

## Exeter City Council Housing - Tenancy Policy

### 1. Introduction

- 1.1 Tenancy policies were introduced as part of the wider package of social housing reforms set out by the Government in *“Local decisions: a fairer future for social housing”*. The reforms include the introduction of fixed term tenancies and affordable rent, changes to allocations and homelessness and the promotion of increased mobility for social tenants. These proposals are being implemented through the Localism Act and changes to the regulatory standards that all social landlords are expected to meet.
- 1.2 The Tenancy Policy, which the regulator’s new tenure standard require all housing providers to publish, sets out how Exeter City Council (ECC) will use the new range of options that are available to us. It also clarifies how we will support tenancy sustainment and prevent unnecessary eviction, tackle tenancy fraud and grant discretionary succession rights. The purpose is to provide clarity to tenants, ensure consistency and transparency of approach protecting the Council from potential legal challenges. It has been written with reference to the ECC Tenancy Strategy.
- 1.3 It will be used to ensure that the right type of tenancy is allocated to each tenant, that the under-occupation of properties is addressed effectively and that we can provide family and/or adapted housing where this is required. It also sets out the circumstances in which we will charge affordable rents and use flexible tenancies.
- 1.4 The ways in which each type of tenancy can be let and brought to an end are set out in law (Housing Acts 1985 and 1996, and the Localism Act 2012.)
- 1.5 The Assistant Director Housing and Contracts will be responsible for applying this policy so as to ensure that the right people are placed in the right property on the right type of tenancy. The Tenancy Services Manager will also be responsible for ensuring that tenants are given support to maintain their tenancy and that the appropriate action is taken where problems occur and where tenancy fraud is suspected.
- 1.6 The Executive Committee will be responsible for sanctioning any changes to this policy.

### 2. Purpose

This policy aims to ensure that:

- The right people are living in the right property on the right type of tenancy
- Households can be moved from properties which are no longer suitable for their needs
- Tenants will be encouraged to move to more suitable accommodation if the property becomes too big or if their needs or circumstances change
- Tenants will be helped to sustain their tenancies for the fixed or long term, but where problems occur, particularly at the start of the tenancy, action can be taken quickly to either change the behaviour, or, failing that, the tenancy can be ended and the property offered to someone more likely to comply with the tenancy terms and conditions
- Tenancy fraud is identified and tackled
- We balance the needs of individual tenants against the need to manage a scarce public resource which is in high demand.

### 3. Policy Consultation

ECC has taken part in the Devon-wide consultation regarding the Tenancy Strategy. The Tenants have been consulted about the proposed policy through the tenants conference in September 2011 and through an extensive survey carried out by the Resident Auditor Team.

### 4. Related Policies and Strategies

This policy is related to the following Exeter City Council policies:

- Tenancy Strategy
- Allocations and Lettings Policy
- Neighbourhood Management Policy
- Devon Home Choice Policy
- Starting Tenancies Policy.

### 5. Tenancy Types and Conditions

Currently we have five different types of tenancies.

#### 5.1 Introductory Tenancy

Generally all tenants new to ECC are initially given an introductory tenancy. The purpose of an introductory tenancy is to allow ECC to be satisfied that the tenant or tenants are suitable to have either a lifetime secure tenancy or a flexible fixed term tenancy.

However tenants transferring from another social landlord may go onto either a secure or flexible tenancy.

This does not apply to tenants given temporary accommodation who will be given a non- secure tenancy.

Introductory tenancies usually last for twelve months from the tenancy start date but if the tenants conduct raises concerns then the introductory tenancy can be extended for a further 6 months, giving 18 months in all.

Before the start of the introductory tenancy, tenants will be told which kind of tenancy (secure or flexible) they will be granted at the end of the introductory period.

After the introductory period the tenancy automatically becomes either a secure tenancy or a flexible tenancy, unless we have begun proceedings to end the tenancy due to a breach of the tenancy agreement.

Introductory tenants have most of the same rights as secure or flexible tenants but there are some rights that they do not have. They do not have right to:

- Take in lodgers
- Sublet part of the home
- Make any improvements to the property

- Be compensated for any improvements to the property
- Exchange their home with another tenant.

Introductory tenants do not have the Right to Buy their property, but the period spent as an introductory tenant will count towards the qualifying period for the Right to Buy.

## 5.2 Secure Tenancy

Most of our tenants have a secure tenancy. If ECC wish to end this type of tenancy then a ground for possession is needed (see Schedule 2 of the Housing Act 1985) followed by a possession order from the courts.

Under the Housing Act 1985 secure tenants have a number of rights which include:

- The right of succession
- The right of assignment in certain cases
- The right to take in lodgers and sublet part of the property
- The right to request a transfer to alternative accommodation
- The right to exchange their home with another council or housing association tenant
- The right to information
- The right to be consulted and involved
- The right to make improvements to their home
- The right to compensation for improvements
- The right to repair
- The Right to Buy in certain cases.

## 5.3 Flexible Tenancy

Introduced through the Localism Act, a flexible tenancy is one that is offered for a specific period of time, as opposed to the traditional 'lifetime tenancies'. The period of time is known as the 'fixed term'.

From **date to be agreed** ECC will start to grant its prospective tenants a flexible tenancy, rather than a secure tenancy, after the introductory tenancy has ended. These flexible tenancies will be granted to most tenants in general needs housing. There will be some exceptions: for example, certain tenants transferring from secure tenancies or some mutual exchanges, these people will be granted secure tenancies. Older tenants (that is tenants over 55 years old in older persons' housing) and disabled tenants in supported housing will also be granted secure tenancies.

The length of the flexible tenancy will be for five years in almost all cases. But the tenancy can be reissued for another fixed term at the end of this period. The first five year period will commence at the end of the introductory tenancy.

In exceptional circumstances we will consider offering a flexible tenancy on less than five, but more than two, years. The decision to do so will be made on a case by case basis. Examples of this may include where a tenant has committed anti-social behaviour and we are not able to put them on an introductory tenancy.

The length and terms of the flexible tenancy will be explained to all tenants concerned before they take on the introductory tenancy.

Tenants on a flexible tenancy have the Right to Buy their property (after a qualifying period).

Tenants on a flexible tenancy have the right to make improvements to the property if they have obtained written permission from the Council, or to be compensated for any improvements. The Council reserves the right to seek compensation from the tenant where no permission has been granted.

Flexible tenancies are subject to the same grounds for possession and succession as secure tenancies.

To end the flexible tenancy we must apply to the court for a possession order.

#### 5.4 **Demoted Tenancy**

Where there have been incidents of antisocial behaviour we may elect to go to court to obtain a demoted tenancy. Demoted tenancies last for one year.

Where a secure tenancy is demoted and the demotion period completed successfully, the demoted tenancy will automatically become a secure tenancy.

Where a flexible tenancy is demoted and the demotion period completed successfully, the demoted tenancy will automatically become a secure tenancy. If a flexible tenancy is required, we must serve a notice on the tenant prior to the end of the demotion period, informing them that the tenancy is to be a flexible tenancy and specifying the length of the fixed term and other express terms of the tenancy. The length of the fixed term after the demotion period has ended will be determined as set out above.

Demoted tenants do not have the same rights as secure tenants. For example they do not have:

- The right to exchange
- The right to succession
- The right to take in lodgers
- The right to sublet.

Also the Right to Buy is suspended until the tenancy is no longer demoted. The time spent as a demoted tenant does not count towards any discount.

#### 5.5 **Non-secure Tenancy**

Very few of our tenants will have a non-secure tenancy. These tenancies are only given to tenants living in temporary accommodation, such as private sector leased accommodation, in discharge of a homelessness duty or function under Part VII of the Housing Act 1996 (as amended).

These tenancies do not have the same security of tenure or rights as secure tenants.

## 6. Tenancy Agreements

- 6.1 Our tenancy agreements will be written in plain English, in a style easily understood by tenants. It has been accredited by the Plain Language Commission as a clear English Standard winning document. They will set out the rights and obligations of both the tenant and the landlord.
- 6.2 Tenants will be given a copy of the tenancy agreement at the start of the tenancy and will have the terms explained to them at the sign up meeting.

## 7. Affordability and Affordable Rent

### 7.1 Definition of affordability:

A household can be considered able to afford market renting in cases where the rent payable is up to 25 per cent of their gross household income (Communities and Local Government). The Tenants and Leaseholders Committee (TALC) has recognised the use of the Local Housing Allowance (LHA) as a standard definition of affordability. Service charges, if applicable, will be additional and reflect the cost of the service provided to each tenant.

### 7.2 Definition of social rent:

The level of rent that ECC charge for the majority of its properties (excluding those charged at 'affordable rent'). Social Rent is currently calculated using guideline target rents which are determined through the national rent regime. Currently the annual rent increase is based on RPI in September + 0.5% (+/- £2). It is anticipated that Exeter City Council will achieve target rents by 2015/16. Members approve any rent increase annually and are applied from April.

### 7.3 Affordable rent:

This is defined as up to 80% of market rent. ECC will charge affordable rent at levels no higher than the relevant Local Housing Allowance at the time as we believe that this is a fair reflection of affordability.

The level of affordable rent charged will be established once we have reviewed our Allocations Policy in line with Government legislation and the needs of the City.

## 8. Reviewing the tenancy

- 8.1 We will normally renew a flexible tenancy unless there are specific reasons not to.
- 8.2 We will begin the review period of all flexible tenancies at least 12 months prior to the end of the fixed term. We will write to tenants to tell them the outcome of the review. Where the tenant(s) circumstances have not changed significantly over the course of the fixed term we will renew the flexible tenancy for a further fixed term, which may or may not be for the same period, it could be more or it could be less depending on the circumstances of the household at the time of renewal.
- 8.3 A different rent may also be charged on a tenancy review depending on individual circumstances.
- 8.4 The following factors either in isolation or in combination will be taken into account in deciding whether to renew the flexible tenancy and on what terms:

- The property has become larger than the household requires (two or more bedrooms in excess of requirements)
- The property has become overcrowded
- The level of income of the household
- The property has adaptations which are no longer required by the current tenant or a member of their household
- The rent account is in arrears at the time of the review or has been in arrears for at least six out of the last twelve months. Exceptions can be made for tenants getting assistance with their rent from Housing Benefit, those who we consider to have only minor rent arrears, or those who have made an agreement to pay by instalments and have kept to this agreement
- There has been a serious breach or breaches of a tenancy condition or conditions
- We intend to demolish, redevelop or dispose of the property within the next five years. In these situations we will consider offering a short term tenancy of the property or suitable alternative accommodation.

8.5 In cases where the flexible tenancy is not being renewed, we will give at least six months notice that the fixed term is coming to an end, and a formal notice seeking possession will be served at least two months prior to the end date. We will make it clear that we do not propose to grant another tenancy and the reason or reasons for that decision.

## **9. Ending the tenancy**

- 9.1 When the tenant gives notice or dies we carry out pre-termination visits with all our tenants, or with the next of kin. During this visit we:
- Check the condition of the property and garden
  - Ensure the rent account is up to date
  - Agree with the outgoing tenant which items can be left in the property and which must be removed
  - Ensure that the outgoing tenant is aware that the property must be left in a good and clean state, and all rubbish and personal items (except those agreed above) must be cleared from the property
  - Read the meters
  - Request a forwarding address, contact details and phone numbers
  - Determine any recharges that may be due.
- 9.2 If there is any rent due to the end of the tenancy we will inform the tenant and expect the amount due to be paid in full before the tenancy ends.
- 9.3 We will provide details for relatives of deceased tenants explaining to them the steps that need to be gone through to end the tenancy and the information we require from them.
- 9.4 All tenants whose flexible tenancies are not going to be renewed will be offered advice and assistance from the Council's Housing Options service. The factors set out at paragraph 8 will all be taken into consideration and where the tenancy is coming to an end through negative tenant behaviour (e.g. arrears or anti-social behaviour) the Housing Options Team will advise on options to secure private rented accommodation or to make a homeless application in line with our existing policy and procedures. If the tenancy is coming to an end as the property would be better used by another tenant (e.g. under-occupation, no longer requiring adaptations)

the Housing Options team/Tenancy Services Team will be make 3 reasonable offers of alternative accommodation (depending on the tenants circumstances) this could include:

- An alternative Exeter City Council property
- A property with a Registered Provider
- A Shared Ownership property
- Private Rented through the council's EXtraLet scheme.

9.5 If three reasonable offers are made and then refused we will then seek to take possession of the property.

9.6 We will give at least six months notice that the tenancy is coming to an end, and a formal notice seeking possession will be served at least two months prior to the end date. At the end of the tenancy we will carry out a pre-termination visit as outlined above.

## **10. Sustaining Tenancies**

10.1 We are very keen that tenants are able to manage their tenancies properly. We are also keen that tenants do not breach the terms and conditions of their tenancy and that they do not get into rent arrears or carry out acts of anti-social behaviour.

10.2 We carry out an in-depth sign up interview with all new tenants. This covers:

- Ensuring the tenant understands the terms and conditions of the tenancy agreement
- Methods and frequencies for paying their rent and accessing benefits
- Checking if they have any particular support needs
- Highlighting opportunities to get involved
- Explaining how to report repairs and our service standards.

10.3 We aim to visit all new tenants within six weeks of moving into their property to check that everything is going well. We will check whether they are paying their rent regularly, whether they are receiving their benefits, and that they are keeping to the terms of their tenancy conditions.

10.4 When tenants move into one of our older persons accommodation we carry out an assessment with them to determine what they require and the level of individual support they might need, for example whether it is a visit every other day, or a phone call once a week.

10.5 We will visit or telephone any tenants who are identified as having problems managing their tenancy. We will seek to discuss the problems with them. We will seek to explain that it is important that they stick to the terms of the tenancy agreement.

10.6 For tenants who are struggling to pay their rent we will seek to discuss what options are available to help them, and put them in touch with other agencies that may also be able to help. With any reminder notices, or when notices for rent arrears are served, we send out contact details for our own Income Officers and other independent debt advice agencies. Our newsletters contain regular articles stressing the importance of contacting us as early as possible if a tenant is having difficulty in paying their rent.

- 10.7 Where we identify that a tenant needs particular support to manage in their home and tenancy we will put them in touch with the relevant agencies such as social services.
- 10.8 Where there are issues of anti social behaviour we will follow the guidelines set out in our Anti-Social Behaviour Policy and Procedure when dealing with and tackling reports of anti social behaviour.

## **11. Tackling Under-occupation**

- 11.1 We recognise that we have a large number of family properties, particularly three bedroom properties, which are under-occupied.
- 11.2 Changes to Housing Benefit regulations through Welfare Reform where properties are under occupied could see restrictions to levels of housing benefit, resulting in tenants having a greater rent burden.
- 11.3 We have a downsizing scheme which provides financial assistance to people who move to a smaller property and so free up a family sized property. This scheme also provides help and support with moving arrangements.
- 11.4 We give priority on Devon Home Choice to people wishing to downsize. Anyone wishing to downsize will be placed into Band B.

## **12. Adapted Properties**

- 12.1 Under our current secure tenancy agreement, if a tenant is living in a property which has been built or adapted for a person with a disability, and the tenant or their family no longer needs that type of home, we may take steps through the Courts to end the tenancy. We will offer the tenant other suitable accommodation.
- 12.2 For tenants on a flexible tenancy living in a property which has been built or adapted for a person with a disability, the presumption will be that we will only renew the tenancy if there is still a requirement within the household for that kind of property (subject to the points set out at paragraph 8 above). This is where an adaptation has costs more than £1000.

## **13. Transfers**

- 13.1 For Exeter City Council secure tenants who transfer to another property, we will ensure that they are given another secure tenancy.
- 13.2 This does not apply to tenants who choose to move to accommodation let on affordable rent terms. In these circumstances existing tenants may be offered a flexible tenancy.

## **14. Mutual Exchanges**

- 14.1 Mutual exchanges take place via a deed of assignment where each tenant steps into the other's shoes and takes over the other tenant's tenancy type and terms. New tenancies are not signed.
- 14.2 Under the Localism Act if at least one of the tenants has a secure tenancy begun before April 2012 and at least one of the tenants is on a flexible tenancy, then such exchanges must be done by surrender and granting of new tenancies.



- 14.3 In these circumstances, we will grant the tenant whose secure tenancy predated April 2012 a secure tenancy. This will ensure that existing tenants (before April 2012) retain similar security of tenure to that of their original tenancy.
- 14.4 As a landlord we can still refuse an exchange of this nature (see Schedule 3 of the Housing Act 1985). We have 42 days to make that decision.
- 14.5 We subscribe to Home Swapper; an internet based mutual exchange service.

## 15. Succeeding to a Tenancy

- 15.1 For our secure tenancy agreements that commenced before **date to be agreed** the following people can succeed to the tenancy, if they have been living in the property as their principal or only home:
- The tenant's spouse or civil partner; or
  - If no spouse or civil partner, another member of the tenant's family that has lived with the tenant throughout the period of twelve months ending with the tenant's death.
- 15.2 Only one succession is allowed by the Housing Act 1985.
- 15.3 If the property is not suitable for the relative, or it is under-occupied, we may request that they move to a more suitable property. We will provide advice and assistance with such a move in a sensitive manner but in line with our succession and assignment policies in such cases such as of extreme under occupation, a legal notice will have to be served between six and twelve months after the previous tenant's death, if agreement can not be reached.
- 15.4 For flexible tenancies and secure tenancies that commenced after **date to be confirmed** there will only be a statutory right of succession to a spouse or civil partner or co-habitee. Legislation gives Local Authorities the power to grant additional succession rights. As such we may allow a two year non-renewable fixed term tenancy to a family member who would have succeeded under the former system to give them sufficient time to find alternative accommodation.

## 16. Tackling Tenancy Fraud

- 16.1 It is important that the people living in our properties are those who need them most. We take various steps to ensure that this is the case, from ensuring we allocate the property to the most appropriate person, to following up allegations of alleged misuse.
- 16.2 For all new tenants we take copies of photo identification such as passport or driving licence. Where there is no available photo ID we will take a photograph of each tenant.
- 16.3 From time to time we may undertake an "illegal sub-letting tenancy audit" with a series of in-depth visits to a number of properties to check identification and to ensure that the occupant is indeed the tenant.
- 16.4 We follow up any reports of unoccupied properties or sub-letting and take action if cases of abuse are discovered. As well as this we carry out tenancy checks when visiting some of our properties. We encourage staff and tenants to report any suspected incidents of tenancy.

16.5 We issue press releases about tenancy fraud and have articles in our newsletters.

## **17. Appeals and requests for reviews of decisions**

17.1 Tenants have the right to request a review of a decision, within 21 days, as to the length of the flexible tenancy being offered. Such a request should be made in writing to an independent and more senior officer who was not involved in the original decision.

17.2 Tenants have the right to request a review of a decision not to renew a flexible tenancy within 21 days of the first notice. Such a request should be made in writing to an independent and more senior officer who was not involved in the original decision.

17.3 The review procedure will be that as set out in the 'Flexible Tenancies (Review Procedures) Regulations 2012'.

## **18. Equality Impact Considerations**

We will carry out an equality impact assessment of this policy.

## **19. Performance Monitoring**

We will review the number of each type of tenancy annually. In the future we will review what happens at the end of a flexible tenancy, how many are terminated and for what reasons. We will also review the assistance given to these tenants.

## **20. Policy Review**

The policy will be reviewed at least every three years or sooner if new guidance or legislation is published.