
**Decision Session of the Cabinet Member for
Communities**

22 December 2014

Report of the Assistant Director – Housing & Community Safety

Changes to The Housing Tenancy Agreement

Summary

1. This report seeks approval for proposed changes to the tenancy agreement for all existing and future council housing tenants, in particular significant changes to succession rights.

Background

2. The current tenancy agreement last underwent significant review in 2004. In recent years there have been a number of legislative changes that are not reflected in the current agreement and as a result, Housing and Legal Services have been looking at potential changes to the tenancy agreement to reflect said legislative change. As part of this review consideration has also been given to clarifying and re-word clauses within the agreement to address issues that have arisen through management of the councils tenancies.
3. A significant change in legislation was introduced as part of The Localism Act 2011 which changed the rules around who could inherit a tenancy on the death of a tenant, we therefore need to consider what changes to make as a result of this legislative change.
4. As part of the council's housing stock, we manage not only general needs homes, but a number of sheltered housing schemes. It has become clear in recent years that a bespoke sheltered accommodation agreement (based on the general agreement) would enhance the council's ability to effectively manage the sheltered schemes.
5. The proposed changes are attached at (Annex 1) and the proposed wording for a new section in the tenancy agreement specific to sheltered accommodation for consultation on is attached at (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 the learning arising from the cases that we have dealt with along with case law that has developed in recent years. Legal Services have been involved in drafting these changes

Consultation

7. The proposed changes have been developed with front line Housing staff and Legal Services. As part of the development of these changes, consultation has been carried out with The Federation and Residents Associations who are in agreement with the proposals. Changes for consideration arising from the consultation so far are indicated in Annex 1 and Annex 2.
8. A formal period of consultation will take place with all residents over a period of 6 weeks subject to Cabinet Member agreement of the proposals. 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

9. One of the most significant proposed changes is to amend the rights to succession. Succession is the ability to inherit a tenancy when the tenant dies. The proposed changes are aimed to bring the tenancy agreement into line with the Localism Act.. To understand the proposed changes the existing and new proposals are set out below.

Current Position

10. When a tenant dies, the tenancy passes to the tenant's husband, wife, or partner, if at the time of the tenant's death 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.
11. 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.
12. A qualifying relative can be parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews and nieces; including step-relations, half-relations and illegitimate children.

13. In law there is only one statutory succession to a tenancy, however our policy allows for a 'second' succession. Given that the law does not recognise a second succession, if there are any problems associated with this 'second' succession it is impossible to get determinations on this through the courts
14. Where a tenancy was originally a joint tenancy and one of the joint tenants dies, or surrenders their interest and the tenancy becomes a sole tenancy, this counts as a succession.
15. The first succession is to the property in question, however a second succession could be to a property of a more suitable size if the property is 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.
16. 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.

Proposed Position

17. 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.
18. It is proposed that the Council amended its tenancy agreement and policy to mirror these legislative changes. Key changes will be:
 - Changes to the who can succeed to a tenancy;
 - Removal of the automatically right to a second succession;
 - Introduce minor amendments for Sheltered Schemes.
19. 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.
20. 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

21. The intention of this piece of legislation was to allow social landlords greater ability to make best use of their stock and ensure homes were allocated to people in genuine housing need, particularly where family housing is in very short supply, as is the case in York.
22. 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.
23. The council's current policy on succession was 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 proposed policy will enable the council to ensure its homes are allocated those in need.
24. 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 (NYHC) lettings policy or by providing other suitable accommodation.
25. Where customers do not qualify 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
26. All other customers can seek help with finding a new home through the Council's Housing Options service. In addition, all customers can ask for an appeal to councillors through the Housing Appeals sub committee

Options

27. Option 1 - Retain the existing tenancy agreement

28. Option 2 - Agree the proposed changes to succession rights to bring the tenancy agreement in line with current legislation and to consult with sheltered scheme tenants regarding the proposed amendments to agreements for Sheltered Schemes.
29. Option 3 – 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 and to consult with sheltered scheme tenants regarding the proposed amendments to agreements for Sheltered Schemes.

Analysis

30. Option 1 - The problems as outlined in the background section would continue and the tenancy would remain unclear or silent on many issues.
31. Option 2 - 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.
32. Option 3 - The tenancy would be clearer on the identified issues for customers and staff but the difficulties presented by the extended succession right and the potential social and legal impact of any challenges would continue depending on the details of who could succeed and under what circumstances.
33. 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.

Council Plan

34. These changes support the priorities set out within the council plan in two main ways.
 - Building Strong Communities - Through the more effective management of tenancy condition as a result of clarity on rights and responsibilities for customers we are better able to support the communities.

- Protect vulnerable people - By allowing homes to be allocated based on housing and social need rather than extended success rights we are better able to make best use of our stock and ensure properties are allocated to support those most in need.

Implications

35. The implications arising from this report are:

- **Financial** – The cost of consultation and issuing new tenancy agreements. This can be met from within existing budgets.
- **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** – The changes will bring the council tenancy agreement in line with current legislation. This will result in fewer succession rights being claimed through the courts. Improvements in the drafting of clauses will enable officers to better manage tenancies where breaches of tenancy clauses take place and should help prevent the need for litigation. Where litigation is necessary clearer tenancy clauses will result in improved ability to address issues through the courts.
- **Crime and Disorder** – The proposed changes will help Housing Services take action against those individuals in breach of their tenancy agreement and reduce the impact of anti-social behaviour.
- **Information Technology (IT)** - None
- **Property** - None

Risk Management

36. The main risk arising from this report is as a result of customers challenging the council as a result of their reduced succession rights.

However, as has been set out within the report, these changes are to bring the council's current policy in line with the recent changes to legislation. The impact of these changes on customers can be mitigated through the application of other council policies, i.e. The North Yorkshire Home Choice policy. The risk is therefore low.

Recommendations

37. The Cabinet Member is asked to:

- Approve Option 2 and agree the proposed changes including succession rights to bring the tenancy agreement in line with current legislation and to consult with Sheltered Housing Tenants on the changes specific to their housing schemes.

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

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**Report
Approved**

Date

11th December 2014

Wards Affected: List wards or tick box to indicate all

All

For further information please contact the author of the report

Background Papers:

None

Annexes

Annex 1 – Summary of proposed changes

Annex 2 – Sheltered Housing Agreement – proposed change for consultation