlawfully subletting or that have obtained the Council properties by deception by giving false or misleading statements. Tenancy Fraud is a criminal offence and individuals risk prosecution under the Prevention of Social Housing Fraud Act 2013 which could result in imprisonment and or a fine.

Tenancy audits will also be carried out from time to time and staff will request details of identification of all persons living in the property. Photographs will be taken of tenants when they receive the keys to their property to help us prevent and tackle tenancy fraud.

Any reports of suspected tenancy fraud should be reported to the Council and will be treated in confidence.

## 14.0 Tenancy Support and Preventing Evictions

As far as possible the Council seeks to minimise the number of evictions that are carried out. We work closely to ensure that tenants are signposted and supported at all stages of any legal process. Ensuring that tenants are encouraged to seek independent legal advice.

13.1 The Council staff carry out sign up interviews which are then followed up with a further tenancy visit after the tenancy has commenced. This covers:

- Ensuring the tenant understands the terms and conditions of the tenancy agreement.
- Checking rent is paid regularly and tenants are accessing benefits.
- Checking if the tenant has any particular support needs.
- Highlighting opportunities to get involved.
- Explaining how to report repairs.

When tenants move into a Retirement Housing property the Council will undertake a Tenancy Sustainment Assessment to ensure tenants are accessing the support they need in order to maintain their tenancy independently.

13.2 The Council have a robust Anti-Social Behaviour (ASB) Policy and the Council Management Team will oversee the consistent and fair implementation of this policy and will consult with colleagues to ensure timely and accurate updates of the policy are given.

The Council's Tenancy Management Team proactively tackles all neighbour disputes and anti-social behaviour issues as quickly as possible, working in close partnership with other agencies including the Police. Where appropriate, the Council also refers tenants to a specialist mediation service. The Council engage with tenants early to sustain tenancies and avoid eviction where possible.

## **15.0 Policy Monitoring and Review**

- 14.1 The Council Management Team will oversee the consistent and fair implementation of this policy and will consult with colleagues to ensure timely and accurate updates of the policy are given.
- 14.2 We will carry out a fundamental review of this policy every three years or sooner, subject to legal, regulatory changes or if internal changes necessitate.