

Report of the Head of Landlord Services

ITEM 7      DRAFT NEW TENANCY AGREEMENT

1.      PURPOSE OF REPORT

To present the board with the council's draft new tenancy agreement for its secure and introductory tenants.

2.      ACTION REQUESTED

The board is requested to note, comment and commend the policy to cabinet, subject to any agreed amendments being made.

3.      BACKGROUND

3.1      The tenancy agreement is the document that defines and governs the contractual relationship between landlord and tenant. It contains the rights and obligations of both parties, which reflect statutory requirements imposed upon the landlord by act of parliament, principally the Housing Acts 1985 [secure tenants] and 1996 [introductory tenants] and contractual requirements imposed through the agreement itself.

3.2      The purpose of the tenancy agreement is to set out clearly each party's rights and responsibilities and provides the basis for either landlord or tenant to enforce non-performance of any obligation or refusal of the exercising of any right.

3.3      Apart from setting out clearly statutory rights and responsibilities, the tenancy agreement also has to fulfil other conditions, notably the requirements the Unfair Contract Terms Act 1977.

3.4      The existing tenancy agreement is more than a decade old. It is considered good practice for landlords to revise their tenancy agreements on a regular basis: the years of operating under one tenancy agreement will expose any shortcomings that it might have; and these can be dealt through future revisions. Changes in legislation, regulation and accepted good practice are also reasons why tenancy agreements should be revised.

4.      PRINCIPAL CHANGES PROPOSED

The existing tenancy agreement is attached as appendix 1; and the draft new tenancy agreement is attached as appendix 2. The changes proposed are summarised below:

**1.      In general**

While the existing tenancy agreement's many sections tend to be subject-based, the new tenancy agreement is divided into **nine** very clear and distinct sections focusing on landlord's and tenant's rights and obligations:

Section 1:	Explanation of words used in the agreement;
Section 2:	Tenancy details;
Section 3:	General terms;
Section 4:	Tenant's rights;
Section 5:	Landlord's obligations;
Section 6:	Tenant's obligations;
Section 7:	Ending the tenancy;
Section 8:	Chargeable services schedules;
Section 9:	Declarations and signings.

Within each section every paragraph is individually numbered so as to provide an easy method of referencing and cross-referencing.

## 2. Tenants' rights

Tenants' rights fall into two broad categories: those conferred by acts of parliament such as the Housing Acts of 1985 and 1996 and those conferred contractually by Charnwood under the tenancy agreement. The draft new agreement makes very clear what rights are statutory and what are contractual. It also removes some 'rights' in the existing agreement that are either incorrect (right to assign) or inappropriate (right to join tenants groups). Rights not enjoyed by introductory tenants are made very clear by the use of bold red text.

## 3. Individual changes

Other than those structural or formatting changes in the agreement, the new conditions of tenancy's changes fall into two broad categories themselves, viz:

- Additional clauses that do not have any equivalent in the existing agreement;
- Existing clauses re-written, clarified, expanded upon and/or strengthened.

The examples given below are not exhaustive: the comparison document accompanying this guide goes into great detail, cross-referencing the existing agreement's clauses with the new one's and *vice versa*.

### (a) New clauses

- Section 2.7 **tenancy start date**: currently all tenancies start on a Monday and run on a weekly basis thereafter. The draft new tenancy agreement allows for tenancies to start on a day other than a Monday. This is intended both to give flexibility to incoming tenants in respect of their moving-in date but also to provide the opportunity for the landlord to reduce void re-let times;
- Section 5.5 **decoration**: this clause makes clear the landlord's obligation to decorate the exterior of tenants' homes and to make good internal decorations [tenant's responsibility] that are damaged in the course of any works or repairs carried out by the landlord;

- Section 5.8 **boundaries**: this clause sets out landlord's obligations in relation to boundaries and makes it very clear which boundaries the landlord will maintain;
- Section 6.1 **taking possession**: although one would argue that this is an implied term of tenancy, there is now an explicit clause requiring the tenant to take up possession of the property upon the start of the tenancy;
- Section 6.4.3 **anti-social behaviour**: the second bullet point in the list of conduct deemed to be anti-social behaviour refers to someone being present at a riot. The tenth bullet point states that drug misuse, such as smoking cannabis, that causes a nuisance to others is a breach of tenancy. This point is absent from the existing tenancy agreement. Mere drug consumption within someone's home that does not cause a nuisance to others remains a criminal matter and not a breach of tenancy. The final bullet point in the list of activities considered to be anti-social behaviour is gang membership. This is a completely new category and makes it a breach of tenancy to belong to a gang or allow a gang member to visit the tenant's home;
- Section 6.8 **looking after your home**: bullet points 10 and 11 prohibit carrying out certain electrical works to the property. Bullet point 10 refers to works that need written consent; point 11 refers to works that are completely prohibited and where no permission will be granted in any circumstances;
- Section 6.11 **insurance**: this clause sets out clearly what the landlord's responsibilities are in respect of insurance – buildings and contents;
- Section 6.12 **health and safety**: this is a new, separate, clause and sets out clear obligations on the tenant on various subjects such as fire safety, responsibility for checking smoke detectors (including changing their batteries). The final bullet point in 6.12.3 is devoted to hoarding; and this is a completely new clause in the conditions of tenancy;
- Section 6.17 **household pests**: this new clause sets out very clearly what are landlord's and tenant's responsibilities in respect of infestations of household pests. The existing tenancy agreement is completely silent on this matter;
- Section 6.24 **owning or renting another property**: the new tenancy agreement introduces a clause on the landlord's position in respect of a tenant owning another property. A tenant must not own or rent another property in which the tenant would reasonably be expected to live in as his or her home. Similarly, the clause sets out the landlord's position if a tenant inherits a property.
- Section 8 **chargeable services**: the existing tenancy agreement is completely silent on what services could be chargeable if provided. The draft new tenancy agreement sets out a comprehensive schedule of all the types of services for

which it would be legitimate to levy a service charge. Section 3.7 [General terms] sets out the landlord's position in respect of how services will be charged and may be accounted for in the future;

(b) Clarification, expansion and re-writing of existing clauses

The clauses in the new tenancy agreement that falls into this category are too numerous to include without exception; the following are considered to be the most important, therefore:

- Section 4 **tenant's rights**: this section is accurate and comprehensive now in that it lists separately all secure and introductory tenants' statutory rights and contractual rights. It also is very clear through the use of bold red text which [statutory] rights are not available to introductory tenants;
- Section 4.5 **right of succession**: the existing tenancy agreement predates the Localism Act 2012. This changed and complicated succession rights significantly. The new agreement sets out in detail succession rights both for tenants whose tenancies began before 1 April 2012 and for those whose tenancies started on or after 1 April 2012;
- Section 6.4/5/6 **anti-social behaviour and harassment**: other than completely new additions to the list as described above, these clauses provide much greater detail and clarity over conduct deemed to be anti-social behaviour and strengthen the landlord's ability to tackle anti-social behaviour through this greater detail and clarity.
- Section 6.5 **harassment**: the new tenancy agreement separates out anti-social behaviour from harassment, the difference between the two being, in principle, that harassment is personally, deliberately and maliciously targeted, in particular to those people protected by the Equality Act 2010. While harassment is personally targeted, behaviour covered by this section is also contained in 6.4.3 where the behaviour is not personally targeted. Again this very much strengthens the landlord's powers under the tenancy agreement;
- Section 6.21 **assignment**: although assignment is covered in the existing tenancy agreement it is listed as a 'right' whereas it is not a right: it is a power that the landlord has to grant in certain circumstances. The new tenancy agreement corrects that inaccuracy;
- Section 6.22 **access obligations**: although the existing tenancy agreement is comprehensive in its position on the tenant requiring the landlord to give access, the new agreement is much more explicit and clear in setting out the consequences of failing to give access; it also makes it clear that failure to grant access as the result of a court order or for the landlord to carry out emergency works will result in forced entry;

- Section 6.7 **domestic violence**: while the existing tenancy agreement lists domestic violence as an example of anti-social behaviour generally, the new agreement devotes a separate section to the subject;
- Section 6.9 **tenant's responsibility for certain repairs**: this section expands considerably on those items in the existing tenancy agreement that are deemed to be the tenant's responsibility to keep in good repair;
- Section 6.10 **alterations and improvements**: again, this section expands considerably on its equivalent in the existing tenancy agreement;
- Section 6.15 **pets and other animals**: while there is reasonably comprehensive clauses in the existing tenancy agreement on the keeping of pets, the new tenancy agreement uses a new pets policy as the governing document on tenants keeping pets. This means that only fundamental details are required in the tenancy agreement and that policy changes to pet ownership can be changed without having to change the actual tenancy agreement;
- Section 6.18 **parking and vehicle repairs**: again, while the existing agreement is not silent over parking and vehicle repairs the new agreement strengthens and expands on existing terms.

## 5. PROPOSED NEW FORMAT OF THE TENANCY AGREEMENT

- 5.1 The existing tenancy agreement is a black and white photocopy of an A4 document of text. One might argue that it does not present a particularly exciting or interesting document and provides no great incentive for a new tenant to read it and keep it in a safe place.
- 5.2 With the new draft agreement the proposal is to create a full-colour booklet of tenancy conditions that will be designed and laid out so as to create a much more readable document and one that both the council and tenant will be proud to give and keep.
- 5.3 The intention is to separate out the tenancy details in section 2 and the declarations/signings in section 9 from the actual conditions of tenancy. That way, only one copy of the conditions will be necessary and one copy of the signed tenancy details will be retained by the tenant (the other being retained by us) in a pocket of the front cover of the conditions of tenancy.

## 6. COMPLEMENTARY INFORMATION

- 6.1 The new draft agreement is longer than the existing one and could be seen by some as quite a daunting document. Because of that we have developed a simple guide to the tenancy agreement that will be issued to everyone and which draws out the most important elements of the new agreement. Officers carrying out sign-ups of new tenants will also use this as a basis for the sign-up. Time constraints would make it very difficult having to go through the entire tenancy agreement. The draft simple guide is attached as appendix 3. It also contains a checklist at the beginning that will be used by officers carrying out the sign-up to be used as an *aide-memoire*.

6.2 We intend also, once the new tenancy agreement has been agreed, to develop a pictorially-based tenancy agreement for those with learning difficulties. This will have to be done through commissioning specialist advice.

## 7. IMPLEMENTATION OF THE NEW AGREEMENT

7.1 There are two aspects of the implementation of the new agreement that have to be considered:

- Replacement of the existing agreement with the new agreement for new tenants;
- Retrospective imposition of the new agreement on existing tenants.

7.2 As a local authority operating secure tenancies under the 1985 Housing Act we are in a very much better situation regarding retrospective imposition than a housing association, which operates assured tenancies under the 1988 Housing Act. With the latter, any decision to change conditions of tenancy has to be formally and explicitly agreed to by existing tenants. As a result, housing associations tend not to attempt to impose new tenancy conditions on existing tenants. The consequence of that is that they have to operate under multiple agreements. Version control is extremely difficult, therefore. Local authorities, conversely, do not need to obtain existing tenants' explicit agreement to change their conditions of tenancy, though they must give due regard to comments made and objections raised.

7.3 The '85 Act under section 103 sets out very clear rules that have to be abided by when local authority landlords wish to vary the terms of tenancy for existing tenants:

- We must serve a preliminary notice on the tenant:
  - informing the tenant of our intention to serve a notice of variation;
  - specifying the proposed variations and their effect; and
  - inviting the tenant to comment on the proposed variation within such time, specified in the notice, as we consider reasonable;
- We must consider any comments made by the tenant within the specified time;
- We must then serve a notice of variation on the tenant which must contain the actual variations being proposed, incorporating additional changes (if any) brought about by comments received through the preliminary notice process and the date on which the variation will take effect, that date being no less than four weeks of the date of the notice;
- We must include any information that we consider necessary to inform the tenant of the nature and effect of the variation

7.4 Special consideration has to be given to what happens to tenancies created after the preliminary notice has been sent out and up to the final agreement being implemented through the notice of variation. It would be easy to implement the new agreement at the same time of the preliminary notice being served; but one would then either run the risk of ending up with two agreements if, as a result of the preliminary notice exercise, further amendments were agreed or run the risk of being accused of having decided not to take into account tenants' comments before the preliminary notice exercise was begun. Neither is a risk we wish to take and so a further exercise under S.103 will have to be carried out on those tenancies created during the period between

starting the preliminary notice exercise and the serving of the notice of variation. A sample timetable is shown below, illustrating these points:

- Preliminary notice served 5 July 2021; existing agreement continues to be given to new tenants;
- Preliminary notice period ends 1 August 2021;
- Consideration of comments ends 13 August 2021;
- New agreement finalised 20 August 2021;
- New agreement printed by 17 September 2021;
- New agreement replaces existing agreement for all new tenants from 20 September 2021;
- Preliminary notice exercise repeated for all new tenancies created from 1 July to 13 September 2021. Taking annual lettings as a round 500, this could amount to between 100 and 110 tenancies;
- Second preliminary notice exercise starts 11 October 2021 and ends 7 November 2021;
- Consideration of comments takes place in the week commencing 15 November 2021;
- Notice of variation to all tenants sent out 25 November 2021;
- New agreement in place for all existing tenants from 3 January 2022.

## 8. CONCLUSION

The new tenancy agreement is a substantial re-write of Charnwood council tenants' conditions of tenancy. It sets out much more clearly and logically tenants' and landlord's rights and obligations; it addresses deficiencies in the existing agreement brought about by new legislation and regulation and it protects tenants' rights to quiet enjoyment of their homes; it protects all rights of tenants through legislation and sets out clearly additional contractual rights conferred through the tenancy agreement. By expanding upon existing conditions and adding new ones brought about as a result of any shortcomings perceived to exist in the existing agreement it strengthens the landlord's ability to enforce conditions of tenancy against those who wilfully and/or persistently fail to abide by them.

## 9. EQUALITY IMPACT ASSESSMENT

An equality impact assessment, attached as appendix 4 has been carried out on the draft agreement.

10. ENDORSEMENT

HMAB members are requested to commend this draft new tenancy agreement and accompanying information to cabinet, subject to any further amendments requested and agreed.

Officer to Contact:

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