

Flexible Fixed Term Tenancy Policy

April 2016

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CONTROL SHEET FOR FLEXIBLE TENANCY

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1. Introduction

The Localism Act 2011 introduced a number of new powers to social landlords, which includes the option to offer fixed term tenancies, known as flexible tenancies, rather than the existing secure lifetime tenancies to new tenants. The provisions creating flexible tenancies came into force on 1st April 2012, however at this time the Council did not choose to grant flexible tenancies keeping lifetime tenancies the preferred option.

A flexible tenancy is a form of secure tenancy for a fixed period not less than 2 years, with the common practice being for 5 years. Generally tenants with a flexible tenancy have most of the same rights as other secure tenants (as set out in the Housing Act 1985). See appendix 1.

Flexible tenancies are being introduced to new tenants who fit the stated criteria listed below in 4.1 of this policy. Access to social housing would be for a fixed period until their circumstances change enabling them to find alternative accommodation, or in some circumstances more suitable social housing may be offered by Rykneld Homes in line with the Choice Based Lettings and Allocations Policy.

Flexible tenancies **do not** affect existing social housing tenants who currently have a lifetime tenancy.

Due to this introduction amendments have been made to the Council's Choice Based Lettings (CBL) and Allocations Policy, which details how it's Arms Length Management Organisation (ALMO), Rykneld Homes, will allocate the Council's housing stock and the Tenancy Strategy.

2. Scope

The policy has had due regard to the Council's Tenancy Strategy and CBL Allocations Policy and is in line with legislation (Localism Act 2011, Housing Act 1985 and Housing Act 1996).

The policy sets out the terms for offering and implementing a flexible tenancy.

The policy will be a working document for operational purposes for Rykneld Homes and will be made available on both NEDDC's and Rykneld Homes websites.

The Council has developed the policy in consultation with Elected Members, Rykneld Homes, SAMT and the Council's legal advisors.

3. Principles

The purpose of the policy is to ensure that the most appropriate tenancy and property is offered to applicants to reflect their current circumstances. When there is no longer a need for the council property, tenants may be asked to seek alternative accommodation to enable the council to make best use of its stock.

The Policy will link to the Council's Tenancy Strategy and CBL and Allocations Policy and will give guidance and clarity to ensure that the process for offering flexible tenancies, as detailed in this policy, meets the requirements of current legislation and will be subject to review and revised to take account of any legislative changes.

4. Statement

The Localism Act 2011 states that the fixed term is not to be less than 2 years, therefore it is at the discretion of the Council to implement longer terms if they wish, however the recommended length of a fixed term tenancy is 5 (or more) years which can be implemented following an introductory tenancy.

4.1 Issuing a Flexible Tenancy

Flexible tenancies will be granted to the applicants stated below for a fixed term following an introductory tenancy period of 12 months;

2 year fixed term tenancy

- Owner Occupiers/applicants who have too much equity/savings/assets which they **cannot** access to secure alternative accommodation due to their current circumstances, for example; relationship breakdown, fleeing domestic violence
- Empty/Void properties to use as a housing solution for applicants for a fixed term until the property can be developed/refurbished/regenerated

5 year fixed term tenancy

- Properties with major adaptations or housing designed for a disabled person

Benefit of a flexible tenancy for these applicants/property types will be;

- housing solution for applicants until funds are accessible, therefore preventing homelessness
- will be secure for 2/5 years, which;
- will give them time to seek alternative accommodation to suit their needs when funding becomes available before the tenancy terminates

- will free up a council property when there is no longer a need for social housing/adapted properties when their circumstances change
- will help Rykneld Homes make better use of housing stock
- will bring empty properties back into use until such a time they can be re developed/refurbished/regenerated

Prior to the start of a flexible tenancy, Rykneld Homes will make it clear to an applicant that on the expiry of the introductory period the tenancy will become a flexible fixed term tenancy and the length of the tenancy they are being offered, which will be in the form of a signed tenancy agreement.

An applicant can request a review of their offer of accommodation on a flexible (secure) tenancy within 21 days of receiving the offer under [Section 107B\(2\) of the Localism Act 2011](#). The review may only be requested on the basis that the length of the term does not accord with the policy. The detailed procedure is set out in [Statutory Instrument 2012/695](#).

4.2 Exemptions from Flexible Tenancies

Existing tenants, or existing tenants who choose to move to another social rented home can retain their secure tenancy which normally lasts a lifetime.

The Council recognises that there may be circumstances in which it would be unreasonable to grant a flexible tenancy instead of a lifetime tenancy, for example;

- Vulnerable people in need of settled or stable accommodation, where their situation is **unlikely to change**

An assessment by Rykneld Homes Occupational Therapist will be carried out liaising with external sources as necessary, for example, GP, Support worker to determine if a flexible tenancy would be appropriate for the applicant.

4.3 Flexible Tenants Rights

During a flexible tenancy period tenants have most of the same rights as a secure lifetime tenant including:

- Right to repair
- Right to exchange
- Right to consultation
- Right of succession to spouse, partner or cohabitee for the remainder of the tenancy term
- Right to buy

For more details regarding the similarities and differences between tenancies see Appendix 1.

4.4 Ending a Flexible Tenancy

Each tenancy will be reviewed no less than 8 months before the expiry date to enable a decision to be made about whether the tenancy should be renewed or terminated. The review will be carried out by Rykneld Homes and each tenant's circumstances will be assessed including a financial assessment.

Following the review, the options that are available are:

- to offer a further flexible tenancy at the current property
- to offer a further flexible tenancy at another property
- to allow the tenancy to become a secure tenancy
- to serve notice of the intention not to renew the tenancy and issue proceedings to terminate the flexible tenancy

When a flexible tenancy is coming to an end, and is not being renewed, it is essential that the tenant is given no less than 6 months notice so that they can seek alternative accommodation and are given advice regarding their options; in these cases a referral will be made to the Council's Housing Options Team.

The Localism Act 2011 states that the first notice to terminate the tenancy should be served no less than 6 months before the tenancy end date with the reason for the termination. The tenant has a right to disagree with the decision to terminate and initially should contact Rykneld Homes, however if the decision is upheld and the tenant would like to take further action they can;

- request a formal review within 21 days from receiving the first notice;
- if the decision at the formal review is upheld the tenant has recourse to the county court;
- should the county court uphold the decision then the tenant should leave the property;
- if the tenant refuses to leave then normal eviction procedures will take place.

A second notice, giving no less than 2 months, will be issued in writing to the tenant stating that the Council is seeking possession; this may be given before or on the day on which the tenancy comes to an end. A request for a review of this decision must be made before the end of the period of 21 days beginning with the day on which the notice is served.

At the end of the tenancy a court must make a possession order if a review has been carried out according to the statutory provisions and it is satisfied that:

- the flexible tenancy has come to an end
- that the landlord has given not less than 6 months notice of the proposal not to grant another flexible tenancy on expiry, giving the reasons and informing the tenant of their right to review
- that the landlord has given the tenant not less than 2 months notice in writing stating that the landlord requires possession of the dwelling house

4.5. Circumstances for Terminating a Flexible Tenancy

In some circumstances, upon review the flexible tenancy will not normally be renewed/extended if;

- the tenant's financial circumstances have changed, for example the tenant is assessed as having sufficient funding (as per the CBL and Allocations Policy) to be able to secure alternative accommodation
- the tenancy has been breached, for example; rent arrears, anti-social behaviour
- possession proceedings have commenced
- the property is no longer suitable for the tenant's needs, for example; if the property has an adaptation that is no longer required

The Council recognises that there may be circumstances in which it would be unreasonable to expect someone to move even if the above criteria applies, and may allow a tenancy to continue, this will be assessed and determined by Rykneld Homes on a case by case basis.

4.6 Tenant Ending a Flexible Tenancy

The tenant is given a statutory right to terminate the flexible tenancy, the tenant must;

1. serve a written notice stating that the tenancy will be terminated on the date specified in the notice, and;
2. the date must be after the end of the period of four weeks beginning with the date on which the notice is served, however;
3. Rykneld Homes may agree with the tenant to dispense with the requirements stated in point 1 and 2 (the dispensation will be in writing to prevent, for example, a subsequent suggestion of illegal eviction), then;
4. the tenancy is terminated either on the date specified in the notice or determined in accordance with the arrangements made with the tenant, only if;
 - no arrears of rent are payable under the tenancy, and
 - the tenant is not otherwise materially in breach of a term of the tenancy

5. Responsibility for Implementation

The policy is owned by the Council and is to be implemented by the Council's Arms Length Management Organisation, Rykneld Homes.

6. Glossary of Terms

Flexible Tenancy – is a secure tenancy for a fixed period, for example 2 or 5 years

Choice Based Lettings Scheme - allows applicants from the housing waiting list to bid (express an interest) for council properties advertised for allocation.

Localism Act 2011 - is an Act of Parliament that changes the powers of local government in England.

Welfare Reforms - Governments changes to the country's benefits system including Housing Benefit.

Possession Order - is a Court Order that entitles a landlord to legally evict a tenant and regain possession of the property

Tenancy Strategy - sets out how Registered Providers should consider issues when producing tenancy policies

7. Appendices

Appendix 1

Similarities and Differences Between Tenancies

Description	Secure Lifetime Tenancy	Flexible Fixed Term Tenancy
Term	For life of tenant	Minimum of 2 years but could be longer at discretion of landlord
Mutual exchange	Statutory right to exchange their property with another tenant which can only be refused by the landlord on certain grounds	Same rights
Lodgers or part sub-let the property	Rights to take in lodgers or sub-let part of the property provided the tenant continues to use the property as their only or principle home. Subletting part of the property require permission from the housing provider and failure to obtain this would be a breach of tenancy	Same rights
Repairs by Landlord	Tenants have the right to ensure the landlord carries out repairs within a reasonable timescale with a right to compensation in some circumstances	Same rights
Home improvements	The tenant can carry out home improvements some may require permission from the landlord and compensation may be paid upon leaving the property	No home improvements can be made or compensation paid unless the tenancy agreement specifically states that they can
Consultation/information	Tenants have the right to be consulted about matters affecting their rights and tenancy conditions and	Same rights

	information about their tenancy	
Right to Buy	Tenants are able to buy their home after they have been a social housing tenant for 5 years	Same rights
Statutory succession	There can only be one statutory succession to a surviving spouse (this includes civil partners) or a member of the deceased tenant's family. Where a tenancy was originally a joint tenancy and one of the joint tenants dies, or surrenders their interest, this counts as a succession; no further statutory successions can be claimed.	Only a spouse or partner living at the property at the time of the tenants death may succeed till the end of the tenancy period
Termination of tenancy by the landlord	Tenancy termination will not be given unless there has been a sufficient breach of tenancy for example: non payment of rent, anti social behaviour	6 months notice for termination of the tenancy and a further 2 months notice for possession