

# Tenants' Handbook

## Your Tenancy

### Introduction

# Introduction

As a council tenant you have signed a tenancy agreement with us, the council, as your landlord. This is a legal agreement placing important responsibilities on both you and the council.

There are two main types of council tenancy: introductory and secure.

This chapter of your handbook is in two sections with Part A dealing with introductory tenancies, introduced for new tenants by the 1996 Housing Act, and Part B deals with secure tenancies.

Secure tenancies used to be allocated to most council tenants but new tenants now usually start off with introductory tenancies. These are then usually converted to secure after 12, sometimes 18, months, if there are no problems arising at the tenancy.

This chapter also gives more detail about various aspects of your tenancy conditions and explains more about your tenancy agreement and your legal rights and responsibilities.

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## Part A – Introductory tenants

Most new council tenancies are introductory under the Housing Act 1996 for a trial period of 12 months. Although we can extend this, by six months to 18 months, if we think you need more time get used to, and comply with, the terms of your tenancy.

After 12 months (or 18 months if we extend it) you will automatically become a secure tenant unless we have started legal action to repossess (take away) your home.

If we have started legal proceedings the introductory period will continue until the case is independently decided by a court.

As an introductory tenant you have limited rights.

You run the real risk of losing your home as an introductory tenant if you do not keep to the conditions of your tenancy.

## A2 Your rights in law

As an introductory tenant you have the following rights only:

- Right to repair
- Partner succession rights
- Housing management consultation rights.

### Introductory Tenant

Right to repair ✓

Right to take in lodger ✗

Right to sublet part of the dwelling ✗

Right to exchange with another tenant ✗

Partner succession rights ✓

Right to improve the dwelling ✗

Housing management consultation rights ✓

Right to buy ✗

## A3 Assignment

Introductory tenancies have limited rights of assignment and in the following circumstances only:

- In pursuance of a court order under matrimonial proceedings or ordering financial relief
- Where the assignment is to a potential successor to the tenancy.

## A4 Succession

If an introductory tenant dies there may be succession where:

- The succeeding person is either the tenant's spouse, civil partner or lived with the tenant as a spouse or civil partner; and
- The succeeding person occupied the dwelling as their sole or principal home (on the death of the tenant).

Succession can only happen once in law.

## A5 Ending an introductory tenancy

Here are some examples of behaviour where we will decide to end your tenancy:

- Not paying your rent on time and in advance
- Creating or even allowing nuisance which affects other people
- Using your home for illegal or immoral purposes
- Damaging any part of the estate or dwelling.

The way we end an introductory tenancy is different from the way we end a secure tenancy.

We need a court order for both but, for an introductory tenancy, the court must grant us possession as long as we have followed the simple procedure set down in law.

Remember: you have no defence against us if we believe you have not behaved in a considerate and reasonable way.

## A6 Antisocial behaviour

You can be evicted if we believe you have behaved in an antisocial way. We do not have to prove this. We simply have to act reasonably and explain to the court why we think you have behaved badly. You will have no defence in the court hearing against this.

## A7 Possession proceedings

When we start proceedings to take back your home we will send you a notice of termination. This notice will tell you the reasons why we will be asking the court to make an order for possession. The possession proceedings will usually start 28 days after we have sent you the notice of termination.

We will normally send you at least one letter before we send the notice of termination, explaining why we are considering sending the notice. It is important that you contact your designated Resident Services Officer or customer contact point when you get the first letter to seek advice and guidance.

## A8 Your right to a review

The notice of termination will explain that you can ask for a review of our decision to take proceedings to repossess your home.

If we decide we have good reason not to give you a permanent home, and to extend your introductory tenancy from 12 to 18 months, you also have a right to ask for a review of that decision.

## A9 The review panel

A panel of senior council officers, who must not have been involved in the decision to serve the notice, will carry out the review. The review is the only opportunity you have to challenge our decision to end your tenancy and take back your home because you have not kept to the terms of your tenancy agreement.

You will be given 14 days from the date we send the notice to ask for an oral (spoken) hearing of your case or to write to us about it. There will be no extension of this 14 day period. We will send you a review form to complete with the notice.

You also have the right to get independent advice from agencies such as the Citizens Advice Bureau, housing aid centres or law centres.

## A10 The right to a written review

If you ask for a written review you have the right to send written evidence, or other information to support your case, to arrive at least two days before the panel meeting. If you ask for a review, we will arrange a panel hearing to take place within **28 days** of the date we sent you the notice. We will tell you the date, time and place of the review hearing and we will give you at least ten days' notice.

## A11 Attending the review

We encourage you to attend the review hearing or send someone to represent you, or both. If you do not attend the review hearing, or tell us why you are not going to be there, the review panel may proceed without you.

## A12 The review hearing

The review hearing will make sure that we have proper evidence that you have broken your tenancy conditions. The panel hearing will be fair and just, and will consider whether our decision to try to evict you is the right course of action to take.

At the review panel hearing you will have the opportunity to put forward any evidence you think is relevant to your case. You may also have a representative to do this for you.

## A13 The review decision and after

We will write to tell you the review panel decision within five days.

### If your review fails

If the panel decides that we will repossess your home, we will tell you the reasons for this clearly and in writing.

### If your review is successful

If the panel decides that we should not repossess your home your introductory tenancy will continue until the end of the 12 month period. If, after 12 months (or 18 months), we have taken no more action you will become a secure tenant and your home will then be permanent.

## A14 Applying for a possession order

We have to wait for 28 days after sending the notice of termination, before we can apply to a court for a possession order.

At the court hearing we simply have to satisfy the judge that we served the notice correctly and that we gave you an opportunity to ask for a review.

### No proof required

We do not need to prove our case to the court by providing evidence. This is why the review hearing is important, because it is at the review that we consider any relevant evidence.

## A15 Evicting an introductory tenant

If the court grants the possession order we will apply for a warrant for your eviction.

Once you have been evicted you may be considered to be 'intentionally homeless' and we will not rehouse you. This is because your actions have led to you losing your home and you have not changed your behaviour when given the chance to do so.

## A16 Debts outstanding to the council

As an introductory tenant the council expects you to clear any outstanding debt owed to us for any reason, and you will usually be offered an agreement to clear all debt lawfully owed to the council at a reasonable rate affordable to you.

If you have any more questions please contact your designated customer contact point or telephone 020 7525 2600.

## PART B – Secure tenants

### B1 Secure tenancies

Most council tenants are secure and protected under the Housing Act 1985. This means that as long as your council home is your only or principal home we cannot make you leave without a court order. Further, we would have to have a very good reason for seeking and obtaining such an order.

### B2 Your rights

As long as you follow the rules of your tenancy agreement there is usually no reason why you cannot stay in your home for life.

#### Secure tenant

Right to repair ✓

Right to take in lodger ✓

Right to sublet part of the dwelling ✓

Right to exchange with another tenant ✓

Family member, partner succession rights ✓

Right to improve the dwelling ✓

Housing management consultation rights ✓

Right to buy ✓

### B3 Your responsibilities

- You should be careful to do the following:
- Pay your rent and other charges on time and in advance
- Be a good and considerate neighbour
- Look after your home and estate
- Keep to the rules of your tenancy agreement, not least because you risk losing your home if you break them.

### B4 Using your home

Your council home must be your only or principal home.

You must not use or allow the property to be used other than as your own private dwelling.

In particular you must not use your home for any purpose which might cause a nuisance or annoy your neighbours. We do not intend to stop you working from home, but we do want to prevent homes being used for any commercial use which adversely affects your neighbours.

### Going away for long periods

You must not be absent from the property for a continuous period of more than 42 days without first telling us in writing. Written notice must be given to a designated office or customer contact point. We also recommend that you provide the address where you are going to and telephone contact details. This is in case an emergency arises and we need to gain access to your home.

### B5 Annual tenancy check

You will permit us, as your landlord, to carry out an annual tenancy check and you must satisfy us that you are occupying the property as your only or principal home.

We will ask you to provide evidence, during the annual tenancy check or within seven days of our written request, material required by us for the purpose of verifying that you are occupying the property and that it is your only or principal home. This may include the provision of a photograph for us to check your identity.

The yearly tenancy check and photographic evidence are to stop people living in council housing without our permission and committing fraud.

### B6 Prevention of fraud

Under the Prevention of Social Housing Fraud Act 2013 you commit an offence as a secure tenant if you knowingly:

- Sublet or part with possession of the whole of your dwelling house, or part of your dwelling-house without our written consent
- Cease to occupy the dwelling house as your only or principal home

or knowingly

- Dishonestly sublet or part with possession of the whole or part of the dwelling house and cease to occupy the dwelling-house as your only or principal home.

You can be fined or imprisoned if found guilty of these offences.

(Sublet – see Definitions)

If you know of any cases where people are living in housing they should not be living in, please contact [housingfraud@southwark.gov.uk](mailto:housingfraud@southwark.gov.uk) or call 020 7525 4686.

### B7 Access

You must allow access to the property to allow our officers, contractors or agents to carry out any inspection,

safety check, treatment, repairs, major works or improvements that we are required, or entitled, to carry out to the property (including fixtures and fittings), or to the building or estate in which the property is situated, or any other adjoining land in the council's control.

We will give you 24 hours' notice that entry is required to the property unless immediate entry is necessary in an emergency. If you repeatedly fail to provide access, whether by refusing or otherwise, we may ask the courts for an order that allows us, our contractors or agents, to force entry to the property.

## **B8 Your duty of care**

Council housing is a valuable resource and you must take proper care of your home, the fixtures and fittings and shared parts of the block and the estate.

If you do not you will be responsible for the cost of repairing, redecorating or replacing items damaged by you, or any person living with you, or your visitors.

At the end of your tenancy you must leave the property in as good a state as it was at the beginning of your tenancy. We allow for fair wear and tear (Fair wear and tear - see **Definitions**) and any damage caused by us not carrying out our obligations for upkeep and repair.

We are not liable for any repairs needed because you have not looked after your home or damaged it.

This includes damage caused by you and can include something like a blocked sink. If a blockage is caused by you not having properly disposed of fat, oil and foodstuffs, when doing an everyday thing like washing up, this is your responsibility. We may recharge you if we need to clear a blockage you have caused by acting irresponsibly or carelessly.

## **B9 Joint tenancies**

A joint tenancy is when two or more adults (aged 18 or over) are named on the tenancy agreement. Joint tenants have equal rights and responsibilities under the tenancy agreement for the whole of the tenancy. They are both responsible, together and individually, for keeping to these tenancy conditions and paying amounts due to us.

There is no automatic or legal right to a joint tenancy. If you ask us to change your sole tenancy to a joint tenancy, we will normally only agree to your request if the person to be added to your tenancy is your husband, wife or civil partner or has been living with you as your husband, wife or civil partner in your home for at least 12 months. You should also not be behind with your rent or breaking your tenancy agreement in any other way.

You may end your tenancy by giving at least four weeks' written notice to quit, to a designated office or customer service point, and ending on a Monday.

If the remaining joint tenant (or tenants) agree, we will normally give them a new tenancy. However, we will not give a new tenancy to the tenant or tenants staying in the property if they are:

- In rent arrears
- Not keeping to the nuisance and harassment clauses in the tenancy agreement
- Responsible for controlling, coercive, threatening or abusive behaviour, threats of violence or actual violence towards anyone lawfully allowed to live in the property that may or does prevent them continuing to live peaceably in the property. ('Controlling and coercive behaviour' - see **Definitions**.)

Each joint tenant is equally liable for paying the rent. If one joint tenant does not pay, then the other tenants are responsible for paying that tenant's share as well as their own. This is because joint tenants are each individually responsible for the whole tenancy.

This means that if you are behind with the rent, we can hold you alone, or all, or any of the joint tenants, responsible for the full amount of rent arrears owed.

## **B10 Lodgers and subletting**

### **Your right to take in a lodger**

There are legal differences between a lodger and a subtenant and you should get advice before renting out a room in your home. ('Lodger' - see **Definitions**)

All secure tenants have the right to take in lodgers and you can take in lodgers provided it does not make your home overcrowded, but you must inform your designated customer contact point within a reasonable time in writing first.

### **Subletting**

You can also sublet part of your home but you must get our permission in writing first.

You cannot wholly sublet or give up possession of your entire home (see B6 Prevention of fraud).

(Subletting – see **Definitions**)

### **Permission**

We will refuse any permission where it would make your home overcrowded or we are planning works on your home which would affect the accommodation likely to be used by the lodger or subtenant.

### **Overcrowding**

You must make sure that, by taking in a lodger or subtenant, your home will not be overcrowded; you can



ask at your designated customer contact point for more advice about this.

### **(Overcrowding - see Definitions)**

#### **Transfers**

If you apply for a transfer lodgers and subtenants are not our responsibility and we will not consider them to be part of your household. If you move out, you must not leave lodgers or subtenants in your home.

#### **Lodgers' behaviour**

If you do take in a lodger or sublet part of your home, remember that you are responsible for their behaviour. If they cause a nuisance or harass your neighbours, you will be held responsible and you will also be breaking the conditions of your tenancy.

#### **Lodgers, subletting and housing benefit**

If you are getting housing benefit you must tell the Housing Benefit Office if you take in a lodger or sublet part of your home as it may affect the amount of benefit you can get.

### **B11 Changing your rent charge**

We undertake to consult with the Tenant Council when proposing to change your rent and other charges, except for water charges which are set by the water provider.

#### **Notice of variation**

If we change the rent or other charges we will serve you with a written 'notice of variation' stating the new amounts and the date the change is to take place, which shall not be less than four weeks from service of the notice.

If, before the date specified in the notice of variation, you give us notice to quit, the change will not take effect unless, with our written agreement, you withdraw your notice to quit before the date so specified.

### **B12 Changing your tenancy agreement**

#### **Reviewing the 'Conditions of tenancy'**

Every few years we review your 'Conditions of tenancy' to ensure they are up to date, relevant, clear and lawful. This is because of new legislation introduced over time and changes to what we do as your landlord. Such reviews are not normally intended to alter your fundamental rights as a tenant or our obligations as your landlord.

#### **Preliminary notice**

If we propose changes to the conditions of tenancy, other than to rent or other charges, we will give you notice in

writing and give you at least 28 days to comment. This is known as a 'preliminary notice'. We must then consider any comments you have made in reply. We also consult on such proposed changes with the Tenant Council and consider also any comments made by that body.

#### **Notice of variation**

After completing this process we will send you a formal notice detailing any changes, giving you at least four weeks' notice in writing of the changes to be made, and the date the changes will take effect. This is known as a notice of variation.

### **B13 Succession - what happens when a tenant dies?**

#### **Secure tenancies created before 01 April 2012**

If you are a secure tenant when you die and your tenancy commenced before 1 April 2012 we can pass your tenancy on to:

- Your husband, wife or civil partner as long as the property is their only or principal home at the time
- Someone who is living with you as a husband, wife or civil partner if they are living with you at the time and it has been their only or principal home for at least 12 months before your death
- A family member if they are living with you at the time and it has been their only or principal home for at least 12 months before your death

('Family member' – see Definitions)

Where more than one person in a family qualifies to take over your tenancy we will give preference to the husband, wife or civil partner of the person who has died.

If the family cannot agree about who should take over the tenancy we will decide. In the case of joint tenants, where one joint tenant dies, the other joint tenant will take over the tenancy, so long as the property was their only or principal home when the tenant died and the tenancy has not been previously passed on

#### **Secure tenancies created on or after 1 April 2012**

Section 160 of the Localism Act 2011 states that statutory succession to a secure tenancy entered into after 1 April 2012 is limited to the spouse or civil partner of the deceased tenant, as long as they were living in the property as their only or principal home at the time of the tenant's death. The statutory right of succession of a member of the family has been removed for new tenancies.

This means that if you are a secure tenant when you die and your tenancy commenced on or after 1 April 2012 we can pass your tenancy on, where there has been no previous succession, to:

- Your husband, wife or civil partner, as long as the property is their only or principal home at the time
- Someone who is living with you as a husband, wife or civil partner if they are living with you at the time and it has been their only or principal home for at least 12 months before your death.

Family members other than your husband, wife or civil partner are now excluded from statutory succession; that is to say: they have no lawful legal entitlement to such a succession.

Southwark Council will exercise its discretion in such a case where there is a case to be considered outside of any lawful entitlement, for example whether to allocate a new tenancy to a person who had been living with a deceased tenant, but who does not have a legal right to succeed. If this situation arises for you, you should contact your designated customer contact point for advice and further information.

In all secure tenancies, no matter when they began, the tenancy passes only once in law.

If you take over a tenancy when the tenant dies, and the property has more bedrooms than your household needs, you may have to transfer to another home. We will discuss the options with you at the time.

If you are living with a tenant who dies you should tell your designated customer contact officer and ask them for advice about your rights.

## B14 Assignment

### Assignment – handing over your tenancy

You can assign (hand over) your tenancy to someone who is living with you if they would qualify to take over the tenancy if you died; or if ordered to do so by the court.

You may see a solicitor and ask them to draft a deed of assignment which you and the person you are handing over the tenancy to must sign with a solicitor as witness.

You will then need to take this deed of assignment, to your designated customer contact point, together with proof of identity and proof of address, for both you and the person who is taking over your tenancy.

Note: You can not leave your home and then hand over your tenancy because, by leaving, you will have ceased to be the secure tenant and will therefore have no right of assignment.

We will allow you to hand over your tenancy if you meet the following legal requirements that the assignment is:

- In line with Section 92 (Mutual Exchanges) of the Housing Act 1985

- By order under Section 23A or 24 of the Matrimonial Causes Act 1973 (property adjustment orders in connection with matrimonial proceedings)
- By order under Section 17(1) of the Matrimonial and Family Proceedings Act (property adjustment orders for overseas divorce)
- By order under paragraph 1 schedule 1 to the Children Act 1989 (orders for financial relief against parents)
- By order of Part 2 of Schedule 5, or paragraph 9(2) or (3) of Schedule 7, to the Civil Partnership Act 2004 (property adjustment orders in connection with civil partnership proceedings or after overseas dissolution of civil partnership)
- To a person who could legally take over the tenancy if the tenant died immediately before the assignment.

## B15 Mutual exchange

You have the legal right to exchange your home with another council or housing association tenant anywhere in the British Isles. This is called mutual exchange and you will need the official consent of both landlords. There is more on this in this handbook's Housing Choice chapter.

## B16 Moving out

You must give us at least four weeks' notice in writing (ending on a Monday) that you want to end your tenancy. You must send the notice to your designated customer contact point. We will then request that you complete a tenancy termination form.

If you are moving because of a transfer, contact your Resident Services Officer as soon as you know the start date of your new tenancy and we may agree a shorter period of notice.

When you move out housing staff will check the premises. You must not leave anyone else living there and you must remove all your belongings, clear any rubbish and leave the place in good order. Our fixtures and fittings must be left in place and in as good a condition as they were when you moved in, taking into account fair wear and tear.

You must return all keys to your designated customer contact point immediately. If you do not return the keys we may charge you extra rent and our costs for getting into the property and fitting new locks, etc.

If all of the following conditions relate to you we may pay you an allowance in recognition of your conduct:

- Give us four weeks' notice of ending your tenancy
- Return all keys on the date agreed
- Leave the property in a clean and tidy condition



- Provide a forwarding address.

## Definitions

Term	Definition
<b>Sublet</b>	A <b>sublet</b> is created when a part or all of the property held by a tenant, as opposed to a landlord, is let by the tenant during the time of their unexpired tenancy.
<b>Fair wear and tear</b>	<b>Fair wear and tear</b> arises from reasonable use of the dwelling by the tenant and the ordinary operation of natural forces. Fair wear and tear is deterioration occurring through normal daily use, but not any deterioration caused by your negligence.
<b>Controlling and coercive behaviour</b>	<b>Controlling and coercive behaviour</b> is a range of acts designed to make a person subordinate and/ or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.
<b>Lodger</b>	<b>Lodger</b> means a person who: is not named in your tenancy agreement as authorised to live in the property; is not a member of your immediate family; and who does not have part of the property for their use only.
<b>Subletting</b>	Subletting occurs when an occupying party through a sublet, which is created when a part or all of the property held by a tenant, as opposed to a landlord, is let by the tenant during the time of their unexpired tenancy, to the subtenant.
<b>Overcrowding</b>	<b>Overcrowding</b> is where the number of people sleeping in the property contravenes the room or space standards of, or numbers permitted by, the relevant law. There is more information about this in the tenant's handbook.
<b>Family member</b>	A <b>family member</b> includes a parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece, step-child, or half-blood relation.