



Decision Session of the Cabinet Member for Homes and Safer Communities**09.12.14**

Report of the Director for Communities and Neighbourhoods

PROPOSED CHANGES TO THE TENANCY AGREEMENT**Summary**

1. To seek approval for proposed changes to the tenancy agreement for all existing and future tenants including substantial changes to succession rights.

Background

2. The tenancy agreement was last reviewed in 2004. Over the last year Housing and Legal Services have been looking at changes to the tenancy agreement to reflect legislative change and lessons learnt from management of tenancies.
3. The Localism Act 2011 changed the rules around who could inherit a tenancy on the death of a tenant and we need to consider what changes to make on the back of this.
4. Some specific additions have been suggested that affect sheltered accommodation to help us protect sheltered residents and acknowledge that living in that environment is a bit different to living in other accommodation.
5. A summary of the proposed changes is attached for you to look at (Annex 1) and the proposed wording for a new section in the tenancy agreement specific to sheltered accommodation (Annex 2)
6. Most of these proposals do not constitute any major changes to the rights that tenants have but do make it clearer what their responsibilities are. They are based on some of the cases that we have dealt with over the years where the tenancy agreement was

silent or unclear. Legal Services have been involved in drafting these changes

Consultation

7. Consultation is currently ongoing with Housing staff, Legal Services The Federation and Residents Associations. Further changes for consideration from the consultation so far are indicated in Annex 1 and Annex 2.
8. An informal discussion has also taken place with the Cabinet member for Homes and Safer Communities.
9. A formal period of consultation will take place with all residents over a period of at least 6 weeks from mid December. All customers will be written to outlining the proposed changes, the implications of these and given the opportunity to comment before final changes are agreed and customers given notice of these along with the rent increase at the end of February 2015.

Proposed changes to succession rules

10. One of the most significant proposed changes is to amend the rights to succession. This is to bring the tenancy agreement into line with the Localism act. To understand the changes the existing and new proposals are set out below.

The old rules (pre April 2012):

11. Succession is the ability to inherit a tenancy when the tenant dies.
12. When a tenant dies, the tenancy passes to the tenant's husband or wife, or partner as long as they were living together as a couple (this includes couples of the same sex) and they were living in the property as their only or main home when the tenant died.
13. If the tenant was not married and did not have a partner, the tenancy passes to a qualifying relative but only if at the date of death, they were living with the tenant without a break for the previous 12 months

14. A qualifying relative can be parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews and nieces; including step-relations, half-relations and illegitimate children.
15. In law there is only one statutory succession to a tenancy but our policy allows for a 'second' succession. As the law does not recognise a second succession it is impossible to get determinations on this through the courts
16. Where a tenancy was originally a joint tenancy and one of the joint tenants dies, or surrenders their interest, this counts as a succession
17. The first succession is to the property in question but the second one could be to a property of a more suitable size if it was too large or adapted for someone with disabilities. If the customer refused the offer of other properties an application would have to be made to court to end the original tenancy
18. If a second succession meant that the customer had to move or a succession was denied the customer has the right of appeal to Councillors.

The new rules available since April 2012

19. The Localism Act 2011 has, since 1 April 2012 amended the statutory succession rights of **new** secure tenants. Statutory succession to a secure tenancy entered into after 1 April 2012 in England only applies to the spouse or civil partner of the deceased tenant. The council landlord may, at its discretion, contractually provide for more extensive succession rights.
20. As City of York Council has not yet amended its tenancy agreement and policy to mirror these legislative changes since April 2012 new tenants have so far enjoyed the same succession rights as those who became tenants before April 2012.
21. The rights of existing secure tenants at 1 April 2012 (and the succession rights of people living with them) are also, as yet, unaffected by the changes in the law.
22. It is necessary for policy to be brought in to line with the legislation and this needs to be done by amending the tenancy agreement to reflect this

Additional comments

23. The intention of this piece of legislation was to allow social landlords the ability to make sure that their stock went to people in genuine housing need, particularly where family housing is in very short supply. This is the case in York.
24. Housing Services have experienced a number of expensive legal challenges posed by people claiming succession rights through the courts over the last few years based on the extended rights to succession currently available through the City of York Council tenancy agreement and procedures. For example a person who had lived in a property for less than a week claimed to be the deceased's partner and claimed succession rights resulting in a long delay in letting the property, lost income and legal fees.
25. The old law on succession rights and the policy in York were formed at a time when there was a much larger supply of council homes generally and there was not a position where the demand far outstripped the supply. The new legal position and policy will reflect the need to help those who have a recognised housing need through the allocation of homes via the North Yorkshire Home Choice policy which can also take other exceptional circumstances in to account..
26. At the same time it is still possible to help customers with housing and social need through other policies.
27. Customers not qualifying for a succession can be accepted as at risk of homelessness where they are in priority need (have children, are pregnant, suffer severe ill health or vulnerable for example) and housed elsewhere through the North Yorkshire Home Choice lettings policy or by providing other suitable accommodation.
28. Where customers do not qualifying for a succession because these rights only extend to spouse / civil partner, if adopted, there is provision under the NYHC policy to allow a direct let to another property on a discretionary basis. This could be done in cases where it is proven that the circumstances are exceptional e.g. the person(s) in question have lived at the property for a considerable portion of their lives, been a carer for the deceased tenant or they are vulnerable in some way
29. All other customers can seek help with finding a new home through the Council's Housing Options service.

30. In addition, all customers can ask for an appeal to councillors through the Housing Appeals sub committee

Options

31. A) Retain the existing tenancy agreement
32. B) Retain existing succession rights through the tenancy agreement and policy but accept other changes following consultation and agreement of the Cabinet Member for Housing.
33. C) Reduce the existing succession rights but not to the level set out in the Localism Act and who these can apply to along with other changes.
34. D) Accept all proposed changes including succession rights as outlined by the Localism Act i.e. one succession to spouse or civil partner.

Analysis

35. A) The problems as outlined in the background section would continue and the tenancy would remain unclear or silent on many issues.
36. B) The tenancy would be clearer on the identified issues for customers and staff but the difficulties presented by the extended succession right and the follow on costs to Housing Services and it's customers would continue.
37. C) The tenancy would be clearer on the identified issues for customers and staff but the difficulties presented by the extended succession right and the follow on costs to Housing Services and it's customers may continue depending on the details of who could succeed and under what circumstances. Using succession rights to acquire housing does not fit with the principle of allocating housing on the basis of need. As outlined in the Background section, customers can be helped in other ways, where housing and social need is evidenced. All customers have a right of appeal to the Housing Appeals sub committee.

38. D) This makes the succession issue clear cut and is the recommendation of Legal services. Housing and other needs can be met through the North Yorkshire Home Choice Policy or Housing Advice. All customers have the right to have their case heard by the Housing Appeals sub committee.

Council Plan

39. Building Strong Communities: Through the more effective enforcement of tenancy condition and clarity on rights and responsibilities for customers.

40. Protect vulnerable people: By allowing homes to be allocated based on housing and social need rather than extended success rights.

Implications

Financial – cost of consultation and issuing new tenancy agreements

Human Resources (HR) none

Equalities Equality issues will be dealt with through the use of other complementary policies such as North Yorkshire Home Choice and are taken in to account when cases are heard at court. A community Impact assessment will be required following the completion of the consultation exercise

Legal – Fewer succession rights being claimed through the courts. Better wording should help prevent the need for litigation but when it does happen it will help get the right result.

Crime and Disorder – proposed changes will help Housing Services take action against criminals in partnership with other services.

Information Technology (IT) none

Property - none

Risk Management

41. Any risks to customers through reduced succession rights are mitigated through the application of other policies. The risk is therefore low.

Recommendations

41. The recommendation of Housing and Legal Services is to adopt option D.

Reasons: This will bring the tenancy agreement in line with the Localism Act and other changes identified and agreed through consultation. Reducing the risk of expensive legal challenge and maximising the use of the authority's council housing stock.

Contact Details

Author:

Denis Southall
Housing Landlord
Service Manager
Housing Services
 Tel No. 1298

Chief Officer Responsible for the report:
Steve Waddington

Report Approved **Date** Insert Date

Co-Author's Name
 Title
 Dept Name
 Tel No.

Chief Officer's name
 Title

Report Approved **Date** Insert Date

Specialist Implications Officer(s) List information for all
 Implication ie Financial Implication ie Legal
 Name Name
 Title Title
 Tel No. Tel No.

Wards Affected: List wards or tick box to indicate all **All**

For further information please contact the author of the report

Background Papers: