

Report to the Housing Scrutiny Panel



**Epping Forest
District Council**

Date of meeting: 15 September 2005

Portfolio: Housing – Councillor M Heavens

Subject: Introductory Tenancy Scheme

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Committee Secretary: Zoe Folley

Recommendations/Decisions Required:

That the Housing Scrutiny Panel recommends to the Cabinet, what discretionary rights should be given to Introductory Tenants as proposed in the attached appendix, when it considers the outcome of the consultation exercise and whether to implement an Introductory Tenancy Scheme.

Report:

Background to Introductory Tenancies

1. Under the Housing Act 1985 (and previously the Housing Act 1980) tenants of local authorities have security of tenure, with the exception of a few cases, including homeless applicants housed temporarily on a non-secure basis pending the offer of permanent accommodation, and Scheme Managers (formerly known as Wardens) still living in tied accommodation.
2. Secure tenants have a number of rights set out in the Housing Act 1985 including the Right to Buy (with some exceptions including older people living in sheltered accommodation), rights to improve, exchange, repair, take in lodgers, and the right to be succeeded upon their death.
3. Other than surrender by the tenant, a secure tenancy can only be terminated by a County Court Order, if the judge considers it reasonable to do so following the breach of any tenancy condition.
4. However, under the Housing Act 1996, local authorities are given discretionary powers to operate a scheme of "Introductory Tenancies" whereby all new tenants would not be secure until after a twelve month "trial" period. This period can be extended by a further six-months if there have been any minor breaches of tenancy conditions. During the "trial" period, Introductory Tenants would not have the same statutory rights as secure tenants. Therefore, if the Council wished to seek possession of the property for any breach of a tenancy condition, (e.g. rent arrears or anti-social behaviour) provided certain procedures are followed, an Introductory Tenancy could be terminated, simply by the issuing of a Notice of Proceedings without grounds having to be stated, with the courts having no alternative but to grant possession provided the Council has followed the correct procedures.
5. An Introductory Tenancy, by its very nature, sends out a message to all new tenants as to what is expected of them, particularly in the early months of their tenancy.

6. The main provisions of the Act are as follows:

- If a council decides to operate a scheme, all new tenancies must be introductory tenancies (i.e. councils cannot target certain applicants).
- All Introductory Tenants would be bound by the conditions of an Introductory Tenancy Agreement which would change after the “trial” period to a Secure Tenancy Agreement. Information on the secure tenancy must be given at the point it becomes secure.
- Authorities should review the legal rights not given to introductory tenants which are held by secure tenants through statute and consider if they should be granted to introductory tenants beyond statute e.g. right to improve, take in lodgers etc. (which is the purpose of this report).
- The power to operate a scheme is discretionary.
- Provided the authority has not begun proceedings for possession within a year of the tenancy commencement date the Introductory Tenancy will automatically become secure, unless the authority exercises its right to extend the period of the Introductory Tenancy by a further six months due to any minor breaches of tenancy conditions.
- Councils can revoke their scheme at any time, in which case all introductory tenancies become secure. The scheme can be re-introduced at a later date.
- Existing council and housing association tenants who transfer are exempt.
- Before a council can apply to the court for possession, it must give the introductory tenant at least two warnings, then serve a Notice of Proceedings setting out the Council’s decision to apply for such an order and the date before which the Council cannot apply for a court order, which must be at least four weeks from the date of service.
- If a notice has been served and the twelve-month trial period subsequently elapses, the tenancy continues to be an introductory tenancy until the proceedings have been determined.
- Introductory tenants who are served with notice may request a review of the decision to seek possession within 14 days of the notice being served. Authorities cannot proceed with an application for possession until it knows whether the introductory tenant intends to exercise their right to review. If requested, the Council must review its decision in accordance with any procedure the Office of the Deputy Prime Minister (ODPM) may prescribe in regulations. The review must be carried out by an independent body or person within the authority and no person involved in the original decision to seek possession can be included. Authorities can choose to have officer only Panels or may wish to establish Member Panels. Reviews would be a “paper” review unless the tenant informs the authority that they wish to have an oral hearing.
- Spouses and family members may succeed to introductory tenancies. A successor tenant would continue with the introductory tenancy until the original “trial” period has elapsed from the tenancy commencement date.
- Where councils operate a scheme, they must publish details of the scheme “from time to time” and provide copies to introductory tenants at the time of the offer.
- Introductory tenants have the same right of consultation on housing management matters as secure tenants.
- Authorities must consult on any proposal to establish an Introductory Tenancy scheme with their existing tenants and any other persons likely to be affected including housing associations, CAB, Social Services etc.

7. As part of the Best Value Service Review of Housing Services, the Service Review Panel set up to oversee the Review agreed that there were merits in exploring further the use of Introductory Tenancies and therefore agreed that a report should be submitted to the Cabinet for consideration.

8. At its meeting on 20 December 2004, the Cabinet agreed the principle of establishing an Introductory Tenancy Scheme for all new secure tenants subject to a consultation exercise with the Tenants and Leaseholders Federation, all existing tenants, and partner agencies; and that a further report be submitted to the Cabinet on the outcome of the consultation exercise, including any additional rights to be given to Introductory Tenants beyond statute.

9. The Cabinet further agreed that reviews of intentions to seek possession (referred to in paragraph 6 of this report) be undertaken, in accordance with the legislation, by an officer panel comprising:

- (a) Assistant Head of Housing Services (Operations) (Chairman) (substitute – Head of Housing Services or Assistant Head of Housing Services Property and Resources).
- (b) Area Housing Manager not involved in the case (substitute Senior Housing Officer- Management).
- (c) Another Section Manager – Housing Services.

10. As explained above, each local authority must review the legal rights not given to Introductory Tenants which are held by secure tenants through statute and to consider any rights granted by the authority beyond statute. Therefore, the Housing Scrutiny Panel are being asked to consider and make recommendations to the Cabinet on which discretionary rights Introductory Tenants should be given, if the Cabinet decides to implement the scheme.

11. Introductory Tenants have similar, but not the same, statutory rights as secure tenants. The table attached as an appendix to this report summarises the key differences, and recommends which rights should be allowed (some with conditions) and which should not.

12. The Housing Scrutiny Panel are being asked to consider and recommend to the Cabinet, which legal rights beyond statute the Council should grant to Introductory Tenants.

Consultation undertaken:

13. A consultation exercise is currently being undertaken with all secure tenants with a closing date of end September 2005. The Tenants and Leaseholders Federation have been consulted and strongly supported the proposal and the review arrangements. The Federation are being consulted on which rights beyond statute should be granted to Introductory Tenants at their meeting on 11 August 2005, their views will be reported verbally. Partner agencies have been consulted including the Citizens Advice Bureau's, Housing Associations the Crime and Reduction Partnership and the Supporting People Core Strategy Group all of whom support the proposal.

Resource implications:

Budget Provision: N/A

Personnel: Increase of workload

Land: N/A

Community Plan/BVPP Ref N/A

Relevant statutory powers: Housing Act 1996

Background papers: N/A

Environmental/Human Rights Act/Crime and Disorder Act: All Council tenants will be "on trial" for the first twelve months of their tenancy which could reduce acts of anti-social behaviour. An Introductory Tenancy Scheme complies with the Human Rights Act.

Appendix One

Legal Rights of Secure & Introductory Tenants

Legal Right	Secure Tenants	Introductory Tenants	Recommend To give Discretionary Right?	Comments
Right to succession of spouse or family member	Yes	Yes	N/A	In the case of Introductory Tenants the successor tenant would remain an Introductory Tenant until the original "trial" period has elapsed.
Right to Repair	Yes	Yes	N/A	
Right to be consulted on housing management issues	Yes	Yes	N/A	
Right to assign	Yes	Yes	N/A	Following any assignment the new tenant would remain an Introductory Tenant until the original "trial" period elapsed.
Right to Buy	Yes	No	No	When the tenancy becomes secure, the period of the Introductory Tenancy would count towards the discount. Right to Buy would not apply as there is no security of tenure until the original "trial period has elapsed.
Right to take in lodgers	Yes	No	Yes	It is suggested that Introductory Tenants should be allowed this right with the Council's permission, provided that no tenancy conditions have been breached at the time of the request.

Legal Rights of Secure & Introductory Tenants (continued)

Legal Right	Secure Tenants	Introductory Tenants	Recommend To give Discretionary Right?	Comments
Right to sub-let part of the property	Yes	No	Yes	It is suggested that Introductory Tenants should be allowed this right with the Council's permission, provided that no tenancy conditions have been breached at the time of the request.
Right to improve	Yes	No	Yes	It is suggested that Introductory Tenants should be allowed this right with the Council's permission, provided that no tenancy conditions have been breached at the time of the request. If the tenant moves out during the period they would not be eligible to benefit from the statutory compensation for improvement scheme.
Right to exchange	Yes	No	Yes	Where an Introductory Tenant wishes to exchange with a secure tenant this could only be achieved by each party surrendering their tenancies, with the Council granting each tenant a tenancy of the new property – a secure tenancy in the case of a secure tenant party to the exchange and an Introductory Tenancy in the case of an introductory tenant party to the exchange. As this should be a rare occurrence it is suggested that this right should be allowed, provided that no tenancy conditions have been breached at the time of the request.

Legal Rights of Secure & Introductory Tenants (continued)

Legal Right	Secure Tenants	Introductory Tenants	Recommend To give Discretionary Right?	Comments
Right to vote prior to transfer to new landlord	Yes	No	Yes	It is suggested that, Introductory Tenants be allowed this right, but in the event of any possible transfer, votes from Introductory Tenants should be analysed separately.
Right to be consulted on decision to delegate housing	Yes	No	Yes	It is suggested that Introductory Tenants be allowed this right, but in the event of any possible delegation, votes from Introductory Tenants should be analysed separately.
Right to participate in housing management contract monitoring	Yes	No	Yes	It is suggested that in the event of any contract being in place, Introductory Tenants be allowed this right.