



# **Tenancy Management Policy**

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## **1.0 Scope**

The Tenancy Management Policy affects all Broxtowe Borough Council tenants and the tenancies that they have with the Council. Some of the provisions in the policy may not apply to all tenants during all periods of their tenancy, however, this will be made clear where this applies.

## **2.0 Purpose**

The purpose of the policy is to outline the rights that each Broxtowe Borough Council tenant has in accordance with the relevant legislation relating to tenancy management.

The Tenancy Management Policy provides a framework of how the Council will respond to and manage certain circumstances that tenants may encounter or requests that they may make over the course of their tenancy.

## **3.0 Aims and Objectives**

As a social housing provider, Broxtowe Borough Council will provide an effective and efficient tenancy management service that reflects best practice, complies with current legislation that relates to tenancies and recognises the rights of its tenants.

The Policy will outline the Council's approach to managing;

- Assignment
- Mutual Exchange
- Succession
- Tenancy Changes
- Lodgers
- Subletting
- Unauthorised Occupants
- Breaches of Tenancy Agreement
- Death of a Tenant
- Ending a Tenancy

## **4.0 Regulatory Code and Legal Framework**

The rights and responsibilities of Secure Tenants are set out in the Housing Act 1985, as amended, and in the Council's Tenancy Agreement. The Housing 1996 Act established an Introductory Tenancy framework and The Localism Act 2011 outlined changes in succession rights.

## **5.0 Policy Outline**

### **5.1 Assignment**

An Assignment is where one tenant or party in a tenancy signs to transfer their rights to and interest in a tenancy to another person. Secure Tenants have the right to an Assignment. Introductory Tenants do not have this right.

Assignment of tenancy is prohibited in legislation. The Council will only consider assigning a tenancy in the scenario of a Mutual Exchange or if ordered by the Court in accordance with any matrimonial, family or other proceedings that may relate to the breakdown of a relationship between tenants or family members living at the property.

Assignment to a potential successor, to a person that is not currently part of the tenancy but who would have rights to the tenancy if a tenant was to die, where the above circumstances do not apply is managed as a Tenancy Change.

### **5.2 Mutual Exchange**

A Mutual Exchange is where two or more tenants who live in separate dwellings swap with each other. A Mutual Exchange does not require a new tenancy to be created and is a move that does not require an allocation and letting. Mutual Exchanges are administered by a Deed of Assignment and no physical tenancy agreement is signed by the incoming or outgoing tenants.

Mutual Exchange is a right that is available to Secure Tenants. Introductory Tenants do not have the right to Mutual Exchange.

Broxtowe Borough Council tenants have the right to Mutual Exchange with other tenants from other social landlords. The Council will accept the incoming tenant from the other landlord on the receipt of a satisfactory reference. The incoming tenants will be granted a tenancy equivalent in rights to the tenancy that they held with their previous landlord.

The Council will consider each application for Mutual Exchange in line with legislation and permission may be withheld. The Council will withhold permission when the incoming tenant is not eligible for the property size or accommodation criteria (for example Independent Living), where the property is adapted and the adaptations are not required, and when the incoming tenant has rent arrears.

The right to Mutual Exchange is subject to written consent from the Council. When an application is received, the Council will make a decision and inform the tenant in writing within 42 days of the application being received.

If permission is to be withheld, the Council will serve a notice on the tenant explaining the reasons why within the 42 days.

The Council subscribes to Homeswapper, a national on-line system which assists tenants in finding a prospective Mutual Exchange.

### **5.3 Succession**

A Succession is the process in which rights are transferred from one tenant to another when a tenant dies. There are a number of different circumstances and people who are or could be eligible for the tenancy when the tenant dies. These are described as Succession Rights.

A Succession does not involve signing a new tenancy agreement. All types of tenancies granted by Broxtowe Borough Council have the right to Succession. Introductory Tenants have more restricted Succession Rights than Secure Tenants. For Introductory Tenants, relatives of the deceased that are not a spouse, partner or civil partner or were not part of a joint tenancy at the point of death, do not have the right to succeed. For Secure Tenants, members of the extended family of the deceased that were resident for 12 months prior to the death of the tenant also have the right to succeed. Full details of those who may be able to succeed are outlined in the Succession Procedure.

A tenancy can only succeed once, and therefore further successions are prohibited. The Council will provide advice and assistance to those family members that are affected by this.

In the event of the death of a tenant, Broxtowe Borough Council will process a request for succession with sensitivity ensuring that the Council's decision is given as quickly as possible. In all cases, a full explanation will be provided to those where there is no right of succession or where the property may be unsuitable for them to occupy if they do have the right to succeed.

A joint tenant automatically succeeds should the other party in the joint tenancy die. The tenancy then transfers to a tenancy in the sole name of the surviving joint tenant and further Succession Rights do not apply. If there is more than one other party in the joint tenancy, the Council will allow the persons to decide themselves who takes on responsibility for the tenancy. In the case of none agreement, the Council will make the decision.

If there are multiple persons that have succession rights, the Council will allow the persons to decide themselves who takes on responsibility for the tenancy. In the case of none agreement, the Council will make the decision.

In certain circumstances, the property will be unsuitable for the successor's needs. This includes if the successor is not eligible for the property size and if the property is adapted, but the adaptation is not required. In cases such as this, the Council will request that the successor move home and will make reasonable attempts to source

alternative accommodation for them. The successor will receive a Secure Tenancy in their sole name in these circumstances so they will experience no reduction of tenancy rights. In cases where the tenant refuses reasonable alternatives in accommodation, the Council may seek possession to recover the property.

Where a tenant dies and there are no succession rights and a person is in occupation in the property. The Council will look to recover the property through an application to the Court. The Council will provide advice and assistance to those persons affected.

If either the property is unsuitable for the successor's needs or there are no succession rights the Council will need to make contact immediately to discuss the situation, however it is acknowledged that this will be a difficult time, therefore the Council will allow the occupier to remain living at the property for a minimum of 6 weeks, before contacting them again to discuss moving and begin the process of applying for another property.

These actions are taken to ensure fairness in allocation of properties, and the most effective use of the Council's housing stock to best meet the needs of the residents of the borough.

## **5.4 Tenancy Changes**

A Tenancy Change is where a tenant is subject to a change in their circumstances and requires the Council to reflect them on their tenancy. A tenancy change request includes a person wishing to join a tenancy or a joint tenant requesting that the tenancy is put into a sole name.

Secure Tenants can request a Tenancy Change. Introductory Tenants do not have the right to request a Tenancy Change.

In the cases where a joint tenancy is requested, the Council requests that the occupant requesting to join the tenancy has been resident for at least 12 months. In cases of marriage or civil partnership, the Council does not enforce the 12 months occupation guidance. The person that is requesting to join the tenancy must meet the standard qualifying criteria to be a tenant of Council housing. A tenancy can be created in joint names involving more than one other party in certain exceptional circumstances.

A joint tenancy should only be created with partners, spouses or civil partners. A joint tenancy may be granted in other circumstances, however, these are at the discretion of Broxtowe Borough Council.

In cases of a joint tenancy being transferred in to a sole name, the person who is going to take on the tenancy must have been in habitual occupation at the property when the request was received and must be a party involved in the existing joint tenancy. The tenancy will be put into sole names if both parties are in agreement to the change. A new sole tenancy will be created in these circumstances and the joint tenancy will be terminated.

## **5.5 Lodgers**

A lodger is a person that a tenant wishes to move in with them but has no legal interest in the tenancy or property. A lodger will also not have exclusive use of any part of the home or prohibit the tenant from having use of any part of the home.

No tenancy or tenancy rights are granted to the lodger by the Council. Any agreement that the lodger may have with the tenant in terms of financial contributions to the rent are not acknowledged by the Council. Any person that is a potential successor of the property is not defined as a lodger.

Broxtowe Borough Council Secure Tenants can take in a lodger. Introductory Tenants do not have this right.

The taking in of a lodger must not include any alterations to the fabric of the building such as the partitioning of part of the home that the lodger will then have exclusive use of. This will be classed as subletting.

The Housing department will update the Revenues and Benefits Section should an application for a lodger be received or it become aware that the tenant may have taken in a lodger.

## **5.6 Subletting**

Subletting occurs when an existing tenant wishes to allow another person (a subtenant) to move into the property and have exclusive use of it or a section of it. The tenant is only able to enter the area let to the subtenant with the subtenants' prior permission.

Broxtowe Borough Council Secure tenants can apply to sublet part of their home to another person not named on the tenancy agreement. Introductory Tenants do not have this right. Part of a property can only be sublet with the written permission of the Council.

In cases where these requests are received, it will be necessary for the tenant to explain which rooms or parts of the property are going to be sublet, which parts the subletting tenant will have exclusive use of and what works are being requested to facilitate this. Any subletting will not be permitted if it results in overcrowding of the property.

No tenant will be allowed to sublet their entire home, this will be considered unlawful and a breach of their tenancy conditions. In these circumstances, legal action will be taken against the tenant to recover the property.

## **5.7 Unauthorised Occupants**

Unauthorised or unlawful occupation of a Broxtowe Borough Council property is not permitted and the Council will take legal action to seek possession of the property through the Court in these circumstances. Unauthorised Occupants can sometimes be squatting in the property.

An Unauthorised Occupier can occur in a number of circumstances such as if one party of a joint tenancy terminates the tenancy. In circumstances such as these, the unauthorised occupier will be considered responsible for the use and occupation of the property and therefore will be charged a use and occupation charge by the Council. These payments are Mesne profits that the Council are claiming are owed. The Council will also provide advice and assistance with finding alternative accommodation.

In cases where squatters have gained access and are in occupation, the Council will request the assistance of Nottinghamshire Police to remove them from the property.

## **5.8 Breaches of the Tenancy Agreement**

Broxtowe Borough Council will proactively investigate all breaches of tenancy. The Council's aim is to stop any identified tenancy breach by swiftly intervening and using all its available powers. It is always the Council's intention to support the tenant to sustain their tenancy, however in serious cases possession action will be taken to bring the tenancy to an end. Protection for the tenant will be available through internal review processes and the legal system.

Where the Council cannot manage the breach by itself it will work with its partners in a multi-agency approach.

## **5.9 Death of a Tenant**

If a tenant dies and there is no request for a succession, the Council will seek to end the tenancy by asking the Next of Kin or Executor of the Estate to legally terminate the tenancy.

In cases where there is no known Executor or Next of Kin, the Council will serve a Notice on the Personal Representatives of the deceased and the Public Trustee to end the tenancy.

## **5.10 Ending a Tenancy**

A tenancy can be brought to an end in different ways, depending on the tenancy type and the circumstances that lead to the tenancy termination.

In all cases, a tenant is required to give 4 weeks written notice to the Council if they wish to end their tenancy. If a tenant is transferring to another property within Broxtowe Borough Council stock, the Council will end the tenancy upon receipt of the keys.

If the Council wishes to terminate a tenancy it will serve the relevant Notice which has been signed by an Officer with appropriate delegation in the Constitution. The Council will give due consideration to the Equalities Act 2010 when serving Notices and preparing Possession Proceedings.

Where the Council wishes to bring an Introductory tenancy to an end it will provide an independent appeals processes which allows the tenant to contest the service of the Notice.



The Council will continue to provide advice and assistance to all tenants that are threatened with eviction, are evicted and/or that are made homeless as a result of any action taken by the Council.

## **6.0 Related Policies, Procedures and Guidelines**

This policy should be read in conjunction with the:

- Tenancy Management Procedures including:
  - Succession Procedure
  - Mutual Exchange Procedure
  - Termination of Tenancy Procedure
  - Death of a Tenant Procedure
  - Introductory Tenancies Procedure
  - Tenancy Change Procedure
  - None Tenanted Occupation Procedure
- Tenancy Agreement
- Tenure Policy
- Enforcement Policy
- Anti-Social Behaviour Policy
- Decant Policy
- Anti-Social Behaviour Procedure
- Rent Arrears Policy
- Rent Arrears Procedure

## **7.0 Review**

This Policy should be reviewed every 3 years unless tenancy agreements require to be changed, tenancy types change or because of significant changes in legislation.

## **8.0 Document History and Approval**

Date	Version	Committee Name
14/03/2017	1.0	Housing Committee
26/05/2021	2.0	Housing Committee