

Royal Borough of Kensington and Chelsea

Tenancy Policy

February 2020

1. Purpose

- 1.1 The purpose of this policy is to set out how the Royal Borough of Kensington and Chelsea (the Council) will issue tenancies to the social homes it owns and manages.
- 1.1 The Policy confirms the Council's decision to end the use of flexible secure tenancies and revert to issuing periodic secure tenancies; sometimes called 'lifetime' tenancies (and referred to in this policy as lifetime tenancies). The Council believes that lifetime tenancies provide a home for life, and the security and peace of mind residents have been telling us they want. The Council is committed to providing excellent services that meet high service standards it has agreed with tenants and residents.

2. Scope

- 2.1 This Tenancy Policy sets out the approach to issuing new secure tenancies by the Council to the residential housing stock which is owned and managed by the Council.
- 2.2 This Tenancy Policy also sets out we will make changes to existing tenancies. The tenancy changes covered by this policy are:
 - Ending a Sole tenancy
 - Creating a joint tenancy
 - Ending a joint tenancy
 - Succession - where an existing tenant has died and the tenancy is 'passed' to another individual
 - Assignment – where an existing tenancy is 'passed' by the tenant to another individual
- 2.3 This policy does not cover the following.
 - tenancies issued by Registered Providers of Social Housing (housing associations) because they will have their own policies

- agreements relating to the residents living in temporary accommodation (under the 1996 Housing Act, Part VII) or supported accommodation
- tied accommodation provided to Council employees as part of their conditions of employment
- temporary decants provided to existing Council tenants, for example due to major repairs, refurbishment or modernisation works
- Council management transfers
- mutual exchanges

3. Legislative framework

3.1 This Tenancy Policy is set within the legislative framework provided by:

- The Housing Act 1985, 1988, 1996 as amended
- The Landlord and Tenant Act 1985
- The Housing & Planning Act 2016
- The Localism Act 2011

3.2 It is also set within the regulatory framework set out by the regulator of social housing.

4. Related Policies and Strategies

4.1 This Tenancy Policy is set within the Royal Borough of Kensington and Chelsea's policy framework provided by:

- The Housing Strategy
- The Tenancy Strategy
- The Allocation Scheme
- The Tenant Management Transfer Policy
- The Emergency Tenant Decant Policy

5. ISSUING A NEW COUNCIL TENANCY

5.1 Properties will be let to residents and families in housing need and registered on the Council's Housing Register. Housing is allocated based on need using criteria set out in the Council's Housing Allocation Scheme. A copy of our current Housing Allocation Scheme can be found on the housing section of the Council's website: <http://www.rbkc.gov.uk/housing.aspx>.

5.2 An explanation of the types of tenancy used by the Council is provided in the appendix.

Introductory Tenancies

- 5.3 New social housing tenants housed to a Council home will first be granted a twelve month introductory tenancy unless they fall within the exceptions provided for by legislation (Housing Act 1996, sections 124 and 125): see paragraph 5.5 below. The tenancy will convert to a lifetime tenancy subject as long as the tenant does not breach the tenancy terms during the introductory tenancy period.
- 5.4 An introductory tenancy may be extended for a further six months in certain circumstances, bringing the introductory period to 18 months in total. This may happen, for example, where the tenant or tenants have breached the terms of the introductory tenancy but the Council decides that extending the introductory period is more appropriate than ending the tenancy altogether. Tenants who are unhappy that the introductory tenancy has been extended may seek a review of that decision.
- 5.5 In certain circumstances, residents may not be required to complete an introductory tenancy. For example, residents who have completed a twelve month introductory, starter or probationary tenancy or are existing social housing tenants will be offered a lifetime tenancy.

6. ENDING A SOLE TENANCY

- 6.1 Sole tenants may end their tenancy at any point if they wish to. To end a tenancy, the tenant must write to the Council providing at least 28 days' notice (a 'notice to quit') or they may surrender, or end, their tenancy more quickly where that surrender is accepted by the Council.
- 6.2 If the tenant has breached the terms of their secure tenancy, the Council may end the tenancy by giving the tenant the appropriate statutory notice as long as one of the grounds specified in the Housing Act 1985 has been met. This means that the Council will write to the tenant to say that the tenancy is being ended and explain the reasons for this. If the tenancy is no longer a secure tenancy the Council may end it by serving a notice to quit to the tenant. It may be necessary for the Council to go to court to gain a Court Order to end a tenancy and evict a tenant.
- 6.3 In certain circumstances tenancies must be ended, for example, if the tenant will not be able to occupy the property for a significant period of time; for example, tenants who move abroad or who must serve a prison sentence. In such circumstances and where appropriate, if the tenant does not end their tenancy the Council will take the correct legal steps to end the tenancy.

7. CREATING A JOINT TENANCY

- 7.1 A tenancy can be placed in the names of two individuals (rather than one), which is referred to as a joint tenancy. The tenancy agreement is the same for joint tenants as it is for sole tenants and each tenant must sign the tenancy agreement.
- 7.2 Joint tenants have equal rights to live in the home and can only be prevented from living there, or evicted from the property, by a Court Order. Each joint tenant is 'jointly and severally liable' meaning both tenants are equally responsible for meeting all the responsibilities of the tenancy including paying the rent. On the death of one joint tenant, the tenancy automatically continues for the surviving joint tenant (see section 9 Succession, below).
- 7.3 Where a joint application for rehousing was submitted to the Council, a joint lifetime secure tenancy is likely to be issued to the joint applicants. If the application for rehousing housing was made in one person's name it is likely that a sole tenancy will be issued.

Ordinarily, the Council will only offer joint tenancies to residents who are partners (married, in a civil partnership, or considered to be living together as partners).

- 7.4 There is no legal right for one tenant to add another tenant onto a tenancy. Where a sole tenants asks to create a joint tenancy, the Council will consider the request carefully. Both residents to the proposed joint tenancy will be interviewed separately to ensure both are equally willing to enter into the joint tenancy. The Council will not agree to the creation of a joint tenancy where the existing sole tenant gained the tenancy as a result of succession.
- 7.5 For a joint tenancy to be created, the following conditions must be met:
- the current tenant must not be the subject of any legal action relating to the property including possession proceedings or a possession order whether it is final, suspended or postponed
 - the proposed new tenant must have the necessary immigration status; for example 'access to public funds' and 'leave to remain in the United Kingdom'
 - the proposed joint tenants must not owe rent arrears or other debts to the Council.

8. ENDING A JOINT TENANCY

- 8.1 Joint tenancies may end for a variety of reasons which include:
- both joint tenants agree to relinquish or end the tenancy
 - relationship breakdown
 - the desire of one of the joint tenants to live elsewhere

- the Council takes legal action for breach of tenancy, secures and takes possession of the property
- 8.2 Where the joint tenants both agree to end the tenancy, they must jointly write to the Council providing at least 28 days' notice (a 'notice to quit') or they may surrender their tenancy where that surrender is accepted by the Council.
- 8.3 Where one of the joint tenants provides 28 days written notice of ending the tenancy, this will end the joint secure tenancy, meaning neither joint tenant will have the legal right to continue to occupy the property. Tenants who are part of a joint tenancy should seek legal advice from the Council or an independent agency before taking action to end the tenancy.
- 8.4 If the Council receives written notice from one of the joint tenants ending the joint tenancy, it will consider whether it is appropriate to grant a new sole secure tenancy for the home to one of the joint tenants. For example, where a joint tenant has experienced domestic abuse or criminal behaviour perpetrated by the other joint tenant and has served notice on the joint tenancy, the Council may consider it appropriate to grant sole secure tenancy to the tenant who has experienced domestic abuse or criminal behaviour (where it is safe and suitable to do so) so they can remain in their home. Tenants wishing to end a joint tenancy without the agreement of the other joint tenant should seek advice from the Council beforehand and may wish to seek advice from independent agencies. Requests for advice will be treated in confidence.
- 8.5 Where spouses or civil partners who hold a joint tenancy separate, a Court Order may be issued to end the joint tenancy and the Court may instruct for the creation of a sole tenancy in one person's name. Where this occurs, the Council will agree with the order and grant a sole tenancy in one person's name.
- 8.6 If one of the joint tenants wishes to be removed from the joint tenancy to live elsewhere they must first consider that they may not have the right to their own housing provided by the Council.
- 8.7 Where one tenant reports that the other has left, the Council must seek evidence that the absent tenant has permanently left before taking action to end the joint tenancy. The Council will consider whether it is appropriate to create a sole tenancy in the remaining tenant's name.

9. CONVERSION OF A FIXED TERM TENANCY TO A LIFETIME TENANCY

- 9.1 The Council issued fixed term flexible secure tenancies to all new tenants following the implementation of the January 2014 Tenancy Policy. The issuing of fixed term flexible secure tenancies for social housing properties will end when this Tenancy Policy is implemented.

9.2 Existing fixed term flexible secure tenants (with either five year tenancies and two year tenancies) will be granted a lifetime tenancy at the end of their current fixed term as long as they have not or are not breaching their tenancy. This may happen in one of two ways.

i) Existing fixed term flexible secure tenancies (both five year tenancies and two year tenancies) will automatically convert to a lifetime tenancy at the end of their current fixed term. Neither the tenant or the Council needs to take any action. Arrangements to review flexible tenancies have ended meaning there will neither be a policy nor procedure to review flexible secure tenancies once this Tenancy Policy has been implemented.

ii) Alternatively, the tenant can ask to surrender or end their current tenancy and to sign a new lifetime tenancy before the end of their current term.

Tenants will have the same legal rights whichever way they convert from a fixed term tenancy to a lifetime tenancy.

9.3 Existing introductory tenancies granted before the implementation of this Tenancy Policy are due to convert to a fixed term flexible secure tenancy at the end of the introductory period. The legal tenancy agreements signed by existing introductory tenants state that the tenant will move on to a fixed term tenancy at the end of the introductory period. This Tenancy Policy does not change this signed legal agreement.

Therefore, to make sure they are granted a lifetime tenancy after the end of the introductory period, the tenant will have to surrender or end their current tenancy agreement and sign a new lifetime tenancy agreement, as long as the introductory tenancy has not been terminated or extended for a breach of the tenancy agreement. If the introductory tenancy has been extended, the tenant will be asked to surrender their old tenancy agreement and sign a lifetime tenancy only if there no further breaches of the tenancy agreement during the period of the extension.

9.4 Surrendering an introductory / fixed term tenancy while signing a lifetime tenancy will not affect the tenant's rights or responsibilities.

9.5 Where the Council is taking legal action against an existing fixed term or introductory tenant for breaching their tenancy, the tenant will not be invited to surrender their existing tenancy in return for a lifetime tenancy.

10. SUCCESSION

10.1 The Council's policy on succession to a secure Council tenancy is the same as the statutory rights set out in the 2011 Localism Act. This means that the Council does not grant 'discretionary succession' beyond the statutory right to possession, except in the circumstances set out in the Grenfell Rehousing Policy April 2019, and the circumstances set out in the Wider Grenfell Rehousing Policy March 2019.

10.2 Only one right of succession is allowed for each tenancy. The different types of succession are set out below.

10.3 Where the tenancy started before April 2012, household members may succeed to a tenancy in the following three circumstances.

- i. If a joint tenancy had been granted, when one of the joint tenants dies the tenancy will automatically pass to the remaining resident tenant. This is known as 'survivorship'. There is no further statutory right to succeed to a tenancy after survivorship.
- ii. If a sole tenancy had been granted, when the tenant dies the tenancy will pass to tenant's spouse or civil partner as long as that person was living in the property when the sole tenant died.
- iii. If a sole tenancy has been granted and the tenant does not have a partner/ spouse, when they die the tenancy can pass to a member of their family (parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece) if:
 - that family member has lived in the property as their main home at the time of the sole tenant's death, and
 - that family member has lived there for more than twelve months

10.4 Where the tenancy started after April 2012, household members may succeed to a tenancy in the following two circumstances.

- i. If a joint tenancy had been granted, when one joint tenant dies the tenancy will automatically pass to the remaining tenant. This is known as 'survivorship'. There is no further statutory right to succeed to a tenancy after survivorship.
- ii. If a sole tenancy had been granted, when the tenant dies the tenancy will pass to tenant's spouse or civil partner as long as they were living in the property when the sole tenant died.

10.5 There is no further right of succession in the following circumstances, when the current secure tenant dies.

- the current tenant her/himself succeeded to the tenancy or gained it through survivorship
- the current tenant became the tenant because the tenancy was assigned to them as a potential successor (see section 10 for assignment)

- the current tenant was assigned the tenancy via the family courts following relationship breakdown and the original tenant was her/himself a successor
- the tenancy was previously an introductory tenancy and the introductory tenant was her/himself a successor
- when the tenant was granted a new secure tenancy of the same or another property by the Council, and it started within six months of the end of the earlier tenancy, and that tenant was a successor under her/his previous tenancy. This is relevant where a resident has succeeded to a property that is not suited to their needs (because it has spare bedrooms or is an accessible property not required by a member of the household) and the Council has offered an alternative secure tenancy under Ground 15a of the 1985 Housing Act.

10.6 The conversion from a fixed term tenancy to a lifetime secure tenancy at the end of the fixed term period does not create a new right to succeed. Therefore, if a succession or survivorship has happened during a flexible term (or during an introductory term that came before it) a further right of succession will not arise when the tenant signs a lifetime tenancy at the end of the fixed term.

10.7 Assignment by way of mutual exchange does not count as succession. However if the tenant was a successor, s/he will remain a successor in her/his new property.

10.8 The right of succession is linked to the tenancy and not the property. Therefore, in certain circumstances, set out below, a successor may be offered an alternative suitable council home by the Council instead of being allowed to remain in their current home. For instance:

- Under occupation - If the resident succeeding to tenancy is a family member (i.e. not the deceased tenant's spouse or registered civil partner), and the property is larger than they need, s/he will be offered one reasonable offer of a suitable alternative Council home either through the choice-based lettings system or by direct offer.

Or

- Accessible or adapted home - If the resident succeeding to tenancy is a family member (i.e. not the deceased tenant's spouse or registered civil partner), the property is accessible to or adapted for the needs of resident with mobility problems and the successor has no such needs, s/he will be offered one reasonable offer of suitable alternative Council home either through the choice-based lettings system or by direct offer.

If, in either case, the resident chooses not to accept and move into the suitable alternative home the Council may take appropriate legal action to end their right to live in the existing home (under ground 15A, Schedule 2 of the Housing Act 1985).

- 10.9 Household members under the age of 18 can succeed to a tenancy. In such cases, a trustee would need to be agreed to hold the tenancy in trust for the child. The trustee is not a guarantor and is not liable for the rent.

11. ASSIGNMENT

- 11.1 A tenant may assign their tenancy to another person, meaning that they transfer their 'legal interest' in the property to this person. The existing tenancy continues and the tenancy terms and conditions do not change, only the tenant changes.
- 11.2 There are three situations when a secure tenancy may be assigned: to a potential successor, due to a Court Order, or as a result of a mutual exchange. These conditions are set out in law.

Assigning the tenancy to a potential successor

- 11.3 The tenant may assign the tenancy to a member of the household who would be qualified to succeed the tenancy if the tenant died, as long as there has not been a previous succession or assignment of that tenancy. If the tenancy is assigned, the right to statutory succession is used up and there is no further right of succession or assignment.
- 11.4 A joint secure tenancy cannot be assigned to a potential successor.
- 11.5 An assignment must occur before the original tenant moves out of the property and it ceases to be his or her principal home.

Assigning the tenancy due to a Court Order

- 11.6 A tenancy can be assigned by Court Order in a number of circumstances, including family law or relationship breakdown. Where such a Court Order is made, the assignment instructed by the court will be accepted by the Council. The date of assignment is set by the court.

Assigning a tenancy through a mutual exchange

- 11.7 Where two social housing tenants exchange homes through a mutual exchange, they swap their tenancies by assigning them to each other IF both tenants hold either lifetime secure or lifetime full assured tenancies
- 11.8 If one social housing tenant holds a lifetime tenancy or lifetime full assured tenancy that started before April 2012, and the other social housing tenant

holds a fixed term (flexible) secure tenancy or an assured shorthold tenancy of at least two years, they *transfer* their tenancies to each other when they swap homes. This means that they are given a new tenancy so that each tenant retains at least their existing security of tenure.

12. POLICY EXCEPTIONS

- 12.1 In exceptional circumstances, the Council may consider variations to this policy where the law allows. The variation will depend upon the individual situation, any exceptional circumstances, the evidence available and due and diligent process. The decision and reasons for the decision will be recorded.

13. PREVENTING FRAUD

- 13.1 Tenants and prospective tenants must tell the truth when they are granted a Council tenancy, when they seek to assign the tenancy or otherwise seek to make changes to it. Any failure to include relevant information, to hide material facts or to attempt to obtain housing through false information will be treated as fraud. The Council treats housing fraud seriously and will take legal action against residents found to have committed fraud, which may include ending their tenancy.

14. REVIEWING OUR TENANCY POLICY

- 14.1 This Tenancy Policy will be subject to periodic review. Any substantial changes to this policy following such reviews will be approved by the Council's Lead Member only after full consultation with the Council's tenants.

TYPES OF TENANCY USED BY THE COUNCIL FOR COUNCIL TENANTS

Sole Tenancy

A sole tenancy is where only one person is named on the tenancy agreement. They are the only legal tenant even though other people may live in the property with them. A sole tenant is responsible for all aspects of the tenancy including the payment of rent.

Joint Tenancy

A joint tenancy is where two people are named on the tenancy agreement. They are 'jointly and severally liable', meaning both tenants are responsible for all aspects of the tenancy including the rent. For example, if rent arrears arise because one joint tenant does not contribute towards the rent, the other joint tenant is still responsible for those arrears.

Introductory Tenancy

Introductory tenancies provide a 12 month trial period during which the tenant must demonstrate the responsibility to maintain a council tenancy, for example by paying rent on time, looking after the home and not engaging in anti-social behaviour, harassment or nuisance. Introductory tenancies made be sole or joint.

Introductory tenants have fewer legal rights than lifetime secure tenants. During the introductory period, tenants cannot:

- take in lodgers
- sub-let part of their home
- swap their home (called an 'exchange') or transfer to another landlord
- buy their council home
- make improvements to their home other than decorating and minor improvements.

Periodic or lifetime secure tenancy

A periodic or 'lifetime' secure tenancy is the main type of legal tenancy used by the Council following the implementation of this Tenancy Policy. A tenant with a lifetime tenancy has a variety of legal rights which include the following:

- to live in the home permanently as long as the terms of the tenancy are not breached
- to buy the home at a discount, after a qualifying period (the 'right to buy')

- to pass on the home to someone in the family living in the property when the tenant dies, subject to certain conditions ('the statutory right to succeed')
- to take in lodgers and sub-let part of the home (the tenant should inform the Council when this happens)
- to have the home repaired and maintained
- to carry out improvements to the home
- to exchange the home for another social housing property
- to be consulted on housing management matters

Lifetime secure tenants also have a number of responsibilities which include the following:

- to keep to the rules in the tenancy agreement
- to pay the rent
- to be a good neighbour and not harass or annoy other tenants and residents

Flexible or fixed term secure tenancy

A flexible or 'fixed term' secure tenancy is the type of tenancy used by the Council between January 2014 and the implementation of this Tenancy Policy.

A flexible tenancy carries the same rights and responsibilities as a periodic 'lifetime' tenancy, but such tenancies issued by the Council lasted a maximum of five years (or in limited circumstances two years). Flexible tenancies would be subject to a review towards the end of the tenancy and while there was a general presumption to renew for another fixed term, if certain conditions were met a new tenancy would not be granted.