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# Tenancy Policy

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## 1.0 Introduction

1.1 This document is Ashfield District Council's (ADC) Tenancy Policy.

1.2 This document sets out Ashfield District Council's policy in relation to the following:-

- *The types of tenancies that Ashfield District Council will grant*
- *The arrangements for the creation of tenancies, the ending of tenancies and the assignment and succession of tenancies*
- *Ashfield District Council's approach to tenancy management, including interventions to sustain tenancies, preventing unnecessary evictions and tackling tenancy fraud*

1.3 This Tenancy Policy fulfils our statutory requirements and has been developed with due regard to the Strategic Tenancy Strategy. This policy will operate in conjunction with ADC's Housing Allocation Policy.

1.4 We will ensure that this policy complies with relevant legislation by utilising customer information to ensure that service delivery and communication with customers is in line with their needs and requirements, whilst ensuring that our procedures are fair and transparent.

1.5 The key principles of the Tenancy Policy are to confirm:

- *The types of tenancies available*
- *That all tenancies will be created correctly*
- *That all tenancies will be terminated correctly*
- *That all tenancies will be assigned correctly*
- *That tenancy succession will occur only where there is an entitlement to succeed to the tenancy*
- *That tenants will be made aware of the opportunity to exercise the rights granted to them when they become tenants*
- *We will comply with our obligations in carrying out our responsibilities to tenants*
- *We will treat all tenants in a fair and non-discriminatory way, in accordance with the Equality Act 2010*
- *We exercise discretion, when we are in a position to do so, in a reasonable, fair and equitable manner*

## **1.6 Relevant legislation and regulatory compliance**

We will ensure that we manage tenancies in accordance with best practice and all relevant policy and legislation, including the following:-

- Housing Act 1980
- Housing Act 1985
- Housing Act 1996
- Matrimonial Causes Act 1973
- Matrimonial and Family Proceedings Act 1984
- Children Act 1989
- Civil Partnership Act 2004
- Crime and Disorder Act 1998
- Anti-Social Behaviour Act 2003
- Equality Act 2010
- Disability Discrimination Act 2005
- Localism Act 2011
- ADC's Housing Allocations Policy
- The Prevention of Social Housing Fraud Act 2013

## **2.0 The Creation of Tenancies**

2.1 We will comply with legislation and good practice in relation to the creation of tenancies.

2.2 We will offer tenancies to applicants for re-housing in accordance with the Housing Allocation Policy.

### **2.3 Types of Tenancy**

#### **Introductory Tenancies**

All new tenancies granted to tenants who have not previously held security of tenure, will be introductory tenancies. Introductory tenancies will last for 12 months. The introductory period ends 12 months after the date of the commencement of tenancy. During the 12 months, introductory tenancies will be reviewed at regular intervals to ensure that tenants' are conducting their tenancy in a satisfactory manner. If tenants' breach their tenancy agreement, they may be evicted. Introductory tenancies may be extended for up to 6 months.

#### **Secure tenancies**

All introductory tenants will automatically become secure tenants on the first anniversary of the date their tenancy commenced, unless either:

- Possession proceedings during the 12 month introductory period have commenced;

Or

- The introductory tenancy has been extended for a further 6 months. In such instances, a notice of extension will be served on the introductory tenant at least 8 weeks before the expiry of the introductory tenancy. The notice will advise the introductory tenant of the reasons why the introductory tenancy has been extended and provide information about their right to ask for the decision to be reviewed.

## **Creation of tenancies for persons aged between 16 and 18**

### **Equitable tenancies**

Where the tenant is under the age of 18, they will be given an equitable tenancy. The tenancy takes effect as a promise by the landlord to grant a legal tenancy if requested by the equitable tenant, either (if the request is made before the tenants turns 18) to a trustee to hold on the minors behalf or (if the equitable tenant has turned 18) to them directly. The trustee will be a responsible adult, family member or support agency.

## **3.0 The ending of tenancies**

- 3.1 Termination of tenancies will fully comply with legislative requirements, ensuring that either tenant is provided with the appropriate form of notice or by court order. If it is considered the tenancy has been surrendered by the former tenant, the tenancy will end.

### **3.2 Notice to quit**

Four weeks statutory notice to quit will be accepted from a tenant(s) confirming the intention to end the tenancy. At the end of the four week period the tenancy will end.

The four weeks statutory notice must be in writing, signed and dated by a tenant of the property.

On receipt of a notice to quit, the property will be inspected and advice will be given to the tenant(s) of any outstanding repairs or redecoration for which tenant(s) are responsible. On the termination of the tenancy the property will be inspected and any outstanding repairs or redecoration for which the former tenant(s) were responsible, will be recharged to the former tenant(s).

### 3.3 **Joint tenants**

A notice to quit will be valid and accepted where it has been signed by one or both tenant(s) who hold the tenancy.

Where one joint tenant seeks to end the tenancy by means of the correct notice to quit, this will serve to end the tenancy. During the notice period, investigations will be carried out to establish:-

- *The intentions of the tenant who served the notice to quit and the reasons for serving the notice to quit*
- *Whether the other tenant(s) wish to surrender the tenancy*
- *Alternative options available to the remaining tenant(s), for example assignment*

Where the tenant who served the notice to quit wishes to withdraw the notice, we will exercise our discretion on a case by case basis.

### 3.4 **Joint tenancies – Domestic abuse**

Where a tenant holding a joint tenancy leaves their home as a result of domestic abuse from their spouse/civil partner/co-habitee, has had their application under relevant legislation accepted and provides the correct notice to quit, investigations will be undertaken into the conduct of the tenancy.

Should there be evidence to support allegations of domestic abuse we will:

- *Inform the remaining tenant that notice to quit has been received and that their tenancy will terminate on its expiry date*
- *Refer the case to the Nottinghamshire County Council's, Children's Social Care Department Referral and Assessment Team, if there are children involved*
- *Inform the remaining tenant of our obligation or not to offer them alternative accommodation, under the provisions of relevant legislation*
- *Refer the case to other relevant organisations as appropriate*

If, following the expiry of the notice of quit, the former tenant is still in occupation of the accommodation, we will regard them as unauthorised occupiers and possession through court action will be taken.

### 3.5 **Remaining Occupants**

If any remaining occupant(s) wish to stay in the property and the accommodation is suitable, consideration may be given to granting them a new tenancy.

In circumstances where the remaining occupant(s) qualifies to succeed and no right of succession is available, or has experienced a relationship

breakdown, wishes to stay and the existing accommodation is not suitable; they will be placed in Band 1 for a limited period of time in accordance with the provisions and conditions set out in the Housing Allocations Policy. During this period the occupant is an unauthorised occupant and will be charged for use and occupation whilst they seek suitable alternative accommodation.

Should the remaining unauthorised occupant(s) refuse an offer of alternative accommodation, we will pursue possession through the Court.

Where the remaining occupant does not qualify for Band 1 priority on the Housing Allocations Policy or does not qualify for re-housing, we will pursue possession through the Court. Use and occupation charges will be levied until the date possession is obtained.

### **3.6 Use and Occupation Charges**

Use and Occupation charges will be levied against occupant(s) remaining at the property where a secure tenancy ends. Use and Occupation charges will usually cease with the individual(s) vacating the property, by possession proceedings through the courts, by re-housing through the Housing Allocations Policy or voluntarily.

### **3.7 The death of sole tenant and occupiers**

In the event of the death of a sole tenant and upon receipt of a valid Death Certificate, written notice to terminate the tenancy will be accepted from the late tenant's next of kin, personal representative, or executor of the late tenant's estate. This will set out the date that possession of the property will be provided. This will normally be four weeks, unless there are individual circumstances that necessitate an extension or reduction to the four week period.

On recovering possession of the property, the property will be inspected. Any outstanding rent liability and repairs or redecoration for which the late tenant was responsible will be recharged to the late tenant's estate.

### **3.8 Death of a sole tenant who was intestate and had no living relatives**

Where a tenant has died without a will or has no known living relatives, following investigations we will serve a notice to quit on the Public Trustee.

On recovering possession of the property, the property will be inspected. Any outstanding rent liability and repairs or redecoration for which the late tenant was responsible may be recharged to the Public Trustee.

### **3.9 Transfer to another home owned by the council**

Where an ADC tenant accepts an offer of a tenancy for another ADC property, or indeed of any other landlord, the tenant will lose their existing secure tenancy status once their new tenancy commences.

### **3.10 Execution of an eviction warrant**

Where we have regained possession of a property following the execution of an eviction warrant by a Court Bailiff, we will secure the property and inspect it.

Any outstanding rent liability (or Mesne Profit in terms of a non-secure tenancy), repairs and/or redecoration for which the former tenant was responsible will be recharged to them.

### **3.11 Abandonment**

Where it is brought to our attention that a property appears to have been abandoned, we will carry out substantial investigations to establish that the tenant(s), by their actions, has surrendered their tenancy.

Following the report of the suspected abandonment, action will be taken to secure the property.

Where we are satisfied that the tenant(s) by their actions, have surrendered their tenancy, a notice to quit will be served on the property and possession of the property will be taken on the expiry of the notice.

Any outstanding rent liability and repairs or redecoration for which the former tenant was responsible will be recharged to them.

## **4.0 Assignment of tenancy**

We will act in such a way as to ensure that tenants are able to exercise their right to assign the tenancy either through exchange, assignment to a person qualified to succeed to the tenancy or by a court order.

### **4.1 Assignment by way of exchange (mutual exchange)**

Every secure tenant has the right to assign their tenancy by means of exchange. Information on mutual exchanges will be provided to all tenants who are considering applying to exchange their home with another tenant. When tenants assign their tenancy by means of exchange with another tenant, they are accepting the property in its existing condition.

Where a secure tenant(s) applies to exchange their tenancy with another secure or assured tenant, landlord consent is required. Consent will only be

withheld as specified and set out in the relevant legislation. The grounds include:-

- *The tenant or assignee is obliged to give up possession under a court order*
- *Proceedings for possession have begun against the tenant or assignee under Schedule 2 Grounds 1-6, or a notice seeking possession has been served on one or more of these grounds and is still in force*
- *The accommodation afforded by the dwelling house is substantially more extensive than is reasonably required by the proposed assignee*
- *The extent of the accommodation is not reasonably suitable to the needs of the assignee and their family*
- *The accommodation was let to the tenant in connection with the tenant's employment, relating to non-housing purposes*
- *The dwelling house was either purpose built or substantially adapted to make it suitable for occupation by a physically disabled person, and if the assignment were made there would no longer be such a person residing in the dwelling*
- *The accommodation is special needs accommodation, let for occupation by persons with special needs, and if the proposed assignment were made, there would no longer be such a person residing at the property*

Where a tenant or assignee has breached conditions of their tenancy agreement, consent to the proposed exchange will be made conditional on the breach being remedied.

Where consent is withheld, the tenant will be informed of the grounds upon which it has been withheld.

All tenants who apply to assign their home by means of exchange will be advised in writing whether consent to the assignment is granted within 42 calendar days of making their request.

Where the consent to the exchange is conditional on a breach of tenancy being remedied, we will inform the tenant of this in writing, indicating what actions they have to take to remedy the breach of tenancy.

Where consent is granted a deed of assignment must be signed by both parties.

Where the tenant is exchanging with a tenant of another landlord, we will contact the other landlord to ensure that the deeds of assignment are signed by both parties before the exchange is affected.

#### 4.2 **Assignment in accordance with court orders**

In the event of relationship breakdown between a married couple or civil partners, the Court will grant a property adjustment order to one of the parties.

We will assign both introductory and secure tenancies in accordance with an order made under relevant legislation.

We will assign the tenant who benefitted from the property adjustment order that the tenancy has been assigned to them within 10 working days of receipt of the court order and in doing so we will advise them of their rights and responsibilities, the date the tenancy was commenced, the balance of the rent account and whether the tenancy has had any notices served upon it which are yet to expire.

We will also write to the former tenant, advising them that their tenancy has ended.

#### 4.3 **Assignment to a person qualified to succeed to the tenancy**

Both introductory and secure tenants may assign their tenancy to another person. There can be one assignment, with no exceptions.

Assignment requests will be considered in line with the relevant legislation. The assignment will only be made to a person who would be entitled to succeed to the tenancy should the tenant have died immediately before the assignment.

Where a secure tenancy has been assigned in this way, the assignee will count as a successor, and there can be no further succession to the tenancy.

Assignment does not involve the creation of a new tenancy, therefore, any outstanding notices will continue to apply and the assignee will also assume responsibility for any rent arrears.

We will consider a person qualified to succeed to the tenancy if they occupy the dwelling as their only or principal home and is either:-

##### **Secure tenancies that started before April 2012**

- *Where there has been no previous assignment, the tenants spouse or civil partner or another member of the tenant's family and they have resided throughout a period of twelve months.*
- *Members of the family include parents, grandparents, children, grandchildren, brother, sister, uncles, aunts, nephews or niece (as per the Housing Act 1985).*

## **Secure tenancies that started after April 2012**

- *An assignee must be a tenant spouse or partner, as per S.86a Housing Act 1985*

For the purposes of this policy:-

- *A relationship by marriage is treated as a relationship of blood*
- *A relationship of half-blood is treated as a relationship of whole blood*
- *The stepchild of a person will be considered as his or her child*
- *An illegitimate child will be considered as the legitimate child of the mother and the reputed father*
- *A former foster child aged over 18 will be considered as the legitimate child of the tenant*

Tenants wishing to assign their tenancy must apply in writing.

Where we receive an application we will reach a decision within 10 working days of receipt of all the required information.

We will only withhold consent on the following grounds:-

- *The existing tenant previously succeeded to the tenancy*
- *The tenancy was assigned to the existing tenant*
- *We are in the process of taking legal action to recover possession of the property*
- *The property is substantially larger than required by the proposed assignee*
- *The proposed assignee is not a person who would be entitled to succeed to the tenancy, if the tenant died immediately before the assignment*

In instances where we provide consent to the proposed assignment, we will write to the tenant and the proposed assignee inviting them to sign the deed of assignment. We will advise the assignee of their rights and responsibilities as a secure tenant, the date the tenancy commenced and the balance of the rent account.

## **5.0 Succession**

When the death of a sole tenant is confirmed, we will undertake investigations to establish whether a right of succession exists to any person. Succession will only be granted to someone who is entitled to succeed to the tenancy. A secure tenancy cannot be 'gifted' in a will. If the deceased tenant held a joint tenancy, the surviving joint tenant will become a sole tenant by succession.

### **Secure tenancies that started before 1<sup>st</sup> April 2012**

For secure tenancies that were created before April 2012 (and there has been no previous succession):-

- *The tenant's spouse or civil partner will be legally entitled to succeed to the tenancy as long as they were occupying the property as their only or principal home at the time of the tenant's death.*
- *If the deceased tenant did not have a spouse or civil partner who was occupying the property as their only principal home at the time of the tenant's death, certain members of the tenant's family may qualify to succeed to the tenancy as long as their only principal home at the time of the tenant's death and had been living with the tenant for at least 12 months prior to death. However, where the property is larger than reasonably required by the successor tenant and/or it has been adapted for a disabled person, the successor tenant may be asked to move to a smaller property.*

### **Secure tenancies that started after 1<sup>st</sup> April 2012**

For secure tenancies that started after 1<sup>st</sup> April 2012 there is a statutory right to only one succession to a spouse, civil partner or cohabitee. There is no statutory right of succession for other family members. The spouses and partners must have been occupying the home as their principal home at the time of tenant's death and there can be no previous succession. A person who was living with the tenant as the tenant's wife or husband will be considered as the tenant's spouse, and a person who was living with the tenant as if they were civil partners will be considered as the tenant's civil partner.

There is deemed to have been a previous succession if the tenant who has died either:

a) *Had a joint tenancy and become a sole tenant when the tenant died*

**or**

b) *Succeeded the tenant (took over the tenancy) when the previous tenant died*

**or**

c) *Was a person qualified to succeed who was assigned the tenancy prior to the tenant's death*

If a deceased tenant did not have a spouse or civil partner who was occupying the property as their only or principal home at the time of the tenant's death, nobody is entitled to succeed to the tenancy.

The successor will in all cases be a sole tenant. If the sole tenant is the spouse or civil partner of the late tenant they will only be granted a joint tenancy following remarriage/civil partnership on application at our discretion.

### **5.1 Succession and under occupation**

If a person qualifies to succeed to a tenancy, when the tenant dies, and the property is bigger than the person needs, they may be asked to move to another property.

If this is the case, the person will be placed in Band 1 Status on the Housing Allocations Policy.

If the person refuses to move to more suitable accommodation, we may seek possession of the property under relevant legislation. In such cases proceedings for possession will commence in line with the Housing Act.

### **5.2 Succession and accommodation suitable for a person with a disability**

If a person who qualifies to succeed a tenancy is occupying accommodation which is either purpose built or substantially adapted for occupation by a person or persons with a physical disability, the property was previously let to someone with a physical disability and there is now no such person in the household, we may seek possession of the accommodation. In this instance we will seek to make available suitable alternative accommodation for the successor, which will be reasonable having regard to age of the successor, their length of residency and any financial or other support they gave to the previous tenant in accordance with relevant legislation.

### **5.3 Where no right of succession exists**

We will serve a Notice to Quit and Use and Occupation charges will be levied. Where a person does not have the right to succeed to a tenancy and is left in occupation following the death of a tenant, we will consider whether the applicant can be considered for Band 1 Status under the Housing Allocations Policy. Each case will be assessed and the applicant must meet at least one of the following circumstances:-

- *They have been living with the tenant for a year before the tenant's death*

*Or*

- *They have been looking after the tenant for a substantial period of time (for example, 12 months or more);*

*Or*

- *They have accepted responsibility for the tenant's dependants*

If an applicant has not expressed an interest in re-housing within the appropriate time set out in the Housing Allocations Policy, their case will be reviewed. We may also express an interest in suitable properties on their behalf. If reasonable offers of a new home are refused, we may review an applicant's situation and serve a Notice to Quit on the occupant(s).

## 6.0 **Sole to joint tenancies**

A tenant wishing to apply for a joint tenancy with another person must apply in writing. Following this request a joint meeting with all parties will be held.

The application will be considered with regard to the following criteria:-

- *There have been no previous successions or assignments;*
- *The rent account on the sole tenancy must be clear, and there must be no other breaches of the tenancy agreement;*
- *The applicant (i.e. the person being added) is clear of housing debt to Ashfield District Council;*
- *The applicant has not been guilty of certain unacceptable behaviour in the last three years that would have incurred a penalty on the Housing Register;*
- *The applicant must be residing at the property as their main home at the date of the proposed joint tenancy and must either;*

***Be the tenant's spouse or civil partner;***

*Or*

***Be another member of the tenant's family and have lived with the tenant for the whole of the previous 36 months.***

('member of the family' means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or a person who has been living with the tenant together as if they were husband and wife or as if they were civil partners).

In considering the application each case will be considered on its merits including the following:-

- *The sole tenant holds a secure tenancy;*
- *The relationship between the proposed joint tenants;*
- *The length of time the proposed joint tenant has been a resident;*
- *The age and health of the proposed joint tenants; i.e (Mental Capacity)*
- *Eligibility to join the housing register;*
- *The housing need of the proposed joint tenants;*
- *Housing need within the local area;*
- *The size of the property and whether it would be under or over occupied; and*
- *Whether the property has any adaptations or services, which are required for use by the proposed joint tenant*
- *Designation of the property i.e. Sheltered or 60+*

Even if the above criteria is satisfied, joint tenancies will only be granted at the discretion of the Service Manager – Housing Management and Tenancy Services.

Applications for joint tenancies, which include more than one additional tenant, will not normally be approved.

If a joint tenancy is approved, a new tenancy will be granted.

Should an application for a joint tenancy be refused, tenants can appeal against this decision by using the Council's Complaints Policy.

## **7.0 Approach to tenancy management**

### **7.1 Tackling tenancy Fraud**

We take a pro-active approach in undertaking occupancy checks and work in partnership with other agencies to tackle tenancy fraud. We will take immediate action to terminate tenancies where tenancies have been obtained by the making of a false or misleading statement or have been wholly sub-let.

### **7.2 Interventions to sustain tenancies and prevent unnecessary evictions**

We may:-

- Provide Money Management advice to support tenants and prevent unnecessary evictions
- Signpost tenants to services that will support tenants to help maintain tenancies and prevent unnecessary evictions

- Provide assistance and support for vulnerable persons associated with Anti-Social Behaviour to ensure that tenants who experience or perpetrate Anti-Social Behaviour are supported.

In order to encourage tenants to report incidents of Anti-Social Behaviour, we will always listen to reports we receive. We are committed to using the full range of powers to tackle Anti-Social Behaviour including interventions such as mediation and provision of support. We will, where such interventions do not work, take firm action against any breach of tenancy conditions in conjunction with our partner agencies.

## **8.0 Useful Contacts**

TO BE INCLUDED HERE