

Tenancy Policy	December 2018
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**Winchester City Council – Housing Services
Policy and Procedure Template**

Title	Tenancy Policy 2018-2023
Housing Team	Housing Management
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Details of Performance Indicators	Local Authority Housing statistical returns (LAHs)
Quality Checks	

Headline Summary of Tenancy Policy, December 2018

Introduction

The Localism Act 2011 introduced Tenancy Policies as part of a wider package of social housing reforms. Under the Act, Local Authorities with a strategic housing role are required to have a Tenancy Strategy setting out the issues which registered providers operating in their area must have regard to when deciding what types of tenancies to offer, details of any fixed-term tenancy, and the circumstances in which they will grant a new tenancy when a fixed term tenancy comes to an end.

This Tenancy Policy takes account of our Tenancy Strategy which can be found at <http://www.winchester.gov.uk/housing/housing-strategies-policies/tenancy-strategy>

The policy summarises the Council's approach to tenancy management and the types of tenancies we offer.

Purpose/aim

The aim of this Tenancy Policy is to provide current Winchester City Council tenants and those on the Housing Register who would like to become tenants with an overview of the tenancies the Council offers together with a summary of some of our key tenancy management policies and procedures.

Scope

The Tenancy Policy confirms the types of tenancies the Council offers, the rents we use, how we try to help tenants to sustain their tenancies and also a summary of some of the key tenancy management policies and procedures.

1. Introduction

This Tenancy Policy sets out our approach to tenancy management and the types of tenancy we offer. The policy is relevant to current tenants of the Council and also applicants on the Council's housing register who would like to become Winchester City Council tenants.

The policy takes account of Winchester City Council's Tenancy Strategy which can be found at

<http://www.winchester.gov.uk/housing/housing-strategies-policies/tenancy-strategy>

2. Types of tenancy

The Council offers the following types of tenancy for both new build and re-lets:

2.1. Introductory tenancies

Those tenants who do not already hold a secure or assured tenancy with Winchester City Council or other social housing provider will initially be offered an introductory tenancy. These are probationary tenancies that normally last for 12 months but can be extended for a further 6 months. The introductory tenancy will automatically become a secure tenancy after 12 months if the tenancy has been conducted successfully or at the end of any extension period.

The introductory tenancy is an opportunity for the tenant to demonstrate that they are able to maintain a tenancy and comply with the Tenancy Conditions. The introductory tenancy will be reviewed during the 12 month term to confirm whether the tenant can become a secure tenant with a life time tenancy, extending their rights within the tenancy agreement.

Introductory tenants have fewer rights than secure tenants and can be evicted much easier if the terms of the tenancy agreement have been breached.

Full details of the statutory rights of introductory tenants and secure tenants are clearly marked in the Tenancy Agreement and the Tenants Handbook.

2.2. Secure tenancies

We will give secure tenancies to tenants who are existing secure tenants with Winchester City Council or are secure/assured tenants with another social housing provider. An introductory tenancy will automatically become

a secure tenancy after 12 months if the tenancy has been conducted successfully or at the end of any extension period.

Secure tenants have full security of tenure and tenancy rights as set out in the Tenancy Agreement and the Tenant Handbook.

2.3. **Fixed term tenancies**

Following the Government publication of the social housing green paper – a new deal for social housing, where it was announced that the plans to require councils to offer all new tenancies on a fixed term would not be implemented at this time, we will continue to offer lifetime tenancies and will make best use of existing housing stock through other measures such as the downsizing incentive scheme ‘Wise Move’ and the Scheme of Allocation. These measures assist Council Tenants who are under-occupying their current home and wish to downsize by offering a cash incentive or services to the value of the cash incentive together with a higher priority to move on the Council's housing register.

2.4. **Minors and tenancies**

A person under the age of 18 can not hold a legal tenancy. In these circumstances we will seek to grant a tenancy to an adult such as a member of the minor's family or if this is not possible, to another adult, for example a social worker who will hold the legal tenancy on trust for the minor's benefit until they reach 18.

3. **Rents**

We will set rents for all our Council new build properties at an affordable rent which can be up to 80% of local market rents, with the additional revenue raised to be re-invested in providing new affordable housing. As part of its commitment to ensure that rents remain as affordable as possible to local people we will ensure affordable rents are provided at rent levels set at or below Local Housing Allowance rates.

Other Council properties will be charged a social rent. Since 2001, rents for properties let at a social rent have been based on a formula set by the government. This creates a formula rent for each property, which is calculated based on the relative value of the property, relative local income levels, and the size of the property. An aim of this formula-based approach is to ensure that similar rents are charged for similar social rent properties.

We will write to all tenants every year to tell them what their rent will be for the next year.

4. Tenancy agreements, responsibilities and sign up

We will ensure that all tenants are fully informed about their tenancy rights and obligations at the pre-tenancy sign up stage and beyond.

The sign-up process will generally be a 2 stage process; firstly a pre-tenancy appointment with Housing Officers from both the Income and Tenancy teams where a financial assessment and other tenancy checks will be made, and secondly the sign-up appointment involving the formal paperwork signing and other associated processes involved in granting the tenancy.

We will ensure that tenants fully understand their rights and responsibilities and the conditions of the tenancy agreement. We will also discuss what the tenant can expect from the Council, what support the Council can provide and also opportunities for involvement in shaping the Housing service.

Any tenant who is refused a tenancy will be provided with the reasons why and will be given appropriate advice on what they can do to improve their chance of being housed by the Council in the future.

The Council requires rent in advance from the tenant at the sign up. We will request up to a months rent in advance based on the tenants financial situation.

5. Tenancy reviews and visits

The Council visits all tenants within the first month of their tenancy. This is to check how the tenant is settling in, and is a chance for both the tenant and the Council to raise any issues of concern.

All introductory tenancies will be reviewed at their ninth month to assess whether the tenancy can convert to a secure one on the first anniversary of the tenancy commencement. Where issues are identified, further reviews will be completed to ensure all appropriate action has been taken. Where an introductory tenancy is extended to 18 months, further reviews will take place during the extension period to ensure that it is appropriate for the tenancy to become secure or take action to end the tenancy. More information about possession action for introductory tenancies and appeal

rights is available in the Tenants Handbook and the Introductory Tenancy Procedure.

After that, the Council will visit tenants as and when required.

Tenancy visits allow the Council to:

- Make sure the tenant is living in the property
- Update records if there have been any changes in the household
- Make sure the property, including any garden areas, are being maintained and looked after
- Identify any repairs
- Identify any other needs that the tenant may have which the Council can help with

Tenancy visits allow the tenant to:

- Report repairs
- Raise any issues of concern
- Update the Council's records
- Ask any questions they may have about their home or their tenancy

6. **Managing tenancies**

We will ensure that tenants are aware of their rights and obligations when they sign up for their tenancy. These terms are set out in the tenancy agreement. Housing Services have a number of tenancy management policies and procedures documenting its approach to tenancy issues and the management of the housing stock. Some of the key documents are outlined below and further details can be found in the Tenancy Agreement and Tenants Handbook.

6.1. **Succession**

The rights of succession are set out in Housing Act 1985 and the provisions introduced by the Localism Act 2011. This section provides a summary of the relevant parts of the law.

If a tenant dies, their tenancy may be passed on to a member of their household. By law there can only be one succession. If the deceased tenant had succeeded to the tenancy following the death of the previous tenant or through assignment there can be no further succession.

If there is a joint tenancy and one of the tenants die, the surviving tenant will automatically succeed to the tenancy by survivorship.

If there is a sole tenancy, this can then be passed on to a spouse or civil partner providing that they lived in the property as their only or principal home when the tenant passed away. If the tenant has no spouse or civil partner and their tenancy began before 1st April 2012 certain close members of the family may be able to succeed to the tenancy if they had been living at the property as their only or principal home throughout the period of twelve months preceding the tenant's death. If the tenancy began on or after 1st April 2012 only a spouse or civil partner will be able to succeed to the tenancy.

We will ask a successor who is not a spouse or civil partner to move to another property if the home they have succeeded to is larger than they would be eligible for. If the successor does not move we will seek possession under Ground 16, Part 3 of Schedule 2 of the Housing Act 1985.

Where there is no-one eligible to be a successor, the Council may grant a new tenancy to a person who lived with the tenant but there is no automatic right to remain in the property. The Council will make a decision on whether to grant a new tenancy (at the current property or at a property which meets the persons housing need) in accordance with its **Left in Occupation Policy** which considers the following criteria:

- fulfil the definition of persons qualified to succeed the tenant under Part IV Section 87 of the Housing Act 1985 (should this right have not already have been used)
- have support needs or be vulnerable as a result of old age, mental illness, physical disability or other special reason (or a person who resides with them is)
- meet the homeless criteria as having a priority need for accommodation under Part VII Section 189 of the Housing Act 1996.

Other factors that may be taken into consideration include the:

- relationship to the tenant if they would not qualify as a successor
- length of residency
- reason for residency

Where the Council decides not to offer a new tenancy, the person will be advised in writing of the reasons why not and given information about the

housing options available to them. If they do not leave the property, the Council will take legal action to recover possession of the property.

6.2. Assignment

Assignment is the process whereby a tenancy can be passed on to another person whilst the tenant is still alive. The Housing Act 1985 sets out the law in relation to assignment and this section provides a summary of the relevant parts.

A sole tenant can pass their tenancy on a person who would be entitled to succeed if they have not previously succeeded to or been assigned the tenancy themselves. It can only be achieved through a legal document called a Deed of Assignment, unless the assignment is by way of a court order.

The tenant will require the Council's permission to assign the tenancy.

The Council recommends tenants seek independent legal advice before assigning their tenancy to another person.

6.3. Mutual exchanges

Secure tenants have the right to exchange their home by assigning the tenancy to another secure tenant of a local authority or with assured tenants of registered social landlords. The Council may refuse permission to exchange in certain circumstances, as set out in Schedule 3 of the Housing Act 1985.

The written permission of the Council and any other landlord must be obtained prior to any exchange of homes. The Council has 42 days in which to consider and respond to the exchange request. The Council will explain its reasons if the exchange is refused. The Council also participates in the HomeSwapper scheme which is free for tenants to use.

If an exchange takes place without the Council's consent, this is an unlawful act and all parties will be required to move back to their original homes or the Council will take legal action to obtain possession.

6.4. Tenancy changes

Sole to joint

There is no right to 'add' a tenant to an existing tenancy. The sole tenancy would have to be terminated and a new joint tenancy granted. This is not

something the Council will normally facilitate. Where the tenant wishes to add their spouse or civil partner, this person should already be afforded rights to the tenancy under the law of succession and assignment as set out in the Housing Act 1985 together with other statutes such as the Family Law Act 1996 and the Civil Partnership Act 2004 and this will be explained to the tenant.

Joint to sole

Where a joint tenant wishes to remove themselves or the other joint tenant from the tenancy there are circumstances when we can facilitate this by ending the joint tenancy and creating a new sole tenancy. In the first instance, the tenant/s will be required to explore other legal remedies available to them, such as a Property Transfer Order or an Occupation Order. Where these legal remedies are not available or an option, the Council will confirm whether it can grant a new sole tenancy at the property taking into account all relevant circumstances. If the Council decides to decline the request to create a new sole tenancy at the property, the tenant/s will be advised of the reasons in writing and how and where to obtain advice regarding the other options available.

6.5 Ending a tenancy

Tenants must give four weeks' written notice to end their tenancy, unless they are transferring to another property owned by the Council in which case two weeks' written notice is required. A joint tenancy will end if one or both tenants give notice. When a tenant dies we expect their next of kin or executor to give four weeks' notice to end the tenancy.

Tenancies with no security

The Council may bring a tenancy to an end if the tenant has lost their security of tenure, for example they no longer occupy the property as their only or principle home, by serving a Notice to Quit. The Council will then take proceedings through the courts to end the tenancy where needed.

Court order

All tenancies issued by the Council can be ended by a court order. This requires the Council to serve the correct notice advising the tenant that possession proceedings are to be taken. The discretion of the court to grant possession differs depending on the type of tenancy.

7. Tenancy sustainment

The Council will assist those tenants who require further support or who are vulnerable and need support to sustain their tenancy. We will offer advice, support and signposting to those who need it through our own support services and through working in partnership with other agencies.

Support needs will be discussed with tenants at their tenancy sign up and throughout their tenancy as and when appropriate.

8. Tenancy fraud

Tenancy fraud covers any situation where the person or people living in a council property is not the person who is entitled to be there. This includes:

- Giving false information on an application for housing
- Subletting the property to another person
- Not using the property as their only or principle home
- Claiming succession when there is no entitlement

The Council will take measures to prevent and identify causes of tenancy fraud and will investigate all allegations of fraud or potential fraud thoroughly. The Council will take appropriate action against any tenant found to be committing tenancy fraud including criminal action.

