

Tenancy Policy

SCOPE

This policy sets out our approach to the type of tenancies we will grant and in which circumstances. It also includes details about which grounds for possession we will use.

This policy applies to residents living in homes owned and managed by Easy Housing Association.

We will expect managing agents, managing properties that we own, to use our occupancy agreements and follow our practices as outlined in this policy.

VERSION NUMBER 2.1

REASON FOR REVIEW To support the implementation of Affordable Rent as a result of the Localism Act 2011 and changes to regulatory standards. Updated to reflect revised wording around the circumstances under which we will and will not issue an assured shorthold five year fixed term tenancy.

APPROVED BY The Management Board

APPROVAL DATE 15 Sep 2012

EFFECTIVE FROM 15 September 2012

ACCOUNTABLE

DIRECTOR : Mohamed Mohamed

DATE OF NEXT REVIEW June 2014

1 Introduction

This policy sets out our commitment to offer and issue tenancies which are compatible with the purpose of the housing, the needs of individual households, the sustainability of the community and the efficient use of our housing stock. It determines which occupancy agreements we will use and the housing circumstances in which we will grant the agreements. This includes our approach to granting tenancies to minors.

The policy also provides details about the grounds for possession which we may rely on, and our approach to using the mandatory grounds.

Objectives of this policy

The objectives of this policy are to:

- ensure we meet our statutory and regulatory obligations
- determine our approach to granting tenancies to minors (under 18 years)
- determine which grounds for possession we will use
- ensure tenancies are granted consistently in a transparent and fair way

- assist mobility and respond to the changing needs of our tenants
- ensure we make best use of social housing stock to reduce the impact where demand for housing exceeds supply
- ensure our approach is sufficiently flexible to support the objectives of our local authority partners tenancy strategies.

Legislative context and background

The most important Acts that currently govern registered provider tenancies are:

- Rent Act 1977 - refers to private sector tenancies before 15 January 1989
- Housing Act 1985 - refers to housing association tenancies before 15 January 1989 and public sector tenancies
- Housing Act 1988 (private sector tenancies and housing association tenancies on or after 15 January 1989)
- Protection from Eviction Act 1977 (giving protection against eviction without court proceedings to most tenants and some licensees)
- Housing Act 1996 (introductory tenancies)
- Anti-social Behaviour Act 2003 (grounds for possession - made amendments to the Housing Acts 1985, 1988, and 1996)
- Localism Act 2011 (assured shorthold fixed term tenancies).

This policy complies with the Housing Regulator's Tenancy Standard and the Affordable Rent Framework.

Security of tenure

Our tenants will enjoy security of tenure and the right to live peacefully in their home without our interruption or interference. There will be occasions when we will need to gain access to our properties, which are stated in our tenancy agreements and set out below. To inspect the condition of the home or to carry out repairs such as a gas service or other work to the home and/or an adjacent property.

To secure the home because it is believed that the resident is no longer living there,. If the resident has breached the terms and conditions of their tenancy agreement, . We would then take legal action to make the resident comply with the tenancy agreement or ask the court for an order to repossess the home, granting us possession

At the end of an assured shorthold fixed term tenancy, if a decision has been taken not to grant a new tenancy.

2 Background

Our approach in the past has been to grant life-time tenancies, periodic assured or secure and new tenants were granted starter tenancies, which converted to periodic assured tenancies.

The Housing Regulator's new investment framework and revised tenancy standard enables Registered Provider's the flexibility to grant fixed term tenancies. The objective is to ensure that social housing is occupied by those who are unable to secure accommodation in the

private sector and is accessible for as long as the need continues and the accommodation meets the needs of the household.

In addition the Localism Act introduced a number of reforms to the way social housing is delivered; this includes the requirements for all local authorities to develop and publish a tenancy strategy. As a Registered Provider, we will need to have regard to the strategies in the areas we operate.

3 Tenancy

From 1 April 2012 in most circumstances, we will grant a five year assured shorthold fixed term tenancy for general needs new build property lettings and all relets.

We will grant a “lifetime” periodic assured or secure tenancy where:

- an existing Easy secure or periodic assured tenant, whose tenancy was granted before 1 April 2012, transfers to another Easy property
- an applicant who has a periodic assured or secure tenancy (granted before 1 April 2012) from a local authority or registered provider moves to a Easy property (unless the property is let at an Affordable Rent)
 - an applicant is over the age of 60
 - an applicant has a disability and is in receipt of Disability Living Allowance with an award of five years or longer or is under Enhanced Care Programme Approach.
 - there is a restriction on tenure type imposed by existing nomination agreements, planning consents, deed title or loan covenant
 - properties are imminently scheduled for redevelopment. In exceptional circumstances we may issue a two year fixed term tenancy, for example where asylum seekers do not have indefinite leave to remain, and other circumstances which may arise from time to time.

Assured shorthold fixed term tenancies - general needs

Fixed term tenancies have less statutory rights than periodic assured tenancies. However we will extend the following rights contractually through the tenancy agreement:

- the right to transfer
- the right to assign
- the right to repair
- the right to make improvements or be compensated for those improvements
- the right to take in lodgers.
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Fixed term tenancies will clearly state the intended length of the tenancy. All residents will have the right to appeal the decision to grant a fixed term tenancy or the length of the fixed term.

Assured shorthold fixed term tenancies - with probationary period

We will include a probationary period for the first 12 months, with the potential to extend for a further six month period where an applicant:

1. is a first time social housing tenant
2. has previously held a social tenancy but has a history of tenancy breaches

The purpose of the probationary period is to enable us to monitor how the tenancy is

managed within the early stages and to ensure appropriate support is in place to enable the tenant to sustain their tenancy.

Tenancy visits

We will make at least two visits to the new fixed term tenant during the first 12 months to review the tenancy, identify any breaches of tenancy or identify support to help them maintain their tenancy.

Where there are breaches of tenancy and support has not proved effective, we may seek to end the tenancy by serving a s.21 Notice Requiring Possession any time after six months and before month 18.

Where a decision is taken to end the tenancy it will need to be approved by the Area Operations Manager. The tenant will have the right to appeal this decision within 14 days of serving the s.21 Notice Requiring Possession.

If we serve a notice requiring possession during the probationary period, we must begin legal action to repossess the property within two months of the expiry date of the notice requiring possession.

Where the tenancy has been managed satisfactorily no action will be taken and the tenancy will continue until the end of the fixed term.

Assured shorthold fixed term tenancies - other

There are other circumstances where we will grant assured shorthold tenancies for a fixed term period. We will only grant fixed term tenancies where a periodic agreement is not appropriate. Circumstances may include:

- time limited supported housing tenancies, e.g. Rough Sleepers Initiative partnership
- intermediate rent tenancies
- keyworker accommodation
- rent to HomeBuy tenancies.

Our fixed term tenancies will clearly state the intended length of the tenancy. At the end of the fixed term, we will determine whether to issue a new tenancy or terminate the tenancy.

Starter tenancies

Where we issue a periodic assured tenancy it will generally be preceded by a 12 month starter tenancy unless one of the following apply:

- applicants who already have a periodic assured or secure tenancy with Easy Housing Association
- applicants who held a periodic assured or secure tenancy with a local authority or registered provider immediately before starting their new tenancy with Easy Housing
- new tenancies arising due to a statutory succession of a periodic assured or secure tenancy or an assured shorthold fixed term tenancy
- where tenancies are mutually exchanged or assigned
- when the tenancy was formerly secure (e.g. stock transfer)

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There may be further circumstances where we will not grant a starter tenancy, including:

- where we have a limited lease period on a property, e.g. properties above shops
- where we plan to redevelop a site or property in the near future
- tied accommodation
- temporary accommodation
- fixed term tenancies
- student accommodation.

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In such situations we will use an assured shorthold tenancy or licence as appropriate.

At the end of the 12 month probationary period, we will extend or terminate a starter tenancy using the accelerated possession proceedings where there is clear evidence of a serious breach of tenancy. Our decision to extend or terminate will be proportionate to the breach of tenancy. If we decide to extend the probationary period, we will do so up to a maximum of a further six months.

Where we have made the decision to terminate the tenancy we will serve the s.21 notice upon the tenant following the steps laid out in our starter tenancy procedure. Tenants have the right to appeal our decision to terminate their starter tenancy.

Periodic assured tenancies

Periodic assured tenancies were created under the Housing Act 1988. Before 1 April 2012 a new tenant to Easy became a periodic assured tenant after successfully completing a starter tenancy. Providing a periodic assured tenant does not breach the tenancy conditions, they will usually be able to stay in their home for the rest of their life. If they transfer to another Easy Housing Association property they will be granted another periodic assured tenancy.

Secure tenancies

The rights of secure tenants are contained in part 4 of the Housing Act 1985. Secure Tenancies were issued to tenants that began their tenancy before 15 January 1989.

We will only grant a new secure tenancy to a resident who was: already a secure tenant with us immediately before they enter into the new contract. This is in accordance with section 35(4)(d) of the Housing Act 1988 and we do not have the discretion to grant another form of tenancy.

Periodic assured shorthold tenancies

We grant periodic assured shorthold tenancies to our temporary housing tenants. Our starter tenancies are periodic assured shorthold tenancies.

Demoted tenancies

The Anti-social Behaviour Act 2003 introduced a power for registered providers to apply to demote a tenancy where the tenant, another resident in the property or a visitor is guilty of anti-social behaviour.

We will seek to demote a tenancy in accordance with our anti-social behaviour policy.

Licences

The distinction between a tenancy and a license is that a tenancy represents a grant of interest in a land whereas a license only grants permission to stay. We will only offer licenses in circumstances where a tenancy cannot be offered. We do not have the discretion to decide whether or not to grant a tenancy or a license, if conditions of a tenancy are fulfilled the resident will be recognised as a tenant in court.

We will issue license agreements to residents who do not have exclusive possession of any part of the premises. Circumstances where we will grant a license includes where: we require residents to be mobile and able to move between rooms in the premises to enable us to manage the premises efficiently, for example in a hostel; or we require unrestricted access to the accommodation so that we can provide care and support services or check on residents' wellbeing; or we require a tenant to move to a temporary decant property in order to carry out repair or improvement works; or we issue licences to the beneficiaries of our almshouses in line with the Charity Commission guidelines.

Supported housing/sheltered housing

Residents in supported or sheltered accommodation will be granted one of the occupancy agreements described above. The agreements will reflect any support and care provisions that form part of the accommodation.

4. Housing minors - granting Agreement for Tenancy

A person under 18 years old cannot hold a legal interest in land, and therefore cannot hold a tenancy, so we will provide them with an 'Agreement for Tenancy' until they turn 18 years old. An 'Agreement for Tenancy' assumes that minors have the capacity to contract for 'necessaries'. Items such as accommodation, food and clothing are classed as necessities.

We will form a contractual relationship with the minor and issue an Agreement for Tenancy which the minor will hold until they are 18 years of age. This agreement reflects the underlying intention of the Tenancy Agreement, whilst acknowledging the legal status of the minor. The minor will sign and date both the Agreement for Tenancy and Tenancy agreement at the same time and we will consider this to be the tenancy commencement date.

Where possible, we will seek a Guarantor and ask them to sign a Form of Guarantee. The Guarantor may be an individual or an agency such as a local authority or Social Services department. The Form of Guarantee sets out financial responsibility, support responsibility in terms of the rights and obligations of tenancy and a requirement for the guarantor to act as litigation friend if required. We will make it clear that the Guarantor cannot exercise any powers which result in the minor giving up occupation.

Agreements for Tenancy and rent arrears

We will recover any unpaid rent (provided it is not excessive) through the courts in the normal manner and will encourage the minor to appoint a litigation friend.

Succession

A minor may succeed to a tenancy either by statutory succession, or the parent's will, through intestacy. Succession to a tenancy takes place even if the minor is under 18 years old. In these cases we will provide the minor with an Agreement for Tenancy until they turn 18 years old, as described above. We will liaise with family members and social services who may need to carry out a 'child in need' assessment to ensure the minor will be cared for.

Safeguarding

A child is defined as anyone under 18 years old. The fact that a child is living independently does not change his or her status or entitlement to services or protection under the Children Act 1989. We have a duty to safeguard children and young people living in the homes we own and manage our responsibilities are laid out in our safeguarding policies and procedures.

5. Grounds for possession

We recognise that a tenancy can only be brought to an end in specific ways and have clear procedures for terminating a tenancy. We see eviction as the last resort and will only seek possession when we have exhausted non-enforcement measures as set out in the relevant policies and procedures.

Where an assured shorthold fixed term tenancy has been granted we may require Possession at the end of the fixed term subject to the outcome of the tenancy review process. We will rely on the grounds for possession available through legislation:

- for secure tenancies - Housing Act 1985 (schedule 2)
- for both periodic assured and assured shorthold tenancies - Housing Act 1988.

(Both as amended by the Housing Act 1996)

We will only seek possession using mandatory grounds when all other non-enforcement measures have been exhausted and it is proportionate to the case.

Some of our tenancy agreements state which ground we will use for possession and thereby prohibit us seeking possession on some grounds.

A list of grounds for possession for secure, assured and assured shorthold fixed term tenants is attached as an appendix.

Accelerated possession for starter and periodic assured shorthold tenancies

Where we decide to end starter or periodic assured shorthold tenancies we will use the accelerated possession process and serve a Notice Requiring Possession complying with s.21 of Housing Act 1988. This process provides a mandatory right to possession, without any requirements to prove a ground for possession.

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Details around ending starter tenancies can be found in our starter tenancy policy and procedure. Our policies and procedures around rent payment and possession provide details about when we will serve a s.21 notice to end an assured shorthold tenancy.

Where we decide to end an assured shorthold fixed term tenancy we can only use the accelerated possession process and serve a Notice Requiring Possession complying with

s.21 of Housing Act 1988 at the end of the fixed term or where appropriate during the probationary period.

Reviewing assured shorthold fixed term tenancies - general needs

Eight months before the end of the fixed-term, the resident will undergo a needs assessment

to determine whether to issue a new tenancy or terminate the tenancy.

The assessment will take into account the following criteria:

_ Household income levels. Generally where this exceeds £64,000 households will be considered able to afford accommodation in the private rented sector or other housing options such as shared ownership or outright purchase.

_ Under occupation. If the property is being under occupied, the tenancy will be terminated, only where an alternative offer of suitably sized accommodation is made.

_ Housing need and suitability of property. If the property has been adapted or is ground floor level and members of the household do not have a specific need, suitable alternative accommodation will be offered.

_ Tenancy history. Where there has been a breach of the tenancy agreement (e.g. rent arrears and repayment agreements have not been complied with or ASB). The end of a fixed term tenancy will not be seen as a substitute to following the processes set out in our rent arrears and ASB policies and procedures.

When determining whether to grant a new fixed term tenancy consideration will also be given to the following circumstances, which may override the assessment criteria above:

_ children in local schools

_ a requirement to live locally to provide care and support to a vulnerable or elderly relative

_ terminal illness

_ approved foster carer.

We may introduce other criteria at a local level where this is negotiated and supported by one of our partner local authority's tenancy strategy. This may include engagement in employment or training initiatives or contributions to the local community. Where this is the

case, this will be clearly set out in writing at the point of sign-up.

Where a decision is taken not to offer a new assured shorthold fixed term tenancy, residents

will be provided with advice on further housing options including supported housing, intermediate rented, private sector renting, and where appropriate the option of converting

their existing home to shared ownership or outright ownership through Right to Acquire.

Where a decision is taken not to issue a new tenancy due to breach of the tenancy agreement, consideration will be given to what support has been offered to the resident and

other household members. This may include referrals to the Financial Inclusion team and/or

tenancy / floating support. Where such support has been offered and not proved effective, consideration should be given to any identified support needs and whether a referral to supported accommodation may be appropriate.

Where a decision is taken to terminate the tenancy a 'minded to' notice will be served at least six months before the end of the tenancy. Residents will have the right to appeal the decision not to issue a new tenancy.

This will be followed up by a s21 Notice Requiring Possession to be served two months before the end of the tenancy.

As.21 Notice Requiring Possession can only be served at the end of an assured shorthold fixed term tenancy or during the probationary period.

Should a resident wish to leave the property before the end of the fixed term, they should make a request in writing to be released from their contract (surrender). There is no legal obligation for us to agree to a request to surrender however we will agree to this subject to the conditions usually attached to the end of a tenancy including providing four weeks notice, payment of rent due and leaving the property in good order. Where the above conditions have not been met we may, at our discretion, agree a request to surrender.

6. Publicising the policy and raising awareness

Our resident handbook gives details about the tenancy agreement together with an explanation of the grounds for possession.

We will provide regular training for our staff on tenancy management issues such as housing minors, grounds for possession, and Affordable Rent to enable them to deal with enquiries and ensure they understand the relevant legislation.

7. Disputes and appeals

A resident may wish to complain if they are dissatisfied with the way their application, selection, offer or allocation has been handled and will be advised to follow our Complaints

Procedure. Residents have recourse to the Housing Ombudsman if a matter is not suitably resolved. Residents may also seek independent advice and assistance from a local Citizen's Advice Bureau, law centre or solicitor.

Applicants offered an assured short hold fixed term tenancy have the right to appeal the length and type of tenancy granted to them on the grounds that it is not compliant with our policy or if they believe our actions have been unlawful. Appeals should be made in writing within 24 hours of viewing the property and will be considered by the Deputy Director of Housing Services or the Head of Housing.

Residents will also have the right to appeal a decision not to issue a new assured shorthold fixed term tenancy on the grounds that it is not compliant with our policy or if they believe our actions have been unlawful. Appeals should be made in writing within 14 days of the notice being served and the case will be reviewed by the Director of Housing Services or the Head of Housing.

8. Monitoring and reviewing the policy

We will review this policy every three years to ensure it is achieving its objectives.

9. Equality and diversity

We will follow our equalities and diversity policy when granting occupancy agreements and taking action to end a tenancy by seeking possession.

There are occasions where the law distinguishes between residents under 18 years and those over 18 and this may override our policy statement.

10. Related documents

Rent payment policy

Succession policy

Safeguarding policy

Starter tenancies policy

Anti-social behaviour policy

Relevant housing management policies and procedures, occupancy agreements and handbooks.

Appendix 1 - Grounds for possession

Mandatory grounds for possession

The court must grant us possession on these grounds.

For secure tenancies

Grounds 9, 10 and 11 are mandatory; however the court must be satisfied that suitable alternative accommodation will be available for the tenant. The grounds are:

Ground 9 Overcrowding

Ground 10 Demolition

Ground 10A Redevelopment

Ground 11 Charity

For assured tenancies and assured shorthold periodic tenancies

Ground 1 (owner occupiers) Landlord previously occupied the property and wants to use the property as his or her only and principal home.

Ground 2 (mortgagees) Dwelling is required for sale in accordance with a mortgage granted before the tenancy began.

Ground 3 (holiday let) Tenancy is an out of season fixed term letting which was used as a holiday let.

Ground 4 (educational institution)
Tenancy is a fixed term letting which was used for students.

Ground 5 (demolition or reconstruction)
Landlord intends to demolish or reconstruct which cannot be done with the tenant in residence.

Ground 6 (death of a tenant) Tenancy has passed to the tenant through the will or intestacy of his/her predecessor and the landlord has begun possession no later than 12 months after the death.

Ground 7 (rent arrears) Tenant owed rent arrears on the date the Notice Seeking Possession was served and at the date of the hearing. The arrears amount to: 8 weeks (rent payable weekly/fortnightly) 2 months (rent payable monthly)

- 1 quarter rent which is 3 months in arrears (rent payable quarterly)
- 3 months rent which is more than 3 months in arrears (rent payable yearly)

For assured shorthold fixed term tenancies only grounds 2, 7 and 8 are available to use.

Discretionary grounds for possession

The court may order possession on these grounds if it is reasonable.

For secure tenancies

Grounds 1-8 are discretionary and the court must be satisfied that it is reasonable to make the possession order. Grounds 12-16 are also discretionary, the court must be satisfied that it is reasonable to make the possession order **and** that suitable alternative accommodation will be available.

- Ground 1 Rent arrears or breach of obligation
- Ground 2 Nuisance and behaviour
- Ground 2A Domestic violence
- Ground 3 Condition of premises
- Ground 4 Condition of furniture
- Ground 5 Misrepresentation by tenant
- Ground 6 Improper assignment
- Ground 7 Conduct in employment related tenancy
- Ground 8 Temporary accommodation due to works
- Ground 12 Employment
- Ground 13 Property adapted for disabled
- Ground 14 Accommodation for special groups
- Ground 15 Accommodation for special needs
- Ground 16 Succession (size of premises)

For assured tenancies, assured shorthold periodic tenancies and assured shorthold fixed term tenancies

Grounds 9-17 are discretionary grounds on which the court may order possession if it is reasonable.

- Ground 9 (suitable alternative) Suitable alternative accommodation is available for the tenant, or will be when possession order takes effect.
- Ground 10 (some rent arrears) Tenant was in rent arrears on the date possession proceedings began and (unless the requirement for a notice is waived by the court) on the date the Notice Seeking Possession was served.
- Ground 11 (persistent delay in paying rent) Tenant has persistently delayed paying rent, whether or not there are any arrears owing on the date on which proceedings for possession are begun.
- Ground 12 (breach of tenancy) Any tenancy obligation (other than rent matters) has been broken or not performed.
- Ground 13 (damage to property) Condition of the dwelling or common parts has deteriorated owing to acts of waste, neglect or default by the

tenant or anyone living with him/her and where a lodger or sub-tenant is responsible for the deterioration the tenant has not taken reasonable steps to remove that person.

- Ground 14 (anti-social behaviour/criminal conduct) Tenant/person residing or visiting:
1. guilty of conduct causing/likely to cause a nuisance, annoyance or otherwise act unlawfully in vicinity
 2. convicted of using the dwelling or allowing it to be used for immoral or illegal purposes, or of an indictable offence committed in or in the locality of the dwelling house.
- Ground 14a (domestic violence) Dwelling was occupied by couple and
1. one or both is a tenant of the dwelling
 2. one partner has left because of violence or threats of violence towards a partner or family member
 3. court is satisfied the partner who has left is unlikely to return.
- Ground 15 (deterioration of furniture) Condition of furniture provided by the landlord has deteriorated owing to ill treatment.
- Ground 16 (premises let to employees) Dwelling was let as a service tenancy and the tenant is no longer in that employment.
- Ground 17 (fraud) Landlord granted a tenancy as a result of a false statement Made knowingly by the tenant.