

Report of Denis Southall, Housing Landlord Service Manager

Tenancy Policy

Summary

1. The Cabinet Member is asked to consider a draft tenancy policy for Housing Services and agree to its adoption.

Background

2. As part of a wider set of social housing reforms, the Government has introduced the requirement for all social landlords to publish a tenancy policy. The reforms include the introduction of flexible (fixed term) tenancies and affordable rent, changes to allocations and homelessness and promotion of increased mobility for social tenants. These reforms are implemented through the Localism Act and the regulatory standards that all social landlords are expected to meet
3. From April 2012, the Homes and Community Agency replaced the Tenants Services Authority as the social housing regulator. The Tenure element of the revised Tenancy standard states the requirement for all social housing providers to publish clear and accessible tenancy policies
4. The tenancy policy must have regard to the tenancy strategy of the local authority.
5. The tenancy policy should be an overarching document that sets out:
 - the kind of tenancy that the Council will offer

- the circumstances in which tenancies will be granted
- the process for reviewing tenancies
- whether the Council will grant discretionary succession rights, and if so to who.

Note: Succession rights for new tenants after April 2012 were restricted by the Localism Act 2011 to a single statutory succession for spouse or partner of the deceased tenant only. Social Landlords have the ability to grant discretionary second successions via the tenancy agreement to others such as other family members or resident carers. No formal decision has been taken on this. I have therefore based the information in the tenancy policy on the pre April 2012 succession rules for City of York Council tenants which still apply until changed for 2nd successions. I will put a report on the forward plan for advice and a formal decision detailing any legal implications.

- interventions used to sustain tenancies
 - the Council's approach to tackling tenancy fraud
 - how frequently the policy will be reviewed
6. The tenancy policy (annex A) provides clarity to City of York Council tenants, and protects the Council from legal challenge.
 7. It should be noted that the requirement for social housing providers to publish a tenancy policy is different to the statutory requirement, under the Localism Act, for all local authorities to develop a tenancy strategy by January 2013.

Flexible tenancies (Fixed Term tenancies)

8. The tenancy policy sets out where City of York Council will issue Flexible tenancies. The term flexible tenancies is used to apply to all tenancies that are offered for a specified period of time, as opposed to traditional 'lifetime tenancies'. The revised Tenancy standard specifies that providers are required to offer a tenancy for a minimum fixed term of 5 years, other than in exceptional circumstances where they may offer a minimum term of no less

than 2 years. Any exceptional circumstances must be set out in the tenancy policy.

9. The tenancy strategy advocates 'a cautious approach to the use of flexible tenancies in York', emphasising the need for housing providers to issue the most secure form of tenancy 'compatible with the purposes of the accommodation, the needs of the individual households, the sustainability of the community and the efficient use of the housing stock'.
10. The Localism Act created this new type of tenancy which came into force on 1 April 2012.
11. A flexible tenancy is a form of secure tenancy and generally, tenants with a flexible tenancy have the same rights as other secure tenants (as set out in Housing Act 1985), including the Right to Buy after a qualifying period, and the Right to Repair.
12. The same grounds for possession are available and can be used during the fixed term, for example if there are rent arrears or another breach of tenancy.
13. However, the tenancy agreement determines whether tenants with a flexible tenancy have a right to improve their property as the statutory right to improve does not apply. Flexible tenants do not have a statutory right to be compensated for improvements.
14. Flexible tenancies are only used where local authorities choose to do so. The rights of existing secure and introductory tenancies are unchanged. This means that adopting this tenancy policy will be confirmation that City of York Council has formally chosen to issue Flexible tenancies in very restricted circumstances.
15. The Right to Buy extends to flexible tenancies subject to the same qualifying criteria.
16. The Localism Act reduces the automatic statutory rights of succession for all new secure tenancies (including flexible tenancies) from April 2012. Any additional contractual succession rights granted in the tenancy will also apply if included in fixed term tenancy agreements

17. **Transfers:** The revised Tenancy Standard states that tenants with an existing social tenancy on 1st April 2012 must be given 'a tenancy with no less security where they choose to move to another social rented home'. This means their security of tenure is protected should they transfer to another social rented home. However, this does not apply to tenants granted a traditional 'lifetime' tenancy after 1st April 2012.

18. In addition, the standard also says that 'this requirement does not apply where tenants choose to move to accommodation let on affordable rent terms'. In those circumstances an existing tenant, with a secure tenancy can be offered a flexible (fixed term) tenancy (unless this is for reasons other than the tenant's choosing e.g. demolition).

19. **Mutual Exchanges:** Most take place via a deed of assignment where each tenant 'steps in to the other tenant's shoes' and takes over the other tenant's tenancy type and terms. New tenancies are not signed. The provisions of the Localism Act cover those situations where:

- At least one of the tenants who wishes to transfer has a secure tenancy, which began before 1st April 2012, and
- At least one of the tenants has a flexible tenancy or a fixed term tenancy

These exchanges must be done by surrender and then granting of new tenancies. The new Landlord must grant the tenant(s) whose secure or assured tenancy predated 1st April 2012 a secure (not flexible) tenancy.

Existing tenants will therefore retain similar security of tenure to that of their original tenancy.

Regulations provide that these provisions do not apply where an existing secure tenant chooses to exchange with:

- Someone with a fixed term tenancy of less than 2 years.
- Someone with a tenancy at an affordable rent, intermediate rent, mortgage rescue properties and shared ownership leases.

A Landlord can still refuse an exchange and the grounds for this are set of in the Localism Act. They have 42 days to make a decision. These are different to the 'grounds' and 'conditions' found in the Housing Act 1985 which apply to secure tenants, they are actually grounds for refusal.

20. **Landlords ending the tenancy during the fixed term:** Local Authority landlords apply for a court order to end the tenancy if any grounds for possession can be proved. The grounds for possession are the same as for secure tenancies.
21. **Tenants ending the tenancy during the fixed term:** Tenants can give a minimum 4 weeks (written) notice.
22. **Landlords ending the tenancy at the end of the fixed term:** The procedure for local authorities who decide not to grant another tenancy at the end of the fixed term are set out in the Localism Act. A court can only refuse possession if the correct procedure has not been followed by the landlord or if the court is satisfied that the decision not to grant another tenancy was otherwise 'wrong in law'.

There are 3 conditions to get a court order for possession to terminate the tenancy:

- A. The fixed term has ended
- B. The tenant has been given no less than six months notice in writing stating:-
 - I. That the landlord does not propose to grant another tenancy on the expiry of the fixed term
 - II. The reasons why
 - III. The tenant has a right to request a review and the timescale for this.
- C. The tenant has been given no less than 2 months notice in writing stating that the landlord requires possession of the dwelling house (notice requiring possession).

If the tenant refuses to vacate the property possession proceedings must be taken to evict them legally.

23. **Review of the decision to end the flexible tenancy:** The procedure for a review of decisions relating to flexible tenancies is set to secondary legislation. The regulations are modelled very closely on those for introductory tenancies.

They require that the tenant request a review of the decision not to review the tenancy in writing within 21 days of the first notice. The tenant is entitled to request an oral hearing and the review must be conducted by someone senior to the officer that made the original decision and not involved in that decision. The review must be carried out before possession proceedings begin.

24. **Legal challenges:** Caselaw has indicated that tenants can mount a human rights appeal although the threshold for such an argument will be a high one (Pinnock and Powell, Hall & Frisby Supreme Court judgements). There will be a strong presumption that the landlord is justified in seeking possession. More recently the Corby BC v Scott; West Kent HA v Havcroft cases (2012) have confirmed this high threshold when an occupier needs to consider whether they have a realistic prospect of success.

To minimise the chances of challenge the Chartered Institute of Housing recommend that organisations:

- Have a clear policy and procedure around renewal and the criteria to be applied
- Follow the policy and procedure carefully
- Offer an internal review process as established in the Localism Act as indicated at paragraph 21.

25. A full policy and procedure for flexible tenancies is in development in addition to information in the tenancy policy. The tenancy policy sets out indicative circumstances for decisions on when these will be introduced. It is proposed that:

- Decisions on individual tenancies be taken by the Assistant Director for Housing and Community Safety in consultation with the Cabinet Member for Health, Housing and Adult Social Services.

- Decisions on scheme (e.g. accommodation developed to meet specific support needs for a time limited period) or initiative specific (loft conversions) use of flexible tenancies be taken by the Assistant Director for Housing and Community Safety in consultation with the Cabinet member for Housing.

Please see the tenancy policy for situations where flexible tenancies may be considered for use.

Consultation

26. As this policy reflects current policy and practice and the guidance offered by the Tenancy Strategy it has not gone for formal consultation. Extensive consultation was undertaken on the Tenancy Strategy itself. The policy reflects current practice in the main. The policy will be available to the public and presented to the next Federation of Residents Association meeting for information and discussion. It will also be made available to the Tenant's Scrutiny panel.

27. Any future substantial amendments will go out to consultation.

Options

28. Option 1: Agree to the adoption of the policy as it is.

29. Option2: Indicate changes to be made before the adoption of the policy.

Analysis

30. Option 1: This will mean that City of York Council Housing Services is complying with regulatory requirements.

31. Option 2: As option 1.

Council Plan

32. Having a tenancy strategy will help:

'Build strong communities' by ensuring that our customers are clear about what they can expect from City of York Council as a social

landlord as well as being made aware of their direct responsibilities as a tenant and of those to the wider community.

'Protect Vulnerable people'. City of York Council provides homes to customers with a wide range of abilities, many of whom are vulnerable. Having a tenancy policy clearly sets out what they can expect as a tenant in an appropriate, well supported and managed home.

Implications

33. **Financial** – none

34. **Human Resources (HR)** – none

35. **Equalities** – A Community Impact Assessment will be needed for the tenancy policy and for any future use of flexible tenancies none

36. **Legal** – this is a regulatory requirement and the fixed term tenancy is based on new legislation which may be subject to challenge. If a tenancy policy is not available Housing Services would be in contravention of the regulatory regime put in place by the TSA

The issues around current rules around succession need clarifying and a formal decision taken on whether a discretionary 2nd succession will be granted and to whom. Legal advice is currently being sought.

Adopting this tenancy policy indicates that City of York Council is endorsing the use of flexible tenancies. The implication of this is detailed from paragraphs 8 to 25

37. **Crime and Disorder** – none

38. **Information Technology (IT)** – changes may be needed to accommodate fixed term tenancies.

39. **Property** – none

40. **Other** – none

41. **Risk Management** - No major risks involved.

Recommendations

42. The Cabinet Member is asked to adopt a tenancy policy in its current or amended form and note that a further report on tenancy successions will be submitted at the earliest opportunity.

Reason: All social landlords are required under the Localism Act and the regulatory framework to have a tenancy policy in place by Jan 2013.

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Report
Approved

Date

15.7.13

Wards Affected: List wards or tick box to indicate all

All

For further information please contact the author of the report

Background Papers:

TSA Regulatory Standards

<http://webarchive.nationalarchives.gov.uk/20120514075635/tenantservicesauthority.org/server/show/nav.15065>

Localism Act 2011

<http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>

Housing Act 1996

<http://www.legislation.gov.uk/ukpga/1996/52/contents>

Housing Act 1985

<http://www.legislation.gov.uk/ukpga/1985/68/contents>

Tenancy Agreement, Tenant's Handbook and Fact Sheets
Copies online only

City of York Council tenancy strategy

http://www.york.gov.uk/downloads/file/1645/tenancy_strategy

Annexes

Annex A

City of York Housing Services Tenancy Policy (May 2013)