

Agenda Item 13

Housing Review Board

10 September 2009

JG/DB



Introductory Tenancies

Summary

This report sets out a proposal to commence the use of Introductory Tenancies under Section 124 of the Housing Act 1996. Introductory Tenancies operate for the first 12 months of a tenancy and at the expiry of this period the tenancy 'matures' to a secure tenancy. The report provides details of Introductory Tenancies, when they are to be used and the benefits to the Council when trying to deal with breaches of a tenancy agreement.

Recommendation

1. Members are asked:

- a. To approve the proposal for implementing Introductory Tenancies for all new tenants of the Council.
- b. To agree to consult tenants on the proposal to implement Introductory Tenancies.

a) Reasons for Recommendation

To create a tenancy that provides for a probationary period for new council tenants.

b) Alternative Options

To not approve the recommendation and continue to provide all new tenants with a secure tenancy.

c) Risk Considerations

The introduction of Introductory Tenancies will enable the Council to deal more effectively with breaches of tenancy agreement in the first 12 months of the tenancy.

d) Policy and Budgetary Considerations

These are set out in the report

e) Date for Review of Decision

An annual report will be submitted to the Board.

1. Introduction

- 1.1 Section 124 of the Housing Act 1996 gave local authorities discretionary powers to introduce introductory (or probationary) tenancies. These have been devised to facilitate the early removal of new tenants who are in obvious and serious breach of their tenancy agreements.

- 1.2 The Council currently offers a 'secure' tenancy to all new tenants, other than those who are placed in Council housing used as homeless temporary accommodation, in which case a 'non secure' tenancy agreement is used.
- 1.3 Introductory Tenancies enable a landlord to take prompt action when a new tenant breaches the conditions of their tenancy agreement. A secure tenancy can only be terminated by a County Court order on specific grounds set out in Schedule 2 to the Housing Act 1985. However, even if the Council has demonstrated that the grounds for possession are sound, the court still has discretion in respect of granting an order for possession. With an Introductory Tenancy the Housing Act 1996 sets out that, when the Council has demonstrated to the court that the procedures in the Act have been correctly completed, the court will grant a (mandatory) possession order.
- 1.4 Introductory tenancies last for 12 months from the tenancy start date, although in certain circumstances it is possible to extend an introductory tenancy for a further 6 months. After 12 months they automatically become secure tenancies unless the landlord has begun proceedings to end the introductory tenancy due to a breach of the tenancy agreement. Breaches of the tenancy conditions would include:
- Rent arrears;
 - Anti-social behaviour;
 - Damage to the property;
 - Noise nuisance;
 - Failure to maintain gardens.
- 1.5 Introductory tenants committing minor breaches would generally be given at least two written warnings. If the warnings fail to resolve the problem then possession proceedings would be taken. More serious breaches would result in the Council taking immediate action.
- 1.6 Introductory Tenancies would apply to all new tenants whose tenancy starts after the date of introduction of the policy. However, they would not apply to the existing secure tenants transferring from one Council tenancy to another, including from another local authority area.
- 1.7 Although existing tenants would not be directly affected by the introduction of introductory tenancies, the Council has a duty to consult them before deciding to do so.
- 1.8 The policy cannot be applied selectively, for example giving all new tenants over 60 years secure tenancies, and those under 60 years introductory tenancies. If the Board agree to introduce this type of tenancy it will apply to all new tenants.
- 1.9 Introductory tenants have most of the same rights as secure tenants except that they do not have the right to:
- Buy the property –though the introductory tenancy period counts towards the discount;
 - Assign the tenancy;
 - Improve the property;
 - Exchange;
 - Sublet;
 - Take in lodgers;
 - Vote prior to transfer to a new landlord.
- 1.10 A copy of the proposed Introductory Tenancy – tenancy agreement is attached at **annex 1**.

2. Conditions applying to Introductory Tenancies

2.1 Assignment

Introductory tenancies may only be assigned in very limited situations.

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

2.2 Succession

If the introductory tenant dies, a person will be qualified to succeed if:

- a. The person is either the tenant's spouse or another member of the tenant's family (if the latter, the person must have resided with the tenant for the 12 months prior to the tenant's death).
- b. The person occupied the premises as his or her only or principal home at the tenant's death, and
- c. The tenant was not such a successor him or herself (only one statutory succession is permitted) (section 131 Housing Act 1996).

If no such qualified person exists, the normal rules of administration of estates will apply.

2.3 Termination and Possession

By the very nature of introductory tenancies, the landlord has considerable flexibility in determining them. No **statutory grounds** need be proven, nor must it be **reasonable** to seek possession. Provided the landlord complies with the correct procedure, the court has no discretion and must make the order for possession.

2.4 Notice

The landlord must serve a Section 182 Notice on the tenant before possession proceedings are commenced. This notice must:

- a. State that the court will be asked to make a possession order.
- b. Set out the landlord's reasons for seeking such an order.
- c. Specify a date after which the possession proceedings may be begun. This date may be no sooner than the tenancy could be determined by a Common Law Notice to Quit.
- d. Inform the tenant of his right to request a review of the landlord's decision to seek an order for possession within 14 days of the service of the Section 182 Notice.
- e. Inform the tenant to seek help, if needed, from the CAB, a housing aid centre, a law centre, or solicitor.

It should be noted that if the trial period comes to an end after possession proceedings have been started, but before an order has been made the tenancy will remain an Introductory Tenancy until the proceedings are determined (s130 Housing Act 1996).

2.5 Review

The tenant has a right to review of the landlord's decision to seek an order for possession. If such a review is sought, the landlord must carry out the review and notify the tenant, with reasons, as to the result of the review no later than the date specified in the Section 182 Notice.

3. Current issues

3.1 Although the majority of new tenants abide by the tenancy agreement, some tenants do not. At the time of 'signing up' a new secure tenancy a limited amount of information is available to housing staff about the tenant and their household. In many instances it is not until after the new tenant has moved in and a subsequent breach of tenancy is reported that we become aware of behaviour that is unacceptable.

3.2 Experience shows that most new tenants who are likely to breach their tenancy agreement in some way will do so within a short period of time. The possession process for a secure tenant is bureaucratic and protracted and quite rightly favours the tenant. Persuasion is the only tool available to the landlord to rectify breaches of tenancy agreement outside of the 'legal' process. The legal process is a heavy handed tool, but unfortunately is the only option available to deal with difficult or intransigent tenants who will not abide by the tenancy agreement. Introductory tenancies give the landlord the opportunity to deal effectively with breaches of tenancy conditions within the first 12 months of the tenancy without recourse to a protracted legal process.

3.3 Although this proposal does not impact on current secure tenants, it is a change in policy. The Council's Solicitor has recommended that if Members approve the implementation of Introductory Tenancies then current tenants should be informed of the proposal and given the opportunity to express their views before implementation. It is therefore proposed that an article be placed in the next issue of Housing Standard about Introductory Tenancies and allowing a timeframe for tenants to comment prior to implementation.

4. Financial Implications

4.1 There are no significant financial implications resulting from this report.

5. Conclusions

5.1 The introduction of Introductory Tenancies provides the opportunity for breaches of tenancy agreement to be dealt with effectively, within the first 12 months of the start of the tenancy. Members are asked to approve the proposal to implement Introductory Tenancies from 1st December 2009.

Legal Implications

Legal implications are set out within the report.

There is a need to consult tenants on this proposal and the process to be adopted is at paragraph 3.3.

Financial Implications

There are no financial implications.

See paragraph 4.0 above.

Consultation on Reports to the Executive

Draft report taken to the Tenant and Leaseholder Customer Panel.

Background Papers

Housing Act 1996.

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Housing Review Board
10 September 2009