

East Devon District Council

EDDC Tenancy Policy

Version 1

Officer Responsible: Housing Service Lead

Authorisation by Housing Review Board

Authorisation date: 20th June 2019

1 Previous Policies/Strategies

1.1 This policy replaces any previous versions

2 Why has the council introduced this policy?

2.1 It is good practice for all Registered Providers (of social housing) to have in place a tenancy policy which sets out the type of tenancies that the provider uses, the circumstances in which each will be used, and other aspects of managing tenancies.

2.2 This policy sets these out for East Devon District Council (EDDC) as a landlord of social housing. It has been written with reference to the EDDC Tenancy Strategy.

2.3 It will be used to ensure that the right type of tenancy is allocated to each tenant, that the under occupation of properties is addressed effectively and that we can provide family and/or adapted housing where this is required. It also sets out the circumstances in which we will charge affordable rents.

2.4 The ways in which each type of tenancy can be let and brought to an end are set out in law (Housing Acts 1985 and 1996, and the Localism Act 2012.)

3 Affordability and Affordable Rent

3.1 **Definition of affordability:** A household can be considered able to afford market house renting in cases where the rent payable is up to 25 per cent of their gross household income (Communities and Local Government). The Housing Review Board has recognised the use of the Local Housing Allowance as a standard definition of affordability. However our preferred base-line is that rents should be set at the level of social rent. Service charges, if applicable, will be additional and reflect the cost of the service provided to each tenant.

3.2 **Definition of social rent:** Guideline target rents determined through the national rent regime. The level of rent that we charge for the majority of our properties will be social rent. Exceptions to this are those charged at 'affordable rent'.

- 3.3 **Affordable Rent:** This is defined as 80% of market rent. The Housing Review Board has taken the view that affordable rents will only be considered for any Council new build schemes and acquisitions. It will not be charged on re-lets of existing stock (stock built before April 2012). EDDC will charge affordable rent at levels no higher than the relevant Local Housing Allowance at the time.

4 Our Tenancy Agreements

- 4.1 We have one generic tenancy agreement document covering our introductory, secure and flexible tenancies.
- 4.2 The document is written in plain English in a style easily understood by tenants. It sets out the rights and obligations of both the tenant and the landlord, and makes it clear which rights and responsibilities apply to which type of tenancy.
- 4.3 Tenants are given a copy of the tenancy agreement at the start of the tenancy and have the terms explained to them at the sign up meeting.
- 4.4 We also have separate demoted and non-secure tenancy agreements, a licence agreement for accommodation in our shared house, and a non-secure tenancy agreement for the Syrian Resettlement Scheme.

5 Tenancy types and conditions

Currently we have six different types of tenancy and a licence agreement for accommodation in our shared house

5.1 Introductory tenancy

- 5.1.1 Generally all tenants new to EDDC are initially given an introductory tenancy. However tenants transferring from another social landlord may go onto either a secure or flexible tenancy. This does not apply to tenants given temporary accommodation who will be given a non secure tenancy.
- 5.1.2 Introductory tenancies usually last for twelve months from the tenancy start date but in certain circumstances (see 4.1.5 below) an introductory tenancy can be extended.
- 5.1.3 Before the start of the introductory tenancy, tenants will be told which kind of tenancy (secure or flexible) they will be granted at the end of the introductory period.
- 5.1.4 After the introductory period the tenancy automatically becomes either a secure tenancy or a flexible tenancy, unless we have begun proceedings to end the tenancy (served notice) due to a breach of the tenancy agreement.
- 5.1.5 Breaches of the tenancy conditions, and reasons why an introductory tenancy may be extended for a period, include:

- rent arrears
- antisocial behaviour
- damage to the property
- refusing to allow access to property for required maintenance/servicing works
- noise nuisance
- failure to maintain gardens

To end this type of tenancy we must get a possession order from the courts.

5.1.6 Introductory tenants have most of the same rights as secure or flexible tenants but there are some rights that they do not have. They do not have the right to:

- take in lodgers
- sublet part of the home
- make any improvements to the property
- be compensated for any improvements to the property
- exchange their home with another tenant

5.1.7 Introductory tenants do not have the Right to Buy their property, but the period spent as an introductory tenant will count towards the qualifying period for the Right to Buy.

5.2 Secure tenancy

5.2.1 Most of our tenants will have a secure tenancy. To end this type of tenancy we must get a possession order from the courts.

5.2.2 The reasons why we may seek to get a possession order would include:

- the tenant refusing to pay rent or accruing large rent arrears
- misuse of the property by either the tenant, a member of their family, or visitors
- the tenant not living in the property as their principal home.

5.2.3 Under the Housing Act 1985 secure tenants have a number of rights which include:

- the right of succession
- the right of assignment in certain cases
- the right to take in lodgers and sublet part of the property
- the right to request a transfer to alternative accommodation
- the right to exchange their home with another council or housing association tenant
- the right to information
- the right to be consulted and involved
- the right to make improvements to their home
- the right to compensation for improvements

- the right to repair
- the Right to Buy in certain cases.

5.3 Flexible tenancy

- 5.3.1 Introduced through the Localism Act, a flexible tenancy is one that is offered for a specific period of time, as opposed to the traditional 'lifetime tenancies'. The period of time is known as the 'fixed term'.
- 5.3.2 From 1 April 2013 the Housing Review Board have agreed that certain groups of tenants will be given a flexible tenancy, rather than secure tenancy, after the introductory tenancy has ended.
- 5.3.3 In most circumstances tenants going into supported accommodation will be granted secure tenancies as it is felt that their circumstances are less likely to change over time. Exceptions may include situations where one tenant requires supported housing but where the spouse or civil partner has no such requirement. Supported accommodation is accommodation specifically for people who have a support need or disability and will benefit from the assistance of a mobile support officer and the Home Safeguard alarm service.
- 5.3.4 In most circumstances tenants going into general needs properties will be given flexible tenancies as it is felt possible that their circumstances (family make up, financial standing or need for adapted accommodation) may change during the course of the flexible tenancy, and so change their housing needs.
- 5.3.5 However there may be some circumstances where it is judged that, due to their individual circumstances, a tenant going into a general needs property should be granted a secure tenancy. These circumstances may include learning disability, chronic physical disability, severe sight impairment, and those with a severe and enduring mental health problem. The Housing Needs and Strategy Manager will decide if particular tenants should be given a secure tenancy.
- 5.3.6 The length of the flexible tenancy will be for five years in almost all cases (see 5.3.7 below). But the tenancy can be reissued for another fixed term at the end of this period. The first five year period will commence at the end of the introductory tenancy. The length of tenancy offered may be amended in future to reflect any changes to government legislation or guidelines.
- 5.3.7 In exceptional circumstances we will consider offering a flexible tenancy on less than five, but more than two, years. The decision to do so will be made on a case by case basis by the Housing Needs and Strategy Manager.

Exceptional circumstances can include:

- Applicants who have too much equity or savings or assets to be eligible for social housing but who are unable to access this due to their current circumstances, for example relationship breakdown, fleeing domestic violence

- Allocations into empty or void properties which are being used as a housing solution for applicants for a fixed term until the property can be developed, refurbished or regenerated.

5.3.8 The length and terms of the flexible tenancy will be explained to all tenants concerned before they take on the introductory tenancy.

5.3.9 We will begin the review period of all flexible tenancies at least 12 months prior to the end of the fixed term. We will write to tenants to tell them the outcome of the review. Where the tenant(s) circumstances have not changed significantly (see 4.3.10) over the course of the fixed term we will renew the flexible tenancy for a further fixed term.

5.3.10 We will renew the flexible term tenancy unless:

- The property has become larger than the tenant and their current family require.
- The property has become overcrowded.
- The income of the household has risen to above the income limit as set out in the Devon Home Choice Policy.
- The property has adaptations which are no longer required by the current tenant or a member of their family.
- The rent account is in arrears at the time of the review or has been in arrears for at least six out of the last twelve months. Exceptions can be made for tenants getting assistance with their rent from Housing Benefits, those who we consider to have only minor rent arrears, or those who have made an agreement to pay by instalments and have kept to this agreement.
- There has been a breach of tenancy conditions and a notice seeking possession has been served.
- We intend to demolish, redevelop or dispose of the property within the next five years. In these situations we will consider offering a short term tenancy of the property or suitable alternative accommodation.
- You have refused to engage with us in the review process

5.3.11 When considering whether to renew a flexible tenancy we will take into account:

- circumstances where there is a clear need for the household to remain in the same location and other suitable accommodation is not available locally. This will usually only apply in our rural areas
- circumstances where the property has had to be adapted to meet the needs of a particular tenant or member of their household and this work would have to be duplicated in a new property.

5.3.12 In cases where the flexible tenancy is not being renewed, we will give at least six months' notice that the fixed term is coming to an end, and a formal notice seeking possession will be served at least two months prior to the end date. We will make it clear that we do not propose to grant another tenancy and the reason for that decision.

5.3.13 To end the flexible tenancy we must apply to the court for a possession order.

5.3.14 Flexible tenancies are subject to the same grounds for possession (see 5.2.2) and succession (see Section 8) as secure tenancies.

5.3.15 Tenants have the right to request a review of the decision to offer a flexible tenancy within 21 days of our decision but only as to the length of the fixed term being offered and only if they believe the offer does not accord with the Council's published Tenancy Policy. Such a request should be made in writing to the Housing Needs and Strategy Manager.

5.3.16 Tenants have the right to request a review of the decision not to renew a flexible tenancy within 21 days of the notice only if they believe this does not accord with the Council's published Tenancy Policy. Such a request should be made in writing to the Housing Needs and Strategy Manager. The tenant can request an oral hearing and the review will be conducted by someone senior to the maker of the original decision and not involved in that decision. The review must be carried out prior to possession proceedings being issued. This review will be in line with Statutory Instrument 2012 No. 695: The Flexible Tenancies (review procedures) regulations 2012.

5.3.17 Tenants on a flexible tenancy have the Right to Buy their property (after the qualifying period). However they do not have the right to make improvements to the property or to be compensated for any improvements.

5.4 Demoted tenancy

5.4.1 Where there have been incidents of antisocial behaviour we will go to court to obtain a demoted tenancy. Demoted tenancies will usually last for one year.

5.4.2 Where a secure tenancy is demoted and the demotion period completed successfully, the demoted tenancy will automatically become a secure tenancy.

5.4.3 Where a flexible tenancy is demoted and the demotion period completed successfully, the demoted tenancy will also automatically become a secure tenancy. If a flexible tenancy is required, we must serve a notice on the tenant prior to the end of the demotion period, informing them that the tenancy is to be a flexible tenancy and specifying the length of the fixed term and other express terms of the tenancy. The length of the fixed term after the demotion period has ended will be determined as set out in 5.3.6 and 5.3.7.

5.4.4 Demoted tenants do not have the same rights as secure tenants. For example they do not have:

- the right to exchange
- the right to succession
- the right to take in lodgers
- the right to sublet.

5.4.5 Also the Right to Buy is suspended until the tenancy is no longer demoted. The time spent as a demoted tenant does not count towards any discount.

5.5 Non secure tenancy

5.5.1 Very few of our tenants will have a non secure tenancy. These tenancies are only given to tenants living in temporary accommodation, such as private sector leased accommodation.

5.5.2 These tenancies do not have the same security of tenure or rights as secure tenants, but are similar to introductory tenancies.

5.6 Licence Agreement

5.6.1 We have a number of properties that provide shared accommodation. There are individual en suite bedrooms and shared kitchen and dining facilities. As there are shared facilities we use a licence agreement not tenancy agreement when letting these rooms

5.6.2 Either party (landlord or tenant) can end the licence agreement by giving one week's notice, unless there is a serious breach in which case we can ask the licensee to leave immediately.

5.6.2 As well as the licence agreement there are house rules which must be followed at all times.

5.7 Syrian Vulnerable Persons Resettlement Scheme

5.7.1 We are assisting Syrian refugees by locating and securing accommodation in the private sector for them to reside in for a fixed period.

5.7.2 The tenancy type is a non secure tenancy agreement with a variable length of between two and five years.

6 Sustaining our tenancies

We are very keen that tenants are able to manage their tenancies properly, that they do not get into rent arrears or carry out acts of antisocial behaviour.

6.1 Helping new tenants:

6.1.1 We carry out an in-depth sign up interview with all new tenants. This covers:

- ensuring the tenant understands the terms and conditions of the tenancy agreement
- methods and frequencies for paying their rent and accessing benefits
- checking if they have any particular support needs
- highlighting opportunities to get involved with the housing service
- explaining how to report repairs and our service standards.

- 6.1.2 We aim to visit or telephone all new tenants between four to eight weeks of moving into their property to check that everything is going well for them. We will check whether they are paying their rent regularly, whether they are receiving their benefits, and that they are keeping to the terms of their tenancy conditions.
- 6.1.3 When tenants move into one of our sheltered properties we discuss with them the level of individual support they need, for example whether it is a visit every other day, or a phone call once a week.

6.2 Help for existing tenants:

- 6.2.1 We will visit or telephone any tenants who are identified as having problems managing their tenancy, such as rent arrears or antisocial behaviour issues. We will discuss the problems with them. We will explain that it is important that they stick to the terms of the tenancy agreement and pay their rent regularly.
- 6.2.2 For tenants who are struggling to pay their rent we will discuss what options are available to help them, and put them in touch with other agencies that may also be able to help.
- 6.2.3 With any reminder notices, or when notices for rent arrears are served, we send out details regarding Citizens Advice Bureau, dates and times of Housing Benefits surgeries, and contact details of debt advice agencies.
- 6.2.4 Our newsletters contain regular articles stressing the importance of contacting us as early as possible if a tenant is having difficulty in paying their rent.
- 6.2.5 Where we identify that a tenant needs particular support to manage in their home we will put them in touch with the relevant agencies such as social services.
- 6.2.6 Where there are issues of neighbour nuisance or conflict we will offer the use of mediation services (paid for by EDDC) to try to help the tenants concerned resolve their differences.

7 Tackling tenancy fraud

- 7.1 It is important that the people living in our properties are those that need them most. We take various steps to ensure that this is the case, from ensuring we allocate the property to the most appropriate person, to following up allegations of alleged misuse.
- 7.2 For all new tenants we take copies of photo identification such as passport or driving licence. Where there is no available photo ID we will take a photograph of each tenant.
- 7.3 We carry out in depth estate inspections where we visit each property and where possible speak to the tenant about any issues affecting them. We take

the opportunity to check identification to ensure that they are indeed the tenant. We are rolling these estate inspections out across the district and aim to do at least one each year. As well as this in depth inspection we undertake about 10 estate walkabouts in different areas each year.

- 7.4 We follow up any reports of unoccupied properties or sub-letting of properties and take action if cases of abuse are discovered. As well as this we carry out tenancy checks when visiting some of our properties.
- 7.5 We issue press releases about tenancy fraud and have articles in our newsletters and information on our website.
- 7.6 We have a policy on tackling tenancy fraud. We encourage staff and tenants to report any suspected incidents of tenancy fraud and have a confidential fraud line available.

8 Ending the tenancy

8.1 When the tenant gives notice or dies

8.1.1 We carry out pre-termination visits with all our tenants, or with the next of kin. During this visit we:

- check the condition of the property and garden
- ensure the rent account is up to date
- agree with the outgoing tenant which items can be left in the property and which must be removed
- ensure that the outgoing tenant is aware that the property must be left in a good and clean state, and all rubbish and personal items (except those agreed above) must be cleared from the property
- read the meters
- request a forwarding address, contact details and phone numbers
- determine any recharges that may be due.

8.1.2 If the condition of the property or garden are unsatisfactory, if the property has been left in a dirty condition, or if rubbish and personal items have been left in the property, the outgoing tenant will be re-charged our costs to bring the property to a satisfactory condition.

8.1.3 If there is any rent due to the end of the tenancy we will inform the tenant and expect the amount due to be paid in full before the tenancy ends.

8.1.4 We have a leaflet for relatives of deceased tenants explaining to them the steps that need to be gone through to end the tenancy and the information we require from them.

8.2 Advice and assistance at the end of a flexible tenancy

- 8.2.1 All tenants whose flexible tenancies are not going to be renewed can contact the Housing Options and Advice service for assistance if required.
- 8.2.2 If the tenancy is not being reissued because the property is going to be under occupied, we will assist the outgoing tenant to access other suitable accommodation and this may well be by moving to smaller council or other Registered Provider accommodation.
- 8.2.3 We will give at least six months' notice that the tenancy is coming to an end, and a formal notice seeking possession will be served at least two months prior to the end date.
- 8.2.4 At the end of the tenancy we will carry out a pre-termination visit as outlined in 8.1.1 above.
- 8.2.5 We will give advice and assistance in line with our current policies and procedures.

9 Succeeding to a tenancy

9.1 For our secure tenancy agreements that commenced before 1 April 2012:

- 9.1.1 The following people can succeed to the tenancy, if they have been living in the property as their principal home:
- the tenant's spouse or civil partner
 - another member of the tenant's family that has lived with the tenant throughout the period of twelve months ending with the tenant's death.

Only one succession is allowed by the Housing Act 1985.

- 9.1.2 If more than one person is eligible to succeed then we will give preference to the tenant's spouse or partner. Where a joint tenant becomes a sole tenant this counts as the one succession allowed.
- 9.1.3 If the property is not suitable for the relative, or it becomes under occupied, we may request them to move to a more suitable property. We can only do this between six and twelve months after the previous tenant's death and only by court order.

9.2 For flexible tenancies and secure tenancies that commenced on or after 1 April 2012:

- 9.2.1 In April 2012 the law regarding succession changed. For tenancies that start after this legislation there is only a statutory right of succession to a spouse or civil partner or cohabitee. They must have to been living in the property as their only or principal home at the time of the tenant's death. Legislation gives Local Authorities the power to grant additional succession rights. However the

Housing Review Board has chosen not to grant additional rights and will adopt the changes in the Localism Act.

10 Tackling under occupation

- 10.1 We recognise that we have a large number of family properties, particularly three bedroom properties, which are under occupied.
- 10.2 Changes to Housing Benefit regulations where properties are under occupied have brought in restrictions to levels of housing benefit. This has resulted in certain tenants having a greater rent burden, and some of these may seek to downsize as a result.
- 10.3 We have a downsizing scheme which provides financial assistance to people who move to a smaller property and so free up a family sized property. Where necessary this scheme will also provide help and support with moving arrangements.
- 10.4 We will give priority on Devon Home Choice to people wishing to downsize.

11 Adapted properties

- 11.1 Our Landlord Disabled Adaptations Policy sets out how we will encourage our tenants to live in properties suitable for their need as well as helping them to live independently by adapting their homes through minor and major adaptations where appropriate.
- 11.2 Under our current secure tenancy agreement, if a tenant is living in a property which has been built or adapted for a person with a disability, and the tenant or their family no longer need that type of home, we may take steps through the Courts to end the tenancy.
- 11.3 We will try as far as possible to offer the tenant and/or their family members other suitable accommodation.
- 11.4 For tenants on a flexible tenancy living in a property which has been built or adapted for a person with a disability, we will only renew the tenancy if there is still a requirement within the family group for that kind of property, and where none of the other conditions under 5.3.10 apply.
- 11.5 Adaptations and mutual exchange - see 13.8 below.

12 Transfers

- 12.1 For secure tenants who transfer to another property, we will ensure that they are given another secure tenancy.

- 12.2 This does not apply to tenants who choose to move to accommodation let on affordable rent terms. In these circumstances existing tenants may be offered a flexible tenancy.
- 12.3 However Clause 11.1 will apply if tenants are required by us to move to a property on affordable rent, for example as a result of demolition.

13 Mutual Exchanges

- 13.1 Mutual exchanges usually take place via a deed of assignment where each tenant steps into the other's shoes and takes over the other tenant's tenancy type and terms. New tenancies are not signed.
- 13.2 Under the Localism Act if at least one of the tenants has a secure tenancy begun before April 2012 and at least one of the tenants is on a flexible tenancy, then such exchanges must be done by surrender and granting of new tenancies.
- 13.3 In these circumstances, we will grant the tenant whose secure tenancy predated April 2012 a secure tenancy. This will ensure that existing tenants (before April 2012) retain similar security of tenure to that of their original tenancy.
- 13.4 As a landlord we can still refuse an exchange. We have 42 days to make that decision.
- 13.5 We subscribe to Home Swapper, an internet based mutual exchange service.
- 13.6 With mutual exchanges tenants accept the property in the condition it has been left in by the previous tenant. We carry out routine repairs in accordance with the tenancy agreement but no specific work will be undertaken as a condition of accepting the exchange.
- 13.7 We carry out health and safety checks as part of the approval process. These include checks on the gas and electricity supplies, and the energy efficiency of the property. From 1 January 2016 we charge £50 to undertake an electrical check and £100 to undertake both electrical and gas checks.
- 13.8 We will not make any adaptations to a property which has changed hands by way of mutual exchange for at least twelve months from exchange date, unless there are very significant changes in the tenant's circumstances.

14 Complaints

- 14.1 The Housing Service will deal with any complaints in accordance with the East Devon District Council corporate complaints policy. For full details please contact the Complaints Officer, East Devon District Council, Blackdown House, Border Road, Heathpark Industrial Estate, Honiton, EX14 1EJ email complaints@eastdevon.gov.uk or phone 01395 517528.

15 Outcomes

15.1 This policy aims to ensure that:

- The right people are living in the right property on the right type of tenancy
- Certain groups of tenants can be moved from properties which are no longer suitable for their needs
- Tenants will be encouraged to move to more suitable accommodation if the property becomes too big for their requirements or if their needs or circumstances change
- Tenants will be helped to sustain their tenancies for the long term, but where problems occur, particularly at the start of the tenancy, action can be taken quickly
- Tenancy fraud is identified and tackled.

16 Responsibility

16.1 The Housing Needs and Strategy Manager will be responsible for ensuring that the right people are placed in the right property on the right type of tenancy.

16.2 The Landlord Services Manager will be responsible for ensuring that tenants are given support to maintain their tenancy and that action is taken where problems occur and where tenancy fraud is suspected.

16.3 The Housing Review Board will be responsible for sanctioning any changes to this policy.

17 Performance monitoring

17.1 We will review the number of each type of tenancy annually. In the future we will review what happens at the end of a flexible tenancy, how many are terminated and for what reasons. We will also review the assistance given to these tenants.

18 Policy consultation

18.1 EDDC took part in the Devon-wide consultation regarding Tenancy Strategy. In the drafting of our first tenancy policy the Tenant Representative Group was consulted and agreed by the Housing Review Board.

18.2 This current revision takes on board recent legislative changes and good practice procedures.

19 Equality impact considerations – the policy is high relevance to equality if it has a big impact on residents and users of the service

High

- 19.1 The council has an Equality and Diversity policy that informs how officers should engage with people with protected characteristics.
- 19.2 Officers are aware that as providers of Social Housing, there may be potentially vulnerable tenants in our properties and will act accordingly in all correspondence and communication, giving due consideration as to how any vulnerability or condition might affect either their judgement or ability to understand information provided.
- 19.3 Where any decisions are made that will affect a tenant, it is necessary to ascertain whether that tenant has the mental capacity to make an informed choice in relation to that decision and to provide and/or engage with an advocate if required.

20 Policy Review

The policy will be reviewed at least every three years or sooner if new guidance or legislation is published.

21 Related Policies and Strategies

The EDDC Tenancy Strategy
The EDDC Allocations Policy
The EDDC Landlords Disabled Adaptations Policy